

MEETING OF THE DEVELOPMENT COMMITTEE

14th MARCH 2013

REPORT OF THE HEAD OF REGULATORY SERVICES

11/00614/USE: LAND TO THE REAR OF PENLAN, 21 BAGGRAVE END, BARSBY.

1. PURPOSE OF THE REPORT

- 1.1 To seek the Committee's determination of action to be taken in respect of a breach of planning control at the above location.

2. RECOMMENDATION

- 2.1 **That the Council serve an enforcement notice, permitting the use to continue on the site to a limited scale, as set out at para 6.1 below. It is recognised that the use of the site can have an effect on the amenities of the surrounding residential properties, and as such conditions should be placed on the use to restrict the use to hours of the day and the extent that the use on site could take place at any one time.**

3. INTRODUCTION

- 3.1 A local planning authority has a discretionary power under the provisions of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004) to consider a breach of planning control and to determine what action should be taken to remedy the breach, if necessary. In these circumstances, there are 3 courses of action that are available to the Council:

- To take no further action in these matters;
- To serve an enforcement notice requiring the cessation of the use of the land;
- To serve an enforcement notice in the positive sense permitting the continuation of the use, much the same as a planning permission, that could include conditions.

- 3.2 Prior to the introduction of the NPPF, National Planning Policy, contained within PPG 18, advised that a local planning authority had general discretion to take enforcement action, when it is regarded as expedient to do so. **The decisive issue being whether it would be in the public interest to take action, having due regard to whether the breach of planning control unacceptably affects public amenity or an existing use of land and buildings meriting protection in the public interest.** The NPPF states that "Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."

- 3.3 Whilst this policy document has been superseded, the principles of planning enforcement remain the same. In deciding whether or not to take action, and what form it should take, the Council must have regard to what is in the wider public interest. Any action that is taken by the local planning authority must be commensurate with the breach and must be reasonable. This means that any action

taken must not be based on irrational factors, taken without proper consideration of the relevant facts and planning issues; or based on non-planning grounds.

3.4 **BACKGROUND**

The site that is subject to this complaint lies to the rear of 21 Baggrave End, Barsby. The site is a group of old agricultural buildings that are used primarily for storage, although any use of the buildings is very limited. The site is accessed along a track which leads off Baggrave End past the residential property. The site itself is outside of the village envelope of Barsby and beyond the conservation area boundary. Baggrave End is a dead end street, with the property that is subject to this complaint being close to the end of the street.

- 3.5 The site is being used for the processing of waste products from the occupiers garden maintenance/arboriculture business. The use the site is for the cutting and storage of logs that are gathered from their arboriculture business.
- 3.6 Complaints have been received from a number of neighbours, via the Parish Council. The complaints stem from the occupiers use of the site, which is understood from the complaints to have started sometime in 2007. There have been a number of complaints all relating to noise and smoke that are allegedly the products of the processing of wood and waste materials on the site.
- 3.7 Complaints were received about the use of a chipper on the site and that this was causing disturbance to residents. Since the intervention of the Council, it has been agreed that the chipper will not be used on the site. Since this agreement, the chipper has not been used.
- 3.8 As part of the ongoing investigations, it has been agreed with the occupier of the land that the hours of use will be restricted to 'normal working hours', those being 8am to 6pm Monday through to Friday and on 8am to 1pm on a Saturday with no Sunday or Bank Holiday working. To date, it is understood that the occupier of the land has kept to these times.
- 3.9 As part of the discussion into the uses, those complaining to the PC were asked to send in their comments and whether there would be any movement in allowing this use to continue, albeit at a restricted level.

Various comments have been received from residents close to the site describing the site and the activities taking place:

- *Noise pollution - and at times air pollution - emanating from these activities constitute anti-social behaviour in our village.*
- *The suggested time restrictions - 8 am to 6 pm Monday to Friday - are totally unacceptable, as this could potentially mean that on many days retired people at home during week days, would be unable to relax or work comfortably in our garden.*
- *We believe that Mr Adcock is saying that he has been carrying out his log cutting activities for the past 20 years. Our evidence tells us that this is not the case, as we have only noticed chainsaw and wood chipping noises in the past two years.*
- *Only been carrying out the activity since 2007, noise is considerable on an agricultural scale affecting amenity*
- *Has been doing the business for 5 to 6 years, increased in the last 4 years.*
- *Noise from the shredder is horrendous.*

- *Residents take exception to this being allowed in a Conservation Area.*
- *These activities take place from early morning to late evening 7 days a week, usually on 2 or 3 days but it is impossible to plan as the days and times are forever changing. Over the last 2 to 3 years the noise & pollution from fires have increased to an unacceptable level in a residential area.*
- *Baggrave End is a quiet rural road with no through traffic because of this children feel safe to play. We do not understand why the Council continues to allow a quiet residential area to be used for this type of business.*
- *On that particular site have been only taking place for the last 7 or 8 years,*
- *Keen to see these antisocial activities to discontinue especially during the summer months when people spend time outside enjoying their gardens and having to tolerate noise and smells to this level is unacceptable.*

3.10 It is clear from the comments that have been received that the residents local to the site seek the discontinuance of the use on the site, the use described as having a detrimental impact on the amenities of those residents close to the site. It should be noted that there is a disparity between the reports on the length of time that the use has been taking place on the site.

4. APPRAISAL

4.1 Policy Implications:

4.2 Policy OS2 of the Melton Local Plan seeks to protect the countryside from inappropriate and unsustainable development. It advises that planning permission will not be granted for development outside of the town and village envelopes shown on the proposals map except for.....limited small scale development for employment.....which is not significantly detrimental to the appearance and rural character of the open countryside.

The use of the site is limited in its scale, being for the sole use of the occupier of the land. The use is limited to the processing of the waste natural materials that are created through their business of garden maintenance and tree surgery. The activities that take place on the site are the cutting and storage of logs for firewood and the burning of waste natural materials. There have been complaints regarding the burning of plastics and the use of a chipper on the site, but as discussed above, these activities have since stopped. The use takes place within redundant agricultural buildings which lie outside of the village envelope in an area of open countryside. Although lying outside of the village envelope, the buildings are intimately related to the host residential property. The site does lie on the edge of the Conservation Area, although its location away from the road and other public vantage points limits the uses effect on the CA.

4.3 Policy C2 of the Melton Local Plan discusses farm based diversification. Whilst the activity is not necessarily a farm based, the use is confined to a number of old redundant agricultural buildings which at some time would have been actively involved in farming.

The use of the site is not ancillary to any existing agricultural use, being a re-use of the redundant buildings. With no pre-existing agricultural activity taking place, the use would technically fail part of the considerations of the policy. Nevertheless, consideration ought to be given to the impact of the use and how so a use could possibly prejudice any further use. The use utilises existing buildings and open areas in the site, requiring no additional buildings or development to accommodate it. Being

of a limited amount, the use has negligible impact on its location in terms scale, design and layout. The impact that the use is having on the character and appearance of the landscape or conservation of the natural environment is again negligible. Stockpiling of logs etc would be the limit of the visual impact of the use, most being stored under cover in the open sided barn on the site. Such activities and features are not alien to a countryside location and as such there is no significant impact. Access to the site is through an existing access off Baggrave End. Whilst this is a dead end road, the impact that the driving of a vehicle towing a trailer would have on the local highway network is limited at best. Parking on the site is adequately provided for, there being ample open space within the site to park vehicles.

- 4.4 Policy C6 considers the re-use of agricultural buildings for alternative commercial, industrial or leisure activities and permits their use for such purposes, subject to meeting criteria relating to access, residential amenity and there not being a need for substantial changes to the building.

The reason for the complaints have not been through the fact that an alternative use has been taking place, but the fact that the use has had, and continues to have, an impact on the amenities of those residential properties within the immediate vicinity to the site. Initially, complaints were fielded concerned with smoke from fires where unsuitable waste was been burnt, plastics etc. This was investigated by the Council's Environmental Health Officers and the activity stopped. As well as smoke, complaints have been received regarding noise created by the chipper and chainsaw, both employed on the site in connection with their business.

Paragraph G seeks to restrict commercial activities to being located within the buildings on the site. At the time of the inspection, the use of the wood chipper on the site had ceased under the request of the Enforcement Officer, leaving the noise experienced from activities on the site to that of the chainsaw. The majority of the cutting of the logs was taking place within the large open sided barn at the top of the site. Whilst inside the building, being open-sided the noise created by the sawing operations could be readily heard in the immediate surrounding area.

- 4.5 Policy 12 of the East Midlands Regional Plan states that employment and housing development should be located within and adjoining settlements. Such development should be in scale with the size of those settlements, in locations that respect environmental constraints and the surrounding countryside, and where there are good public transport linkages.

4.6 The National Planning Policy Framework (NPPF)

NPPF supports the sustainable growth and expansion of all types of business and enterprise in rural areas, both new buildings and conversions. The NPPF offers direction on the relative weight of the content in comparison to existing Local Plan policy and advises that whilst the NPPF does not automatically render older policies obsolete, where they are in conflict the NPPF should prevail. It also offers advice on the weight to be given to 'emerging' policy (i.e. the LDF) depending on its stage of preparation, extent of unresolved (disputed) issues and compatibility with the NPPF.

- 4.7 The policies in question are **Local Plan Policies OS2 and C6 are considered to be consistent with the NPPF** in terms of countryside protection and development of the rural economy and as such retain weight within the terms of paragraph 215 of the NPPF.

- 4.8 The NPPF is clear in its advice that there is a presumption in favour of sustainable development. The guidance also states that where the development plan is absent, silent or relevant policies are out of date, local planning authorities should grant planning permission unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits”.
- 4.9 The NPPF supports economic development and states its commitment to securing sustainable economic growth, explaining that planning should do “everything it can” to facilitate this. Paragraph 28 of the NPPF relates to supporting a prosperous rural economy. It states that local planning authorities should support the sustainable growth and expansion of all types of business and enterprise in rural areas.
- 4.10 More specifically Paragraph 28 of the NPPF states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable rural development. This includes the sustainable growth and expansion of all types of businesses and enterprise in rural areas, both through the conversion of existing buildings and well designed new buildings.
- 4.11 Whilst the East Midlands Regional Plan supports economic development, it states that it should be promoted in sustainable locations and concentrates new development and economic activity in and adjoining existing urban areas. The application site is some distance from any sustainable settlement and therefore it is not considered that the proposal complies with the requirements of the Regional Plan.

5. CONCLUSION

- 5.1 It is considered to be a material change of use if the land and as such, the use does require the benefit of express planning permission. Without the grant of express permission the use is unauthorised and the Council has the discretion to consider whether to take formal action, i.e. serve an enforcement notice, in respect of the use.
- 5.2 The activities that are subject to the complaints, arboriculture/log cutting, are usually rural in nature, uses not naturally being found in urban areas. Whilst there have been complaints in respect of the use, these have been limited to the noise that is being created and nuisance from smoke created by fires on the site. Initially, there were two sources to the noise, a chipper and a chain saw. After initial discussions and negotiations with the tenant of the site took place, the use of the chipper has ceased and the use has been limited to ‘normal working hours’ stopping activities in the evening and at weekends.
- 5.3 **It is considered that the use is appropriate in the location it occupies and, as set out above, performs well in respect of policy requirements. It is possible to limit the use of the site by setting limits to levels where the harm to amenity is limited. These could limit the potentially harmful activities that cause noise and disturbance. The limits could restrict types of use, time of day, frequency and length of use and days permitted. Such limitations would be enforceable and could be monitored to ensure compliance if necessary, in a manner similar to planning conditions.**

6. RECOMMENDATION

- 6.1 That the Council serve an enforcement notice permitting the use to continue on the site to a limited scale and imposing limitations on the use to restrict the use to hours

of the day and the extent that the use on site could take place at any one time. As part of an Enforcement Notice, breaching of these limitations would be an offence in law and could be enforced by prosecution.

1. The use of the site for the purposes of cutting logs and other waste natural materials is limited to the sole use of Mr Adcock and no other person.
2. The use of the site for the purposes of cutting logs and other waste natural materials that are created through Mr Adcock's commercial gardening and arboriculture activities can only take place on the site between the hours of 08:00 to 18:00 hours Monday to Friday, with no activity at weekends or bank holidays.
3. There will be no burning of waste materials in connection with the commercial use on the site.
4. The use of mechanically powered tools on the site in relation to the commercial activities is limited to no more than 1 hour in any day and no more than 3 days per week.
5. Powered tools is limited to a chain saw and no other mechanically powered implements will be used in connection with the use including a chipper.
6. Cutting of logs will only take place within the building indicated on the attached plan.

Date: 6th March 2013
Author: Mr A Dudley, Lead Enforcement Manager
Background documents: Enforcement file 11/00164/USE