

BOROUGH OF KETTERING

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| Committee | Planning Committee | Item 6.1 | Page |
| Report Originator | Mark Coleman | ENFO/2009/00138 | |
| Wards Affected | SLADE | 15.01.13 | |
| Title | Authorisation for Planning Enforcement Action at Nus Hill Lodge, Cransley Road (land at), Loddington | | |

1. PURPOSE OF REPORT

To seek authorisation to issue an Enforcement Notice in respect of unauthorised change of use of land adjacent Nus Hill Lodge, Cransley Road, Loddington, Kettering.

2. BREACH OF PLANNING CONTROL

It appears that a breach of planning control has occurred, namely, the material change of use of agricultural land to private garden, as is shown for the purposes of identification only edged in red on the attached plan.

3. RECOMMENDATION

That in respect of the breach of planning control described above, the Head of Development Services be authorised to issue an Enforcement Notice pursuant to section 172 of the Town and Country Planning Act 1990 (as amended) requiring the steps to be taken within the specified time periods; and for the reasons which are set out below:

3.1 Steps to be Taken

The steps required to remedy the breach of planning control are:-

- (1) Permanently cease the use of the land for private garden use. For the avoidance of doubt, this includes the permanent removal of all domestic paraphernalia associated with the use of the land as private garden land (e.g. furniture, toys, trampoline, etc).

Time for compliance: 1 month from the date this Notice takes effect.

- (2) Permanently remove from the land the post and rail fence enclosure surrounding the land on the southwest, northwest, northeast and southeast boundary, as well as the dividing post and rail fence

enclosures separating the vegetable patch and lawn area from the formally planted garden area.

Time for compliance: 1 month from the date this Notice takes effect.

- (3) Permanently remove from the land all external lamps together with all associated electrical wiring and foundations.

Time for compliance: 2 months from the date this Notice takes effect.

- (4) Permanently remove from the land the Summerhouse located to the east of Nus Hill Lodge, together with associated picket fencing, decking, foundations, and all electrical wiring and other services connected to the building.

Time for compliance: 2 months from the date this Notice takes effect.

- (5) Permanently remove from the land all planted bulbs, trees, shrubs, seeded grass turf, vegetables, and all other domestic planting located on the land.

Time for compliance: 12 months from the date this Notice takes effect.

- (6) Following compliance with steps 1-5 above, permanently remove from the land all materials arising from compliance with the above requirements (steps 1 - 5).

Time for compliance: 13 months from the date this Notice takes effect.

3.2 Reasons For Issuing the Notice

As the Local Planning Authority has taken enforcement action in respect of the same breach within the last 4 years, section 171(B)(4)(b) of the TCPA 1990 has effect. This enables the Local Planning Authority to take further enforcement action in respect of the breach.

It is considered that the unauthorised change of use of the agricultural land has a harmful impact on the rural vitality of the area as it does not make efficient or effective productive use of Grade 2 (very good as defined by the Agricultural Land Classification system) agricultural land. Removal of the land from productive agricultural use not only has a harmful impact on the strength of future opportunities for sustainable economic development in this rural location, but also changes the character of the land by introducing a domestic character to the open countryside more physically and visually linked with the authorised residential curtilage of Nus Hill Lodge, Cransley Road, Loddington than the surrounding open countryside within which the land is situated. This weakens the relationship between the land and the surrounding open countryside and detracts from the established arable character of the area. In the absence of a justified need for the additional garden land or the demonstration of exceptional circumstances, the development is unacceptable and contrary to Development Plan policies which seek to resist development in open countryside.

As such, the development conflicts with the aims and objectives of para's 17, 58, 109, 112, of the National Planning Policy Framework and the following policies of the Development Plan:-

Policy 1 (Strengthening the Network of Settlements) of the North Northamptonshire Core Spatial Strategy states in the remaining rural area *[outside of growth towns, smaller towns and rural service centres]* development will take place on sites within village boundaries, subject to criteria to be set out in development plan documents. Development adjoining village boundaries will only be justified where it involves the re-use of buildings or, in exceptional circumstances, if it can be clearly demonstrated that it is required in order to meet the local needs for employment, housing or services. Development will be focussed on those villages that perform a sustainable local service centre role.

Policy 9 (Distribution & Location of Development) of the North Northamptonshire Core Spatial Strategy states development will be distributed to strengthen the network of settlements as set out in Policy 1. New building development in open countryside outside of the Sustainable Urban Extensions will be strictly controlled. Priority will be given to reuse of suitable previously developed land and buildings within the urban areas, followed by other suitable land in urban areas.

Policy 13 (General Sustainable Development Principles) of the North Northamptonshire Core Spatial Strategy states development should meet the needs of residents and businesses without compromising the ability of future generations to enjoy the same quality of life that the present generation aspires to. Development should:

(h) be of a high standard of design, architecture and landscaping, respect and enhance the character of its surroundings and be in accordance with the Environmental Character of the area;

o) Conserve and enhance the landscape character, historic landscape designated built environmental assets and their settings, and biodiversity of the environment making reference to the Environmental Character Assessment and Green Infrastructure Strategy;

p) Not sterilise known mineral reserves or degrade soil quality.

Policy 7 (Environment: Protection of the Open Countryside) of the Local Plan for Kettering Borough states planning permission for development within the open countryside will not be granted except where otherwise provided for in this plan. *[This development is not an exception].*

The Council considers that planning permission should not be given, because planning conditions could not overcome these objections to the development.

4. INFORMATION

At its meeting on 16th August 2011 Planning Committee authorised the issue of an enforcement notice, broadly in line with the recommendation at paragraph 3 above. The notice was duly issued and served. The land owner lodged an appeal against the notice. One of the grounds of appeal was that the notice had not been properly

served on all persons with an interest in the land. The planning inspector considered that in the light of information aired at the hearing, the owner of the surrounding farmland had been substantially prejudiced by the Council not having served a copy of the notice on him personally. The Inspector therefore quashed the notice, leaving it open for the Council to correctly re-serve under the “second bite” provisions.

Site Description

The site is located in open countryside, halfway between Great Cransley and Loddington in an elevated and visible position. The site comprises of a ‘u’ shaped piece of land which wraps around the curtilage of the dwellinghouse [known as Nus Hill Lodge] to the southwest, northwest, northeast, and southeast boundaries. The total area of land measures approximately 0.634ha (1.56acres). The site has been landscaped with lawn, and planted with numerous shrub beds and trees. A formal rose garden and a separate vegetable plot have also been planted; a separate area of land has also been laid to grass. A timber children’s play house has also been erected within the site. The landscaped planting (including lawn) is regularly maintained to a similar standard as the authorised garden land, and the entire outer edge of the site is enclosed by timber post and rail fencing and hedgerow. There is no clear and continuous delineation between the authorised and unauthorised garden areas. Outside of the site to the southwest, northwest, north, and northeast is agricultural land of which the site was originally a part. The surrounding agricultural land can best be described as arable land which appears to be in active use for agriculture.

Planning History

ENFO/2009/00138 – Enforcement Notice Served on 22nd May 2012 with respect of the existing breach of planning control currently under consideration. That notice was the subject of an appeal under reference APP/L2820/C/12/2178406. On 30th October 2012 The Planning Inspector allowed the appeal under ground (e) *‘that copies of the enforcement notice were not served as required by section 172 of the Act’*. This was a decision based on the methodology of the service of the notice; it did not comment on the merits etc. of the notice. In this instance, the stated owner of the boundary fence did not receive a copy of the enforcement notice, and the Planning Inspectorate determined that he would therefore be prejudiced by any decision to dismiss the appeal. The appeal decision is attached at Appendix 1.

A series of comparable breaches, raising similar planning considerations, have occurred elsewhere in Great Cransley and have been subject to similar enforcement action. Appeals against those notices, which did not have the same land ownership issues, were all dismissed and the notices upheld without modification.

Planning Policy:

National Policy

National Policy

National Planning Policy Framework

Core Planning Principles

Policy 7: Requiring Good Design

Policy 11: Conserving and Enhancing the Natural Environment

Decision Taking: Enforcement

Government Circulars

Circular 10/97: Enforcing Planning Control - Legislative provisions and procedural requirements

Development Plan

Local Plan for Kettering Borough (LPKB):

Saved Policy 7: Protection of the Open Countryside

Saved Policy RA3: Restricted Infill Villages

North Northamptonshire Core Spatial Strategy (CSS):

Policy 1: Strengthening the Network of Settlements

Policy 9: Distribution and Location of Development

Policy 13: General Sustainable Development Principles

Supplementary Planning Guidance:

Sustainable Design SPD

Biodiversity SPD

5. APPRAISAL

Whether a material change of use has occurred is a matter of fact and degree. In this instance, the following matters are indicative of a material change of use having occurred:

- The land has been separated from the agricultural unit by the erection of post and rail fencing and boundary hedging; the principal access to the land is through the removal of part of the pre-existing boundary surrounding Nus Hill Lodge to the southwest, northwest, north, northeast, and southeast, which is in the same ownership;
- The lawn and landscaped planting is being maintained to a similar standard as that within the existing authorised garden;
- There is evidence of domestic paraphernalia and buildings on the land (i.e. a trampoline, children's timber play house);
- Domestic planting in the form of numerous trees, shrub and flower beds, formal rose garden, formal vegetable garden has taken place; and
- There is no evidence of any agricultural use and the layout of the site is not arranged in such a way as to support a viable agricultural business use.

As a result, the land now has no relationship with the adjoining agricultural land but has a clear functional relationship with the dwellinghouse, Nus Hill Lodge.

The erection of fences can benefit from a "Permitted Development" permission, although case law confirms that where such works (or other matters such as trees, shrub beds, hedges, etc that do not constitute development in their own right) facilitate an unauthorised use, any enforcement action attacking the unauthorised use can require their removal in order to remedy the breach of planning control.

At a national level, Core Planning Principles, Policy 7, Policy 12 promote the sustainable use of land which protects and enhances valued landscapes, takes into account the benefits of the best and most versatile agricultural land, recognises the intrinsic character and beauty of the countryside supporting thriving rural communities within it, and ensuring that planning decisions respond to and reflect the local character and identity with appropriate landscaping.

In accordance with the national planning policy approach on the matter, the presumption against unjustified development in the open countryside is further reinforced within the Development Plan Policies; specifically within saved Policy 7 (LPKB), which states that “*planning permission for development within the open countryside will not be granted except where otherwise provided for in this plan*”. Recent appeal decisions have Saved Policy RA3 (LPKB) reiterates this approach, by requiring residential development in Restricted Infill Villages to be within defined settlement boundary.

Policy 1 (CSS) states that development adjoining village boundaries, within the open countryside, will only be justified in exceptional circumstances; Policy 9 (CSS) also states that development should be distributed to strengthen existing settlements and that new building development in open countryside will be strictly controlled; Policy 13(0) (CSS) aims to conserve and enhance the intrinsic quality of the open countryside.

Nationally, some planning appeals for changes of use to garden land have been allowed, but these tend to be where existing garden size is insufficient to provide adequate private amenity space and the area of the proposal is modest. In this instance, the authorised garden land at Nus Hill Lodge is provided to the front (northwest), and rear (southeast) of the dwelling, with a small section to the side; authorised garden land to the rear measures approximately 30m (d) x 55m (w) which provides a good sized private amenity space; additional amenity space is also provided as already described. The enclosure of this large additional area of land for garden use results in an ineffective and inefficient use of land, which erodes the character and appearance of the open countryside and its setting. Recent appeal decisions relating to similar development on land to the rear of 35a, 61, 63, 63a, 65 and 67 Loddington Road, Cransley have been dismissed.

In addition to this, the land is classified as grade 2 (very good) agricultural land under the Agricultural Land Classification system adopted by DEFRA. As set out in Policy 12, para 112, the government adopts a sequential approach to the use of agricultural land in respect of its productive quality, in order to retain the best quality agricultural land for food production except where this approach may be inconsistent with sustainability considerations.

Owing to the layout and size of the parcel of land, the site is not sufficient to support an independent agricultural use. In addition, because the quality of the land is ‘very good’, its removal from the surrounding agricultural unit prevents it from being put to a more productive use which would strengthen opportunities for sustainable economic development and have a positive impact on local rural economies.

The unauthorised change of use on site does not fall within the exceptions to these national and local policies and as such it conflicts with their aims and objectives. It is therefore considered that should the Local Planning Authority resolve not to take enforcement action, then this would be likely to result in an undesirable precedent being set which would not only harm the integrity of development plan policies which seek to resist unjustified development within open countryside, but also lead to pressure to allow further similar development at other locations within the periphery of this and neighbouring villages/towns within the borough.

Para 207 of the National Planning Policy Framework (supported by advice in Circular 10/97) advises that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. It is considered that the unauthorised development has an unacceptable adverse impact which conflicts with the Development Plan and therefore it is recommended that enforcement action is authorised.

Human Rights Implications

Service of an enforcement notice in this instance is not a breach of the property owner's human rights. Whilst it does affect their property rights they will have an opportunity to challenge the decision by way of an appeal against the enforcement notice and that provides adequate safeguards in accordance with the Human Rights Act 1998 incorporating the European Human Rights Convention.

Background Papers:

Title of Document:

Date:

Contact Officer: Mark Coleman

Previous Reports/Minutes:

Ref:

Date: