

**The purpose of this report is to enable the Planning Committee to consider the question of whether enforcement action should be taken with respect to a breach of planning control consisting of engineering works in the form of the construction of a pool and the formation of an access track along with the depositing and removal of soil on and from the land. Industrial skips, fuel tank, machinery and a portakabin are also being stored on the land.**

**The site lies within the North Staffordshire Green Belt, within the Rural Area, and within an Area of Active Landscape Conservation all as indicated on the Local Development Framework Proposals Map.**

**The breach was first identified in March 2013. It has been brought to the Committee at the request of a ward councillor on the grounds that there is considerable public concern about the operations being undertaken at the site. The councillor has made further representations which are reported below.**

### **RECOMMENDATION**

**A) Subject to the applicant submitting a full planning application by the 15<sup>th</sup> July 2014 for the engineering works in the form of the construction of a pool, the formation of an access track and the depositing and removal of soil the Council should take no action at this time.**

**B) Should a full planning application not be received and having regard to the provisions of the development plan and to all other material considerations, the Head of Central Services be authorised to issue enforcement and all other notices and to take and institute on behalf of the Council all such action and prosecution proceedings as are authorised by and under the Town and Country Planning Act 1990 for the following;**

- a. Removal of the industrial skips, fuel tank, machinery and a portakabin within one month from the date of the notice, and**
- b. Restrictions on the vehicle movements to and from the site (details of which will be reported) to limit the impact on highway safety and residential amenity levels.**
- c. All activity associated with the engineering works, i.e. the vehicle movements, the removal of soil from the site, and the re-contouring of the site areas shall cease after a period of no more than 3 years.**
- d. No soil shall be imported onto the site**

### **Reason for recommendation and the taking of enforcement action**

The applicant has indicated that a full planning application will be submitted in the near future but one has not been submitted to date. There has been a breach of planning control in the form of the formation of the track and pool which are considered to represent appropriate development within the Green Belt that would not harm the openness of the Green Belt and preserve and enhance the appearance of the landscape. It is therefore not expedient to take enforcement action for these engineering operations due to them complying with policies of the development plan and the guidance and requirements of the NPPF. The soil mounds do not have an adverse impact on the character and quality of the landscape but the associated vehicle movements are uncontrolled and the frequency of the movements are having an adverse impact on the residential amenity of neighbouring residential properties. In accordance with the NPPF it is likely that suitably worded conditions would mitigate this impact. However, the breaches of planning control in the form of the storage of industrial skips and the siting of a fuel storage tank, machinery and a portakabin comprise inappropriate development within the Green Belt that would have an adverse harm on the openness of the Green Belt and the character and quality of the landscape. The required very special circumstances justifying inappropriate development in the Green Belt do not exist and the storage and siting is Policies ASP6, CSP1 and CSP4 of the Core Spatial Strategy, Policies S3 and N18 of the Local Plan and the guidance and requirements of the NPPF. It is not considered that conditions could address these

concerns so the appropriate requirement is to seek the removal of the industrial skips, fuel storage tank, machinery and portakabin. The period for compliance indicated is appropriate having regard to the practicalities of relocation.

**Policies and proposals in the approved development plan relevant to this decision:-**

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (CSS)

Policy ASP6: Rural area Spatial Policy  
Policy CSP1: Design Quality  
Policy CSP3: Sustainability and Climate Change  
Policy CSP4: Natural Assets

Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy S3: Development in the Green Belt  
Policy T16: Development – General Parking Requirements  
Policy N17: Landscape Character – General Considerations  
Policy N18: Areas of Active Landscape Conservation

**Other Material Considerations include:**

National Planning Policy

National Planning Policy Framework (March 2012)  
National Planning Practice Guidance (2014)

Supplementary Planning Guidance/Documents

Planning for Landscape Change: Supplementary Planning Guidance to the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011

**Relevant Planning History**

10/00704/AGR          Erection of a building for storage of machinery          Deemed Permitted

**Views of Consultees**

The **Environmental Health Division** have detailed that the hours of operation should be limited to Mon to Fri 7am to 6pm, Sat 7am to 1pm, no work on Sundays/Bank Holidays. Dust mitigation measures could include resurfacing of road surfaces (and maintenance), speed limit, surface conditioning, visual monitoring and/or dust measurement with action plan to deal with dust emission events. Noise mitigation could include vehicle selection, speed restriction, road resurfacing and maintenance, traffic control measures, screening of sensitive premises. Prevention of mud deposition could include appropriate road surfacing, road cleaning regime (on and off site), monitoring programme regarding road conditions.

**Representations**

A representation has been received from the **ward councillor** who details the following key points;

- Mr. Oulton, in conjunction with Frizells carried out extensive earthworks at Doddlespool Farm. This has involved creation of a roadway across the farmland and the excavation of a large hole.
- An Environment Agency Certificate of Exemption covered the activity. The alleged reason was to improve the drainage.
- During the operation large quantities of hardcore were brought onto site and large quantities of topsoil were removed and sold.
- The work ceased in December 2013, but has now commenced again.

- This is not an enhancement of agricultural land. It is an industrial business involving the importation of inert waste and the sale of topsoil.
- The operator claims that railway ballast is now being dumped. Clean railway ballast has a commodity value, unclean railway ballast will contaminate the land.
- The site is within the green belt, and an Area of active landscape conservation (N18).
- Good agricultural land is being destroyed and an area of Landscape Conservation wrecked.
- Residential properties are adjacent to the site entrance, and the residents have endured noise, dust and vibration for the duration of this industrial operation.
- Highway safety is compromised.
- The noise of the excavations can be heard at Betley Common, some 800 metres away.
- Some 50 vehicles a day operated mainly by one contractor are travelling through Betley.
- There are two rights of way issues. There is no indication of the right of way route through the site and the right of way leading to the site from Old Hall Betley is completely blocked by vegetation.
- The Planning Authority should issue an enforcement notice on the site. This should require activity to cease. Issues include export of top soil, importation of waste and effect on N18 land.
- Mr. Oulton should be requested to produce his business plan and proposals for the site.

### **Background Information**

The site and operations being undertaken have been under investigation by Development Management officers and officers of the Councils Environmental Protection section since March 2013 following receipt of a complaint. Site visits and discussions have been on going with the owner since this time. The County Council as the minerals and waste planning authority have also been investigating the operations on the site, as have the Environment Agency.

Whilst the development that is being undertaken involves the importation of waste material, the County Council have concluded it is not a waste operation, which is a matter for them to address, but an engineering operation for the Borough Council to deal with.

The owner has been informed by Development Management Officers that whilst permitted development rights exist, under Class A, of Part 6 to Schedule 2 of the General Permitted Development Order for engineering works, the works have already been carried out without a prior approval application being received by the authority for a determination as to whether the prior approval of the authority will be required to the siting of the excavation or deposit of the material. As a consequence of not submitting a prior approval application such permitted development rights cannot be exercised. Therefore the owner has been advised that full planning permission is required and an application invited for the excavation of the pool, the depositing of soil on the land and the formation of the track.

A further site visit was undertaken on the 25<sup>th</sup> June 2014 to observe the current situation of the operations. During this site visit a number of industrial skips were observed along with a raised portakabin type of building, fuel storage tank and earthmover.

A Planning Contravention Notice (PCN) has not been served on the owner to date but it is now considered appropriate to do so enable the Council to establish a number of key points, including the long term plan for the existing operations.

The owner has since contacted the Council and a meeting arranged to discuss the requirements of a full planning application with the view to submitting this in the near future. The meeting is arranged for the 8<sup>th</sup> July 2014 at the Civic Offices with the owner and a representative.

### **The issue of whether it is expedient to take enforcement action, and the nature of that action**

The breach of planning control consists of engineering works in the form of the construction of a pool, the formation of an access track and the depositing of soil on the land. Industrial skips, fuel storage tank, machinery and a portakabin type building are also being stored on the land. In deciding whether it is expedient to take enforcement action, the Local Planning Authority (LPA) is required to have regard to the provisions of the approved development plan for the area, which are detailed above, and

to any other material considerations. This approach is supported by the recently published National Planning Practice Guidance (2014).

Paragraph 207 of the National Planning Policy Framework details that *“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”*

As with planning applications if a LPA gives consideration to immaterial considerations that opens the LPA to the complaint that its decision to take enforcement action is not well-founded. A decision to take enforcement action must not be based on irrational factors; or taken without consideration of the relevant facts and planning issues; or based on non-planning grounds.

The decisive issue is always whether the alleged breach of planning control is unacceptably affecting public amenity or the existing use of land or buildings meriting protection in the public interest. It could never be that a planning application has not been submitted, The Committee should not take into account the decision of the owner not to apply for planning permission, but rather they should concentrate on coming to a view as to whether the development is unacceptable or not in planning terms. In effect the Committee should consider the matter as if it had before it an application for planning permission – a so called “deemed planning application”.

This means that if the Committee were to come to the view that the development is acceptable then it should not authorise the issue of an Enforcement Notice, even though no planning application has been made to the Authority.

Alternatively if the Committee were to come to the view that the development can be made acceptable by the imposition of conditions the Committee should authorise the issue of an Enforcement Notice but only one which, by reason of the steps that it requires the offender to take, in effect grants a conditional planning permission for the development.

Finally if the Committee were to come to the view that the development is unacceptable on planning grounds and cannot be made acceptable by the attachment of conditions only then should it authorise the issue of an Enforcement Notice requiring the cessation of the use.

### **The issues to be considered**

The site is within the North Staffordshire Green Belt, the Rural Area and within an Area of Active Landscape Conservation, as indicated on the Local Development Framework Proposals Map. In considering this ‘deemed planning application’, the main issues for consideration are as follows:

- Is the use appropriate or inappropriate development in Green Belt terms?
- Is there any conflict with policies on development in the countryside and the impact of development on the landscape?
- Is there any adverse impact on highway safety?
- Are there any issues regarding impact on residential amenity?
- If inappropriate development in Green Belt terms, do the required very special circumstances exist to justify acceptance of the use?

### **Is the use appropriate or inappropriate development in Green Belt terms?**

The site is located within the Green Belt. In these locations the NPPF details that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

The NPPF, at paragraphs 89 and 90, indicates that new buildings and other forms of development are classed as inappropriate development other than a number of identified exceptions. Exceptions include;

- buildings for agriculture and forestry (para 89),
- mineral extraction; and
- engineering operations;

Paragraphs 87 and 88 detail that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

The formation of an access track and pool are classed as engineering operations. The owner has detailed verbally that the main purpose of the works is for the operation of the agricultural unit with the pool forming part of an irrigation system. The irrigation system would assist the owner's potato crop. The track way would enable vehicles to manoeuvre around the agricultural unit

The owner has provided no written submission which would have supported any full planning application. Therefore no justification, other than his verbal comments, is available for consideration. However, having visited the site on a number of occasions officers have no reason to doubt that the engineering operations are not for the functioning of the agricultural unit and the formation of the track and pool do not adversely harm the openness of the Green Belt.

The mounds of soil are as result of the pool being excavated and are being exported off site. The owner details that there is enough volume of soil to result in exportation for a further three to four years depending on demand. These soil mounds are not considered to harm the openness of the Green Belt.

The engineering works that have been undertaken are considered to constitute appropriate development in the Green Belt. The storage of industrial skips, fuel storage tank, machinery and the portakabin are not included within one of the exceptions and are considered to represent inappropriate development within the Green Belt, however.

Is there any conflict with policies on development within the countryside and the impact of development on the landscape?

The site is within an Area of Active Conservation and NLP Policy N18 states that "Within these areas the Council will support, subject to other plan policies, proposals that will help to conserve the high quality and distinctive character of the area's landscape. Development that will harm the quality and character of the landscape will not be permitted. Within these areas particular consideration will be given to the siting, design, scale, materials and landscaping of all development to ensure that it is appropriate to the character of the area."

The track appears typical of what would be expected on an agricultural unit. The track is very informal in appearance and is considered to have a minimal impact on the character and quality of the landscape. Many agricultural units have concrete tracks which are of a more permanent construction and appearance which would have a greater impact on the appearance of the landscape. Such a track has not been constructed in this case and due to its length this would not be recommended in this instance.

The formation of the pool has been done in an appropriate manner is acceptable in appearance and enhances the landscape. The pool has been formed to overcome drainage problems of the land and is required to support a proposed irrigation system for the potato crop that is a primary use of the agricultural business.

A result of the excavation of the pool is the amount of soil deposited around it. The volume of soil is not known and a PCN would seek to establish this. Whilst this has some impact on the landscape it is a temporary feature and on balance it is not considered that it would significantly harm the appearance of the landscape to warrant action to secure its removal as there are minimal views from any main vantage points. Notwithstanding this it does appear that waste is being brought onto the site and this should be prevented. The County Council are also investigating this activity further.

The portakabin, fuel storage tank and skips do not conserve the appearance of the landscape and are contrary to policy N18 of the local plan, policies of the CSS and the guidance and requirements of the NPPF. These should be removed from site.

Is there any adverse impact on highway safety?

The site is an established agricultural unit with access onto the A531.

Complaints have been expressed regarding the amount of vehicles accessing and egressing the site due to the importing and exporting of materials. The ward councillor, in his submission, has detailed that there is no regular sweeping of the road by the contractor, there are no notices advising of site entrance/vehicles turning and some 50 vehicles a day operated mainly by one contractor are travelling through Betley.

There is however no indication that the site is causing a significant highway safety concern and any impact could be controlled to mitigate any significant impact on highways safety.

Are there any issues regarding impact on residential amenity?

As discussed this is an established agricultural unit with access onto the A531. The nearest residential properties are adjacent to the access and the main complaints are regarding the amount of vehicles using the access and the disturbance caused by these vehicles in terms of noise and dust. The access remains largely unmade.

The amount of vehicles is largely down to the importation and exportation of waste following the formation of the track and the excavated soil.

The owner has detailed that the importation of waste has occurred for the hardstandings created and the track. Officers are satisfied that these are required primarily for agricultural purposes. The owner has detailed that further material may be required and this could involve a further period of 2/3 weeks.

The exportation of soil has been as a result of the amount of earth excavated for the pool that has been created. The removal of top soil is an operation that generally requires planning permission but would have been considered as part of the wider engineering operations of the site that is now under consideration.

The volume of soil remaining on site is not known but the owner has detailed that the exportation could take 3/ 4 years depending on demand. This is a concern and measures to minimise the impact on neighbouring properties in terms of noise and dust are being monitored and addressed by the Environmental Protection Division to ensure that they are effective. Further measures such as the control over the amount of movements per day but it is hard to assess what would be an acceptable level of such movements in terms of the impact on the residential amenity of neighbouring properties. The comments of Environmental Health Division have been received with mitigation measures advised. The required mitigation measures should be a requirement of any enforcement notice. No soil should be imported on to the site.

If inappropriate development in Green Belt terms, do the required very special circumstances exist to justify approval?

As referred to above, the storage of skips/ fuel tank and siting of the portakabin represent inappropriate development in the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The development does not maintain the openness of the Green Belt and conflicts with at least one of the purposes of including land in Green Belts, namely that of assisting in safeguarding the countryside from encroachment. Furthermore, as referred to above, the storage of the industrial skips, fuel tank and siting of the portakabin is harmful to the visual amenities of the Green Belt and the countryside by reason of its appearance.

Mr Oulton has provided no justification for the storage of the industrial skips and siting of the portakabin and it is considered that the very special circumstances exist to outweigh the harm identified above.

### Conclusion

The formation of the track and pool are considered to meet local and national planning policy guidance but the storage of industrial skips, fuel tank and the siting of the portakabin has a harmful impact on the openness of the Green Belt and landscape and should be removed. The soil removal and importation is having an adverse impact on the residential amenity of neighbouring residential properties and should be controlled to minimise this impact and that of highways safety.

### **Date report prepared**

03 July 2014