

The purpose of this report is to inform members of a decision taken under delegated powers to take enforcement action and to enable the Planning Committee to consider the question of whether enforcement action should be continued with respect to the unauthorised change of use of agricultural land to garden land to the rear of 17 and 19 Biddulph Road, Harriseahead, and if so the nature of that enforcement action.

The site of the breach of control lies within the Green Belt, within the Rural Area, and within an Area of Landscape Restoration as indicated on the Local Development Framework Proposals Map. The houses at No.17 and No.19 are not within the Green Belt.

A retrospective planning application (reference 12/00780/COU) to retain the unauthorised use was refused on 22nd January 2013 by the Local Planning Authority. Enforcement action was authorised under delegated powers on the 26th February 2013, and letters then sent to the owners/ occupiers of 17 and 19 Biddulph Road detailing the steps that they would need to take to address the breach of planning control so as to avoid the taking of formal enforcement action.

This case has been brought to the Committee at the request of Councillor Boden, and with the agreement of the Chairman. Councillor Boden has indicated that there has been significant public interest in the decision to refuse planning permission and the subsequent decision, under delegated authority, to take enforcement action against the unauthorised change of use of land. In light of the strength of feeling expressed he considers that it would be appropriate for the issue of enforcement action to be considered by the Planning Committee.

RECOMMENDATION

That the Committee notes and reaffirms the decision taken by your Officer

Reason for recommendation and the taking of enforcement action

There has been a breach of planning control involving the change of use of land from agricultural land to domestic garden land within the last ten years. The development comprises inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The harm caused by the development, which would not maintain the openness of the Green Belt, and the erosion of the character and the quality of the landscape, is not outweighed by the considerations advanced and accordingly the very special circumstances required to justify approval of inappropriate development do not exist. As such the development is contrary to Policy D5B of the Structure Plan, Policy S3 of the Local Plan and the aims and objectives of the National Planning Policy Framework (NPPF). Furthermore, the development is considered to erode the character and quality of the Area of Landscape Restoration, contrary to Policy N21 of the Local Plan, and Policies NC1 and NC2 of the Structure Plan. It is not considered that planning permission should be given because planning conditions could not overcome these objections. Accordingly it is expedient to take enforcement action having regard to the provisions of the development plan and all other material considerations.

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

West Midlands Regional Spatial Strategy (WMRSS)

Policy QE1: Conserving and Enhancing the Environment

Policy QE3: Creating a high quality built environment for all

Staffordshire and Stoke-on-Trent Structure Plan 1996- 2011 (SSSP)

Policy D1: Sustainable forms of development
Policy D2: The design and environmental quality of development
Policy D5B: Development in the Green Belt
Policy NC1: Protection of the Countryside: General Considerations
Policy NC2: Landscape Protection and Restoration

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006 - 2026 (Adopted 2009) (CSS)

Policy CSP1 Design Quality
Policy CSP3: Sustainability and Climate Change
Policy ASP6: Rural Area Spatial Policy

Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy S3: Development in the Green Belt
Policy N21: Areas of Landscape Restoration

Other Material Considerations

Relevant National Policy Guidance:

National Planning Policy Framework (March 2012)
Circular 10/97 Enforcing Planning Control and its related Good Practice Guide
The Planning System – General Principles

Supplementary Planning Guidance

Space Around Dwellings (July 2004)

Relevant Planning History

02/00987/OUT Erection of detached dwelling (in garden of 17 Biddulph Road, to become 19 Biddulph Road) – Outline permission refused 26.9.2002, allowed on appeal 30.5.2003

03/00868/FUL Erection of a detached dwelling (detailed proposal) (in garden of 17 Biddulph Road)- permitted 8.1.2004

06/00075/FUL Conversion of existing disused barn/stable at 17 Biddulph Road into granny flat including rear dormer extension – permitted 29.3.2006

12/00780/COU Retention of amenity/garden area (change of use from agricultural land) – refused 22.1.2013 – no appeal lodged to date

Views of Consultees on the related planning application

Kidsgrove Town Council – Supported the application, subject to any relevant restrictions relating to further development

Representations

No representations were received on the planning application.

However, since the decision (to take enforcement action) has been publicised in several local and national newspapers correspondence from a number of third parties has been sent to the Borough Council expressing the following concerns:

- Disbelief at the decision that has been made
- The land had been transformed from a boggy wasteland to a garden, at a cost of thousands of pounds and through hard work
- Green Belt exists to protect wildlife, which it is doing here
- A 10 foot garden extension will not make any difference to the Green Belt
- Requests to let the garden remain

Applicant's submission

A letter from one of the occupiers of No 17 was submitted with the application, of which the main points are summarised below:

- The occupiers of No. 17 purchased their property from the then owner of No. 19 Biddulph Road.
- The property (No. 17) had a small garden with a lawn but no plants.
- The house that the occupier of No 17 moved from had an acre garden with a small nursery, which they ran with one of the occupier's mother.
- Gardening and plants were a very important part of their lives, but the mother's health deteriorated and they decided to downsize.
- They decided to buy 17 Biddulph Road because the owner offered to give them some land to the rear to enlarge the garden.
- Both the occupiers of 17 and 19 decided to put ponds in to attract wildlife
- The occupiers of No 17 discovered early on that the land tended to flood badly, so they had the garden landscaped at a cost of £9000.
- The garden is now very beautiful with much wildlife
- Due to her mother's ill health she only goes shopping once a week and the garden gives her therapy and exercise and a reason to keep going every day
- Would not have considered purchasing the property without a garden
- Unaware that they had broken planning laws or needed permission for the garden
- The correct planning permission was gained for the conversion of the stable and no issues about the garden were raised at that time
- There has never been any complaints as far as they are aware
- If they were allowed to keep the garden they understand certain restrictions could be imposed regarding structures such as sheds and greenhouses which they would comply with
- It has always been their intention never to put any structures or even a large tree in the garden because they want it to blend in with the beautiful views of the horses and countryside
- They have approached two local councillors, Councillor Waring and Councillor Elsie Bates who gave their full support to the application

Background Information

Planning permission was applied for retrospectively under application 12/00780/COU for the change of use of agricultural land to domestic garden land at the rear of 17 and 19 Biddulph Road, Harriseahead, which are two neighbouring detached dwellings located within the Green Belt and an Area of Landscape Restoration, as indicated on the Local Development Framework Proposals Map. Photographs will be available for members to view of the situation in each of the garden extensions. In one case the land is principally now laid to grass (a pond having been removed on the grounds of safety) with a summer house and a small area of planting. In other (at number 19) there is a pond surrounded by walling and rockery features with a covered seating area, and various raised beds.

The dwelling known as No. 19 Biddulph Road was originally refused (ref 02/00987/OUT), but subsequently gained planning approval on appeal. One of the three reasons for refusal by the Authority was the applicant had failed to demonstrate the site could accommodate a dwelling together with an adequate amenity space around it and any extension of the residential curtilage would be inappropriate development in the Green Belt. In allowing the proposal the Inspector noted that the (proposed) dwelling would be close to the boundary with the adjoining field, that he had seen that this was not an unusual arrangement in the area, that the amount of space proposed to the side of the dwelling would provide adequate amenity space for a dwelling of this size, that there had been no pressure from existing residents to increase the size of their gardens because of the proximity of agricultural activity within the adjoining field and finally that taking land into the curtilage of the dwelling would require planning permission, at which time the Council could appraise the proposal in line with extant planning policies.

The size of the garden extensions amount to approximately 250 square metres at No. 17 and 150 square metres at No. 19 Biddulph Road. The length of the garden extension at No.17 is just over 12 metres (39 feet), and the length of the garden extension at No. 19 is just over 13 metres (42 feet).

The retrospective planning application was refused for the following reason:

1. *The development involves a change of use of land from agricultural land to garden land and accordingly constitutes inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The harm caused by the development, which would not maintain the openness of the Green Belt, is not outweighed by the circumstances advanced in the application submission. As such the application is contrary to Policy D5B of the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011, Policy S3 of the Newcastle-under-Lyme Local Plan 2011 and the aims and objectives of the National Planning Policy Framework 2012 (NPPF).*
2. *The development, involving a change of use from agricultural land to garden land is considered to erode the character and quality of the Area of Landscape Restoration, contrary to Policy N21 of the Newcastle-under-Lyme Local Plan 2011, and Policies NC1 and NC2 of the Staffordshire and Stoke on Trent Structure Plan 2011.*

Planning Assessment and the expediency of taking enforcement action

In determining whether or not it is expedient to take enforcement action with respect to unauthorised development, the Local Planning Authority is required to have regard to the provisions of the approved development plan for the area, and any other material considerations. The relevant provisions are indicated above. The key issues to consider when taking the decision on whether to take enforcement action are derived from the two reasons for refusal, namely:

- The impact upon the Green Belt, and
- The impact upon the character and appearance of the landscape

The impact upon the Green Belt

The Government attaches great importance to Green Belts. 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 five purposes that Green Belts serve are:-

- To check the unrestricted sprawl of large built up areas;
- To prevent neighbouring towns merging into one another;
- To assist in safeguarding the countryside from encroachment;
- To preserve the setting and character of historic towns; and
- To assist in urban regeneration, by encouraging the recycling of derelict and other urban land

Changes of use of land are not listed within the NPPF as appropriate development. Therefore the change of use of the land has to be considered as inappropriate development in Green Belt policy terms. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In this case the change of use does involve elements – some structures (including a summer house/garden shed in one plot and a covered seating area in the other), planting and decorative garden features – all which serve to reduce to some degree the “openness” of the Green Belt.

The NPPF at paragraph 88 states:-

“When considering any planning application, 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.’”

A case was advanced with the planning application by the owner of No. 17 Biddulph Road, although not by the then owner of No.19 – a property which has since changed hands. To date no submission has been received from the current owners of No.19 – if it is it will be reported to the Committee. The owners of No.17 purchased the property knowing that the dwelling had no rear garden of any size, but the seller offered to give them some land to the rear which they decided to use to extend their garden. The fact that the property only had a small garden originally is not considered to be a very special

circumstance for allowing encroachment into the Green Belt. The front garden of No.17 is paved over almost across its full width. The health of the occupants of the dwelling is not a very special circumstance to allow permanent encroachment into the Green Belt as it could be argued in many other cases and the garden would remain long after the personal circumstances of the occupants have changed. Spending money to improve the garden is not considered a very special circumstance, nor is the fact that they were unaware that they had broken planning laws or needed permission for the garden extension.

In weighing up such harm as may exist against any other material considerations, the Authority has to also consider any other harm, in addition to that caused to the Green Belt. Although the site is not a prominent one, at least in views from adjacent roads, it is considered that the development has been harmful to the character and appearance of the countryside.

Having considered the case put forward, it is concluded that there are no considerations that clearly outweigh the harm that is caused to the openness of the Green Belt, by virtue of the change of use to garden land that has occurred and that to character and appearance of the landscape.

It is considered that the only way to rectify the inappropriate development in the Green Belt is to require the garden use to cease, the removal of all garden paraphernalia including sheds, summer houses, the pond, washing lines, ornaments, tables and chairs, and block paving, and the erection of a fence or similar separating the lawful residential curtilage from the land to the rear. It would be appropriate to allow a small service strip to be left immediately to the rear of the properties to allow for maintenance.

Removing this paraphernalia associated with domestic garden use will remove the harm to the openness of the Green Belt.

The impact upon the character and appearance of the landscape

As already indicated the development is considered to be harmful to the character and appearance of the countryside and Area of Landscape Restoration.

Similarly to the above discussion, it is considered appropriate and necessary to seek the removal of the garden paraphernalia from this land and return it to agricultural use, to remove the harm to the Area of Landscape Restoration.

Options

The Committee, which also has authority to authorise the taking of enforcement action and accordingly also to decide when it should not be taken, has a number of options.

If it is considered that, notwithstanding your officer's decision and recommendation, it is not expedient to take any form of enforcement action it could so resolve. A decision not to take enforcement action is in effect a decision to grant planning permission. Members should note that once the use of the land as residential curtilage becomes lawful then the householders would enjoy the normal permitted development rights for extensions and outbuildings over the land in question. If exercised this right would lead to a further reduction in the openness of the Green Belt. Your officer will advise at the Committee how control over any future buildings could potentially be achieved in this scenario.

It may be that the Committee consider the requirement to remove all domestic paraphernalia is unreasonable and would wish perhaps to allow for the retention of the pond feature in the garden of No.17. That could be achieved by altering the terms of the currently approved enforcement action

Your Officer maintains that the decision to take enforcement action is one that is soundly based on the provisions of the development plan and that all other material considerations have been appropriately taken into account. Members do need to be mindful that precedents can be established by decisions (when all circumstances are equal). Your officers are investigating an other similar breach of planning control in the vicinity of the site. It is not the number of representations which are received either in support of or in opposition to a proposal that is material but rather whether they are founded on valid planning reasons.

Background Documents

Development Plan

National Planning Policy Framework (2012)

Planning application files referred to.

Date report prepared

15.3.13