Date of meeting Tuesday, 27th March, 2012
Time 7.00 pm
Venue Council Chamber. Civic Offices, Merrial Street, Newcastle Under Lyme, Staffordshire ST5 2AG
Contact Peter Whalan

Planning Committee

AGENDA

PART 1– OPEN AGENDA

1 DECLARATIONS OF INTEREST
To receive Declarations of Interest from Members on items included on the agenda.

2 Application for Major Development - Moores Metals, Chemical Lane, Longbridge Hayes. Moore's Metals Ltd. 12/00086/CPO (Pages 1 - 6)

3 Application for Other Development - Silver Birches, Heath Road, Whitmore. Mrs Sharon Ralphs. 12/00024/FUL (Pages 7 - 12)

4 Miscellaneous Item - Junction of Newcastle Road and Post Office Lane, Balterley. 11/00145/207C2 (Pages 13 - 22)

5 Miscellaneous Item - Maerfield Gate Farm. 11/00155/207C2 (Pages 23 - 32)

6 Appeal Decision - Erection of an 11kw Wind Turbine at Hillberry, Hill Crescent, Alsagers Bank. Mr & Mrs Fagan (Pages 33 - 34)

7 Appeal Decision - Two Storey Rear Extension and Single Storey Front Porch at 95 Nantwich Road, Audley. Mr & Mrs Rhodes (Pages 35 - 36)

8 URGENT BUSINESS
To consider any business which is urgent within the meaning of Section 100B(4) of the Local Government Act 1972.

Members: Councillors D Clarke (Vice-Chair), E Boden, G Cairns, M Clarke, J Cooper, A Howells, I Matthews, M Reddish, R Studd, S Sweeney, A Fear (Chairman), G Williams, J Williams, B Lewis, T Hambleton and S White

*Members of the Council: If you identify any personal training / development requirements from the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Committee Clerk at the close of the meeting*
Officers will be in attendance prior to the meeting for informal discussions on agenda items.
This is a consultation by the County Council on a planning application for variation of conditions 1, 15, 18 and 21 of planning permission (SCC ref.) N11/08/334W relating to the change of use of the premises from oil refinery to scrap metal and dry waste recycling facility.

The Borough Council was consulted on the original proposal and a report was presented to the Planning Committee on 12 July 2011. (reference 12/00086/CPO) (Part 1a item 1).

The variation of the conditions relates to the substitution of previously approved plans with revised plans relating to the proposed site layout plan and the reorganisation of the permitted operations within the site.

The site has no specific designation by the Local Development Framework Proposals Map.

The site is accessed off the A500, sited within an established industrial estate sitting between the A500 and the Stoke to Manchester railway line, and extends to approximately 1.62 hectares.

For any comments that the Borough Council may have on this proposal to be taken into account, they have to be submitted to the County Council by no later than 30 March 2012.

RECOMMENDATION

That the County Council be advised that the Borough Council raises no objections to the proposal, subject to controls being imposed controlling:-

(i) Hours of use.
(ii) Noise and dust mitigation schemes.

Reason for Recommendation

Given no objection was made to original proposal for the recycling facility on this site and there is no apparent reason associated with other corporate objectives of the Borough Council, such as the creation of a prosperous Borough, to resist the current proposal to vary the conditions. Subject to the appropriate conditions/controls being put in place relating to the prevention and reduction of noise and dust at the site, the proposal is considered to be acceptable and to not cause adverse harm to the local environment or neighbouring uses.

Policies and Proposals in the Approved Development Plan Relevant to This Recommendation:-

West Midlands Regional Spatial Strategy 2008 (WMRSS)

Policy QE1: Conserving and Enhancing the Environment
Policy QE3: Creating a High Quality Built Environment for all
Policy WD1: Targets for Waste Management in the Region
Policy WD2: The Need for Waste Management Facilities – by Sub-Region
Policy WD3: Criteria for the Location of Waste Management Facilities

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 MW5: Sustainable Waste Management
Policy MW6: Evaluation of Proposals
Policy MW7: Relationship to Conservation and/or Development Initiatives
Policy MW8: Transportation of Minerals and Waste
Policy MW9: Reclamation
Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (CSS)

Policy SP3  Spatial Principles of Movement and Access
Policy CSP10  Planning Obligations

Staffordshire and Stoke-on-Trent – Waste Local Plan 1998 - 2011

General policies

Policy 3: General Policies
Policy 4: Restoration, Aftercare and Afteruse
Policy 5: Legal Agreement

Specific Policies

Policy 12: Criteria for the Location of Waste Treatment Facilities
Policy 14 Waste Treatment Facilities within buildings and in open air

Other Material Considerations Include:

National Planning Policy

PPS10: Planning for Sustainable Waste Management
PPG13: Transport
PPG23: Planning and Pollution Control
PPG24: Development and Noise
Circular 11/95 - The use of conditions in Planning Permissions
Staffordshire and Stoke on Trent Municipal Waste Management Strategy
Newcastle (urban) Transport and Development Strategy 2008 – 2013
Supplementary Planning Document on Developers Contributions

Relevant Planning History

Numerous applications relating to the previous oil refinery use of the site
2002 02/00925/CPO Permit – recycling facility for incinerator bottom ash to produce secondary aggregates (relates to part of the current application and the site immediately to the south of the site)
2011 11/00340/CPO Permit – change of use from oil refinery to scrap metal and dry waste recycling facility

Views of Consultees

It is the responsibility of the County Council to carry out consultations on this application. One of those consultations has been with the Borough Council’s Environmental Health Division, who has no objections to the proposal.

Representations

It is the responsibility of the County Council to publicise the planning application.

Applicant/Agent’s Submission

The application is accompanied by a:

• supporting letter
• supporting statement
Key Issues

The original application sought to develop a scrap metal and dry waste recycling centre, recycling ferrous and non ferrous metals, end of life vehicles, waste electrical goods, cardboard, plastic, green waste and construction and demolition waste into secondary aggregates and reclaimed soil, and the processing of waste wood to create a combustible fuel substitute and mulch.

Members may recall the Planning Committee on 12 July 2011 resolving to raise no objections to that proposal subject to conditions.

The Borough Council has been asked for its views on this proposal – the County Council being the Waste Planning Authority. The Planning Committee, with respect to “major developments”, is the part of the Borough Council which decides what comments are to be put to the County Council in response to such consultations.

In deciding what representations to make the first consideration is whether the proposal has an impact upon any particular interests of the Borough Council (such as its landholdings). It is understood that the Borough has no land or property interests in the area.

Beyond that members may wish to consider whether any aspect of the development has a particular bearing upon the amenity of the residents of the Borough, and to comment upon whether the proposal appears to conflict with any policies within that part of the development plan or emerging local development framework for which the Borough Council is the responsible Planning Authority, and upon whether the proposal has any bearing upon the strategic aims of the Council – of creating a Borough of opportunity; a cleaner, safer and greener Borough; and a healthy and active community.

The Borough Council should not attempt to deal with the matter as if it were the relevant planning Authority. There is, it is suggested no merit in it commenting upon detailed technical considerations upon which the County Council will obtain advice both from their specialist officers and consultees.

This current proposal is for a variation of conditions 1, 15, 18 and 21 relating to the substitution of previously approved plans with revised plans relating to the proposed site layout plan and the reorganisation of the permitted operations within the site.

The proposal is to change the approved site layout to enable more efficient recycling of stainless steel material and to reduce levels of inert waste recycling.

The proposed change would not alter the total amount of waste recycled on the site which was set by the previous approval at 75,000 tonnes per annum, the current proposal would amend the ratio between scrap metals and other wastes recycled from 50,000 : 25,000 ratio to 60,000 : 15,000 ratio.

Given the principle of waste processing facility, in the context of the site’s surroundings, has been accepted, it is considered that this variation does adversely alter the use of site which has been previously permitted.

The County Council will have to determine the application, balancing a range of considerations including the visual, environmental and traffic implications of the development as it is undertaken. From the Borough Council’s point of view it is considered prudent to advise the County Council of potential concerns a proposal such as this may raise and request controls are put in place to either alleviate or mitigate against these concerns.

The Borough Council had previously requested that controls be put in place relating to the hours of use and noise and dust mitigation schemes. Again it is considered prudent that these issues are also controlled with this application.

The Borough Council also previously requested the County Council to identify whether the original proposal required a financial contribution to be secured towards NTADS and, if required, the contribution is appropriately secured. The County Council has considered the site’s previous use and the use proposed and no additional peak hour trips were identified and as such no contribution was sought. It is considered the
current proposal would not alter the number of peak hour trips to the site and as such it is not considered appropriate to request the County Council seek a NTADS contribution relating to this current proposal.

Background Papers
Planning file
Documents referred to

Date Report Prepared
8 March 2012
The Application is for full permission for the erection of a detached garage measuring 8.6m in length with a width of 6.53m and a ridge height of 5.5m. The garage would replace one of exactly the same footprint however with an overall existing ridge height of 5.179m.

The application site is within the Green Belt and an Area of Landscape Maintenance as designated on the Local Development Framework Proposals Map.

The statutory 8-week period for the determination of this application expired on 9 March 2012.

RECOMMENDATION

Permit, subject to conditions relating to:-

(i) Standard time limit.
(ii) The development shall be constructed in accordance with the approved plans.
(iii) Materials to accord with those shown on the plans.
(iv) Tree Protection Fencing.

Reason for Recommendation

Whilst the proposal does not accord with the Development Plan insofar as it constitutes inappropriate development within the Green Belt, there are special circumstances present that would justify an approval of such development. The retention of the existing garage is considered to be a genuine fall back position and the proposed replacement garage would be very similar in scale with just a marginal increase in height (37cm). The proposal garage would therefore have a limited impact on the openness of the Green Belt, has a higher design quality than the one it replaces and would be more in keeping with the appearance of the dwelling. These are considered to be the very special circumstances required that would outweigh the marginal harm on the openness of the Green Belt. The development therefore accords with Policies N17 and N19 of the Newcastle under Lyme Local Plan 2010, Policies D2, NC1 and NC2 of the Stoke on Trent Structure Plan 1996-2011 and policy CSP1 of the Newcastle under Lyme and Stoke on Trent Core Spatial Strategy 2006-2026.

Policies and Proposals in the Approved Development Plan Relevant to This Decision:-

West Midlands Regional Spatial Strategy (WMRSS) 2008
Policy QE1: Conserving and Enhancing the Environment
Policy QE3: Creating a High Quality Built Environment for All.

Newcastle under Lyme and Stoke on Trent Core Spatial Strategy 2006 – 2026 adopted 2009
Policy CSP1: Design Quality

Staffordshire and Stoke-on-Trent Structure Plan 1996-2011
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 Local Plan 2011
Policy S3: Development in the Green Belt
Policy H18: Design of Residential Extensions, Where Subject to Planning Control
Policy N17: Landscape Character – General Considerations
Policy N19: Landscape Maintenance Areas
Policy B5: Control of Development affecting the setting of a listed building

Other Material Considerations include:

Relevant National Planning Policy

PPS1: Delivering Sustainable Development (January, 2005)
PPG2: Green Belts (January, 1995)

Companion Guide to PPS1 “The Planning System: General Principles"

Supplementary Planning Guidance

Supplementary Planning Guidance relating to the control of residential development (July 2004)
Newcastle-under-Lyme and Stoke-on-Trent Urban Design SPD (2010)

The Secretary of State’s announcement of his intention to abolish RSS

The Secretary of State has made it clear that it is the Government’s intention to revoke RSSs and the Localism Act 2011, which includes powers to give effect to that intention, received Royal Assent on 15 November 2011. However, pending the making of a revocation order in accordance with the new Act, the RSS remains part of the statutory development plan. Nevertheless, the intention to revoke the RSS and the enactment are material considerations.

Emerging Draft Policy

Draft National Planning Policy Framework (July 2011)

Whilst it (the draft NPPF) is a consultation document and, therefore, subject to potential amendment, nevertheless it gives a clear indication of the Government’s “direction of travel” in planning policy. Therefore the draft NPPF is capable of being a material consideration, although the weight to be given to it will be a matter for the decision maker’s planning judgement in each particular case. The current Planning Policy Statements, Guidance notes and Circulars remain in place until cancelled.

Relevant Planning History

An application (08/433/FUL) was previously approved for alterations to the existing dwelling. These works have been undertaken and the proposed garage has been designed to replicated some of the design features of the house.

Views of Consultees

Whitmore Parish Council has no objection to the application.

Landscape Development Section has no objections to the application subject to an appropriate condition relating to tree protection fencing.

Representations

None received.

Applicant/Agent’s Submission

The requisite application forms and plans were submitted with the proposal.

Key Issues

The application is for full permission for the erection of a detached garage measuring 8.6m in length with a width of 6.53m and a ridge height of 5.5m. The garage would replace one of exactly the same footprint however with an overall existing ridge height of 5.179m. The application has come about due to the existing
foundations not being deemed suitable to take the weight of a new roof that was proposed to replace the existing dilapidated one.

The application site is within the Green Belt and an Area of Landscape Maintenance as designated on the Local Development Framework Proposals Map.

The key issues in the determination of the development are:

• Whether or not the proposed development would constitute appropriate development within the Green Belt.
• Does the development comply with landscape/countryside policy taking into account the acceptability of its design?
• If inappropriate development in Green Belt terms does the required very special circumstances exist to justify the proposal.

Appropriate development within the Green Belt?

PPG2 states that the construction of new buildings inside a Green Belt is inappropriate unless it falls within one of a number of purposes, including the limited extension, alteration or replacement of existing dwellings. It states that provided that it does not result in disproportionate additions over and above the size of the original building, the extension or alteration of dwellings is not inappropriate in the Green Belt. Similarly, Policy S3 of the Local Plan states that the well designed extension or alteration of an existing dwelling may be acceptable as long as it does not result in disproportionate additions over and above the size of the original dwelling.

The proposal is for a detached building and not an extension to the dwelling and could not, therefore, be considered to be appropriate development.

As the development is inappropriate in Green Belt terms the decision maker must take into account the presence of any very special circumstances.

Does the development comply with landscape/countryside policy taking into account the acceptability of its design?

Policy NC1 indicates that building in the open countryside should be strictly controlled, and the countryside protected for its own sake. Policy N19 states that the council will seek to maintain the high quality and characteristic landscapes within Landscape Maintenance Areas and where development can be permitted it would be expected to contribute to this aim. Within these areas it is necessary to demonstrate that development would not erode the character or harm the quality of the landscape.

As the main property has already been altered in its design, the current garage does not currently assimilate well in aesthetic terms with this. The proposal however would ensure a high quality design that would match the existing property and create a more cohesive development within the plot. Its scale which is almost identical to the existing garage would also ensure that no adverse impact on the surrounding countryside would arise. It must also be noted that the location of the garage and its location within the plot would mean that it would not be a prominent development within the surrounding area.

In terms of the Landscape Maintenance Area it is considered that the proposal would not have an adverse impact upon the surrounding landscape due to its design and location within a domestic curtilage. The development therefore adheres with the principles of policies N17 and N19 of the Newcastle under Lyme Local Plan 2011, policy CSP 1 of the Newcastle under Lyme and Stoke on Trent Core Spatial Strategy as well as policies NC1 and D2 of the Staffordshire and Stoke on Trent Structure Plan 1996-2011.

If inappropriate do very special circumstances exist to grant the proposal

The decision maker is required, in the case of inappropriate development, to consider whether there are material considerations which clearly outweigh any harm both to the Green Belt and any other interests to be acknowledged. Inappropriate development is by definition harmful to the interests of the Green Belt.

The proposed garage is a replacement of an existing garage. The existing garage requires a new roof and the applicant has opted not to replace the roof of the building, but to replace it with a building which is more in...
keeping with the appearance of the dwelling on the plot. The roof of the existing garage, if suitably designed to take account of the strength of the walls, could be repaired/replaced without the need for planning permission and it is considered that this constitutes a fall back position. Taking into account the fall back position, which is a material planning consideration, the marginal increase in height (37cm) and the consequent limited impact on the openness of the Green Belt, and that the proposed building has a higher design quality than the one it replaces it is considered that the very special circumstances required to justify inappropriate development in the Green Belt exist in this case and that such very special circumstances outweigh the negligible harm to the Green Belt.

Other matters

Due to the location of the proposals no adverse impact upon residential amenity would ensue.

Background Papers
Planning file
Planning documents referred to

Date Report Prepared
12 March 2012.
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The purpose of this report is to give the Planning Committee an opportunity to consider whether enforcement action should be taken with respect to a breach of planning control consisting of a change of use of land for the stationing of a mobile catering van at the junction of Newcastle Road and Post Office Lane, Balterley.

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

Newcastle Road is part of the A531, whilst Post Office Lane is a Class C road.

This use was first noted in August 2011. It has been brought to the Committee at the request of Councillor Becket on the grounds that there is considerable public concern about this van, not least the possible effect on Betley Village shop. Councillor Becket has made further representations which are reported below.

**RECOMMENDATION**

That, 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 to cease the use of the land for the stationing of a mobile catering van, and that the Notice require the use to cease within 2 months of the Notice coming into effect.

**Reason for Recommendation and the Taking of Enforcement Action**

There has been a breach of planning control and it is expedient to take enforcement action having regard to the provisions of the development plan and all other considerations. The development comprises inappropriate development in the Green Belt and by reason of its visual appearance, has an adverse impact upon the character and appearance of the landscape and the countryside. Although the development is acceptable in all other respects including its impact on highway safety, residential amenity and retail impact, the required very special circumstances justifying inappropriate development in the Green Belt do not exist in that any material benefits are outweighed by the harm caused by the development to the Green Belt, the landscape and the countryside. The development is therefore contrary to Policy QE1 of the Regional Spatial Strategy, Policies D2, D4, D5B, NC1 and NC2 of the Structure Plan, Policies ASP6, CSP1 and CSP4 of the Core Spatial Strategy, Policies S3 and N20 of the Local Plan and the aims and objectives of PPS1, PPG2 and PPS7. It is not considered that conditions could address these concerns so the appropriate requirement is to seek the cessation of the use. The period for compliance indicated is appropriate having regard to the practicalities of relocation and guidance in PPG 18 on the treatment of small businesses involved in a breach of planning control.

**Policies and Proposals in the Approved Development Plan Relevant to This Decision:**

- West Midlands Regional Spatial Strategy 2008 (WMRSS)
  - Policy QE1: Conserving and Enhancing the Environment
- 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 D4: Managing Change in Rural Areas
  - Policy D5B: Development in the Green Belt
  - Policy T1A: Sustainable Location
  - Policy T13: Local Roads
  - Policy T18A: Transport and Development
  - Policy NC1: Protection of the Countryside
Policy NC2: Landscape Protection and Restoration

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

Policy SP1: Spatial Principles of Targeted Regeneration
Policy SP2: Spatial Principles of Economic Development
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 N20: Areas of Landscape Enhancement

Other Material Considerations include:

National Planning Policy

PPS1: Delivering Sustainable Development
PPG2: Green Belts
PPS4: Planning for Sustainable Economic Growth
PPS7: Sustainable Development in Rural Areas
PPG13: Transport
PPG18: Enforcing Planning Control

Companion Guide to PPS1 “The Planning System: General Principles”

Circular 10/97 Enforcing Planning Control and its associated “Good Practice Guide for Local Planning Authorities”

Planning for Landscape Change – Supplementary Planning Guidance to the Structure Plan

Department for Transport Circular 01/2008 Policy on Service Areas and Other Roadside Facilities on Motorways and All Purpose Trunk Roads in England

Relevant Planning History

Nil

Views of Consultees

Betley, Balterley & Wrinehill Parish Council states that they have received many complaints regarding the siting and operation of the snack bar vehicle at this location. The Parish Council is very firmly of the view that given the strong local concern about the activity taking place and the desirability of establishing the precise legal standing of such trading activity in such locations, it is essential that enforcement action is taken in order to allow the issue to be tested.

The Highway Authority has visited the site and states that it has no objections to a mobile hot food van/trailer for the preparation and sale of hot food for sale to the public. The van was situated clear of the visibility splay onto Post Office Lane therefore causing no highway safety problems for drivers emerging onto Post Office Lane. For drivers travelling along the A531 and turning right into Post Office Lane the van is sited rear of a footway and grass verge running parallel with the A531 and therefore clear of any required visibility splay. Consideration has been given to the road traffic accident data within the vicinity of the site and there have been no recorded accidents since the van has been known to be trading on this site. Should the van be subject to a planning application then it is recommended that a condition be imposed requiring the van to be
sited 2m clear of the carriageway edge of Post Office Lane to protect visibility for drivers emerging off the land onto Post Office Lane.

Further comments have been received from the Highway Authority in response to an additional statement from Councillor Becket. In particular, it is stated that the speed of traffic closer to the junction of Post Office Lane and A531 will be reduced closer to the junction and therefore if drivers are mindful to leave the lay-by closer to the junction the visibility requirements are reduced due to the reduction in speed of traffic. Although Councillor Becket refers to articulated vehicles turning into Post Office Lane with insufficient swept path and vehicles needing to reverse onto the A531, it should be noted there is a weight restriction along Post Office Lane and therefore such vehicles are not entitled to turn into Post Office Lane.

The views of the Environmental Health Division have been sought and will be reported to the Planning Committee.

Representations

A representation has been received from Councillor David Becket stating that in view of local concern, the effect on a local business and the establishment of a business in the Green Belt, enforcement must take place in order that this application can be fully examined.

A letter has been received signed by 21 signatories, as the occupants of properties adjoining and in the vicinity of the site. It is stated that the van has been sited since 3 August 2011 and therefore residents have had time enough to gauge the impact on themselves and the area. Their concerns are as follows:

- The van is within the Green Belt and is not compatible with its surroundings. The site is directly bordering a residential property.
- Trading hours are 7am until 2pm Tuesday to Friday during which time the noise from the generator is relentless.
- Noise from vehicles (many of which are lorries) entering and leaving the site includes reversing bleepers, doors slamming, customers sounding horns and shouting.
- Historically the site has been owned and used by Staffordshire County Council Highways Department for storage of aggregates and road repair materials, and also for parking for residents’ visitors and anyone wishing to come and enjoy the area. In recent months, parking on the site has been difficult and at times impossible.
- The surface of the site is only approximately 35% tarmac finish, the remainder being fine limestone and gravel. With increased use of the area, there have appeared substantial water filled holes and traffic exiting the area now leaves a mud trail on the road.
- In fine weather, tables and chairs are sited encouraging visitors to socialise at the burger van. The adjoining residential property has lost all privacy to their total garden area.
- Cooking smells in the adjoining properties are invasive making opening windows impossible.

A further letter has been received from the occupiers of the two neighbouring properties, New Thorntree and Byeways, stating that the burger van is only 14m and 34m respectively from their properties and on the day of writing it had been fully operational since 6.55am.

A letter has been received from the owners of Betley Village Store regarding impact upon sales at their business. A summary of the comments made is as follows:-

- The shop relies on passing trade and tradesmen working in the area as local business is limited.
- It is estimated that from August/September the business has suffered a loss of turnover of between £120 - £160 per week, approximately £8,000 per annum.
- On Mondays when the snack bar does not operate, there is a lot of passing trade and builders buying food. However from Tuesday to Friday only the locals buy food and there is an impact on sales.
- The shop has had to reduce their orders for pies and cakes and they have stopped selling certain microwave items.
- The business relies on passing trade to be viable but as the snack bar has taken a lot of the passing trade, there are problems in running the business.
**Background Information**

In September 2011 officers served a Planning Contravention Notice on the owner of the snack van on the basis that it was considered there might have been a breach in planning control. She responded advising that she commenced the use on 9 August 2011 and that she operates Tuesday to Friday, 7am to 1.30pm. At that time, on 24 September 2011, she confirmed that she had occupied the site for 28 days in total. The use has apparently continued to operate on Tuesdays to Fridays since that time. The owner of the van submitted an invalid planning application for the change of use of land for the stationing of a mobile snack bar on 26 October 2011 and has never submitted the required fee and information.

Whilst temporary uses of land for up to 28 days in any one calendar year are “permitted development” by reason of Part 4 to the General Permitted Development Order (the “GPDO”), the evidence is that the use has occurred both in 2011 and 2012 for more than 28 days in each year, and furthermore that it is even arguable that this is not a temporary use at all but rather a permanent use of land. That matter does not need to be decided at this point - there has undoubtedly been a breach of planning control even if the use is regarded as a temporary one.

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

The breach of planning control consists of a change of use of land for the stationing of a mobile catering van. 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. Guidance on the process to be followed is provided within PPG18 and Circular 10/97. 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.

PPG18 indicates that in assessing the need for enforcement action LPAs should bear in mind that it is not an offence to carry out development without first obtaining any planning permission required for it, and that whilst it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to “regularise” development which is acceptable on its merits, but for which permission has not been sought. 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, as perhaps implied by the Parish Council and Councillor Becket.

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. In this respect members will note the condition that is suggested by the Highway Authority.

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 (taking into account at the same time the specific guidance within the PPG on the treatment of small businesses).
The issues to be considered

The site is within the Green Belt, the Rural Area and within an Area of Landscape Enhancement 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?
- Are there any issues of retail impact?
- 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. PPG2 states that the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt. Although the mobile catering van is not permanently on the site, the frequent presence of it 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. On this basis, it must be concluded that the development constitutes inappropriate development.

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. This matter will be considered later in the report.

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

PPS7 refers to sustainable development as being a core principle and states that development in the open countryside should be strictly controlled. SSSP Policy D4 seeks to protect the countryside for its own sake.

The site is within an Area of Landscape Enhancement and NLP Policy N20 states that within such areas the Council will support, subject to other plan policies, proposals that will enhance the character and quality of the landscape. Within these areas it will be necessary to demonstrate that development will not further erode the character or quality of the landscape.

The surrounding area is characterised by open fields, mature trees and hedgerows with a row of residential properties to the north of the site. Although the site is an informal lay-by on which vehicles might be expected to be occasionally parked and the van is not always present, the van when it is present (which is for quite a considerable proportion of daylight hours) is out of character by reason of its appearance with the surrounding rural area and has an adverse impact on the character of this countryside location. Therefore, the development conflicts with development plan policies relating to impact on the landscape and the control of development within the countryside.

Is there any adverse impact on highway safety?

The mobile catering van is sited within a lay-by at the junction of Newcastle Road (the A531) with Post Office Lane (a Class C road). Access to the lay-by is obtained via Post Office Lane. National speed restrictions apply in the area.

SSSP Policy T13 states that one of the priorities for local roads is to improve safety for all users. Concerns have been raised in relation to the siting of the catering van and the potential impact of the use. Although the site is a long established lay-by/parking area, the siting of the catering van is clearly likely to lead to additional use of the lay-by which would not otherwise occur. However, the lay-by is of substantial size and therefore it is considered that sufficient space remains to enable users to park and to manoeuvre safely without having any adverse impact upon highway safety.
Concerns have been raised regarding the impact on visibility for drivers exiting the site onto Post Office Lane and on vehicles travelling north along Newcastle Road turning right into Post Office Lane. Given that the catering van is sited rear of a footway and substantial grass verge running parallel with Newcastle Road, it is clear of any visibility splay. The Highway Authority has considered this ‘deemed planning application’ and has no objections to the stationing of a mobile catering van on the site. It states that given that the van is sited clear of the visibility splay onto Post Office Lane no highway safety problems are caused for drivers.

On the basis of the above, it is not considered that there is an adverse impact on highway safety.

Are there any issues regarding impact on residential amenity?

The site comprises a large lay-by/parking area. The catering van parks adjacent to the western edge of the lay-by, approximately 34m from the closest residential property to the north-east and approximately 13m from its garden boundary. Concerns have been raised by residents regarding noise and cooking smells from the van, and disturbance associated with the use.

Given that the neighbouring residents currently live adjacent to a long established lay-by/parking area, they are already exposed to some levels of noise and disturbance. Although the presence of the catering van is likely to have resulted in a greater number of vehicles visiting the site, given the distance to the neighbouring properties, it is not considered that the impact on residential amenity from noise and disturbance will have been significant. With respect to odour, given the distance of the catering van from the properties, it is not considered that impact is significant. The views of the Environmental Health Division have been sought and will be reported to Members if received.

Are there any issues of retail impact?

Policy EC13 of PPS4 refers to determining planning applications affecting shops and services in local centres and villages. In particular it states that when assessing planning applications affecting shops or services in local centres and villages, LPAs should refuse planning applications which fail to protect existing facilities which provide for people’s day-to-day needs.

Objections have been raised by the owners of Betley Village Store regarding impact upon sales at their business. The purpose of the planning system is not to prevent competition however the impact on the vitality and viability of the limited shops and services within Betley, the closest village to the site, needs to be considered.

Given the nature of the use it is not considered that the catering van would have any significant adverse impact on the shops or services of the village. Although the proprietors of Betley Village Store have stated that their business is adversely affected by the catering van, no substantive quantitative evidence has been submitted to support that contention. They have included copies of invoices for food orders placed before and after the catering van began trading. Although they show a limited reduction in the size of the order, the difference is not significant and in your Officer’s view, does not provide evidence that trade has been materially adversely affected.

Accordingly it is not considered that the development is in conflict with any policies regarding retail development.

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

As referred to above, the development comprises 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 siting of the mobile catering van is harmful to the visual amenities of the Green Belt and the countryside by reason of its appearance.
It is acknowledged that Policy EC10 of PPS4 states that LPAs should adopt a positive and constructive approach towards planning applications for economic development. Planning applications that secure sustainable economic growth should be treated favourably. There is no specific support within development plan policies for the siting of roadside facilities and although the Department for Transport Circular 01/2008 Policy on Service Areas and Other Roadside Facilities on Motorways and All-Purpose Trunk Roads in England does consider the need for such facilities it is for sites on the Strategic Highway Network (which this site is not). This site is not far from urban areas where users of the road network can obtain refreshment and rest.

Therefore, although support for economic development is acknowledged, your Officer does not consider that the very special circumstances exist to outweigh the harm identified above.

Conclusion

The development comprises inappropriate development within the Green Belt and the appearance of the catering van would harm the character and quality of the landscape in which it is located. There is no alternative siting for the development that would be acceptable and the applicant has not put forward any case that would affect the expediency of taking enforcement action to cease the use of the land for the stationing of the structure. It is considered that the taking of enforcement action would be both proportionate and reasonable.

**Date Report Prepared**
13 March 2012
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Purpose of This Report

To enable the Planning Committee to consider the question of whether enforcement action can and should be taken with respect to two alleged breaches of planning control at Maerfield Gate Farm, Maer as follows:

(a) the formation of earthworks known as the “lower plateau” associated with the proposed erection of a building, and
(b) the carrying out of earthworks described here as the “upper plateau” and associated with the proposed construction of a manege or horse exercise area

The report is brought before the Planning Committee in accordance with the resolutions of the Planning Committee of 14 February, although the resolution with respect to the upper plateau indicated that additional time could be given (before the matter was considered by the Committee) to allow revised proposals to be put forward. No revised proposals with respect to the upper plateau have been submitted to date however an indication has been given that appeals may soon be lodged against the Council’s recent refusals of planning permission. It is considered appropriate that the issue of whether it is expedient to take enforcement action should now be decided by the Council so that if the Council does decide that enforcement action should be taken any appeals (planning and enforcement) can be dealt with at the same time.

RECOMMENDATION

That having regard to the provisions of the development plan and 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 to obtain the following:

(i) The installation of fencing to protect adjoining trees and hedgerows - such fencing being retained during the duration of the works.
(ii) The replacement of any trees removed or harmed during the reinstatement works.
(iii) The regrading of the land covered by upper plateau so that it is in line with its contours prior to the carrying out of the works, using only material that was moved during the unauthorised works.
(iv) Such regrading to include if necessary the moving of material from the lower plateau as is required to achieve these contours, with the material being taken initially from the western side of the lower plateau and that lower plateau being regraded following the completion of those works.
(v) The application of topsoil of a required depth on the upper area and on any remaining regraded slopes to the lower plateau.
(vi) The application of grass seed to the topsoiled areas.
(vii) All the above works to be undertaken within 3 months of the Notice coming in to effect, with the exception of any replacement tree planting which shall be required to be completed by the following planting season.

Reason for Recommendation

With respect to the lower plateau whilst the works are a breach of planning control, it is not expedient to take enforcement action against them because they are not having an adverse impact upon the surrounding countryside or the Maer Conservation Area. However material forming at least part of the lower plateau was imported from the works of formation of the upper plateau and it is likely to be required to form part of the reinstatement of the upper plateau area.

With respect to the upper plateau the works are in breach of planning control and it is expedient to take enforcement action having regard to the provisions of the development plan and all other material considerations. The development, by reason of its scale, location, elevation, and skyline location in certain views, has an adverse impact upon the character and appearance of the Maer...
Conservation Area and upon the landscape within which it is located. The development fails to preserve or enhance the character and appearance of the Conservation Area. The development is therefore contrary to policies NC19, NC1 and NC2 of the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011, policies B9, B10, N17 and N19 of the Newcastle-under-Lyme Local Plan 2011 and policies CSP1, CSP2 and CSP4 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 as well as the aims and objectives of national policy. These concerns could not be addressed by conditions so it is appropriate, having regard to the highway safety implications of importing additional material, to seek reinstatement of the land in a manner which does not involve the importation of any material other than topsoil. The period for compliance indicated is appropriate having regard to the practicalities of the works.

**Policies and Proposals in the Approved Development Plan Relevant to These Decisions:**

**West Midlands Regional Spatial Strategy 2008 (WMRSS)**

Policy QE1: Conserving and Enhancing the Environment  
Policy QE3: Creating a high quality built environment for all  
Policy QE6: The Conservation, Enhancement and Restoration of the Region’s Landscape  
Policy PA14: Economic Development and the Rural Economy  
Policy PA15: Agriculture and Farm Diversification

**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 D4: Managing Change in Rural Areas  
Policy NC1: Protection of the Countryside: General Considerations  
Policy NC2: Landscape Protection and Restoration  
Policy NC13: Protection of Trees, Hedgerows and Woodlands  
Policy NC17A: Historic Parks and Garden: Protection  
Policy R3: Recreational Facilities in the countryside

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

Policy ASP6: Rural Area Spatial Policy  
Policy CSP1: Design Quality  
Policy CSP2: Historic Environment  
Policy CSP4: Natural Assets

**Newcastle-under-Lyme Local Plan 2011 (NLP)**

Policy B5: Control of development affecting the setting of a Listed Building  
Policy B9: Prevention of Harm to Conservation Areas  
Policy B10: The Requirement to Preserve or Enhance the Character or Appearance of a Conservation Area  
Policy B13: Design and Development in Conservation Areas  
Policy B14: Development in or Adjoining the Boundary of Conservation Areas  
Policy B15: Trees and Landscape in Conservation Areas  
Policy N12: Development and the Protection of Trees  
Policy N17: Landscape Character – General Considerations  
Policy N19: Areas of Landscape Maintenance

**Other Material Considerations**

**National Planning Policy**

PPS1: Delivering Sustainable Development (2005)  
Companion Guide to PPS1 “The Planning System: General Principles”  
PPS5: Planning for the Historic Environment (2010)  
PPS7: Sustainable Development in Rural areas (2004 as revised 2009)
Circular 10/97 – Enforcing planning control, and its associated “Good Practice Guide for Local Planning Authorities”

PPG 18: Enforcing Planning Control

Planning for landscape change – Supplementary Planning Guidance to the Structure Plan

The Secretary of State’s announcement of his intention to abolish RSS

The Secretary of State has made it clear that it is the Government’s intention to revoke RSSs and the Localism Act 2011, which includes powers to give effect to that intention, received Royal Assent on 15 November 2011. However, pending the making of a revocation order in accordance with the new Act, the RSS remains part of the statutory development plan. Nevertheless, the intention to revoke the RSS and the enactment are material considerations.

Emerging Draft Policy

Draft National Planning Policy Framework (July 2011)

Whilst it (the draft NPPF) is a consultation document and, therefore, subject to potential amendment, nevertheless it gives a clear indication of the Government’s “direction of travel” in planning policy. Therefore the draft NPPF is capable of being a material consideration, although the weight to be given to it will be a matter for the decision maker’s planning judgement in each particular case. The current Planning Policy Statements, Guidance notes and Circulars remain in place until cancelled.

Consultations and Representations

No express consultations have been undertaken with respect to the issue of whether it is expedient to take enforcement action. However the Borough Council did receive comments on the two associated planning applications which were reported when those applications were determined (by the Planning Committee at its meeting on 14 February). With respect to the groundworks the following comments were made by Maer and Aston Parish Council and Chapel and Hill Chorlton Parish Council:-

- The works conducted to date which of course are still incomplete form a very obvious stepped intrusion into the otherwise unmarred rise to the scenic focus of the copse on the skyline.
- The development would have a severely detrimental visual impact on the wider geography.
- Major earthworks have already taken place on site and it is very obvious from the A51 and road into Maer that these earthworks have changed the historical contour of the skyline of the original John Webb Parkland.
- The earthworks in the re-contouring of the land have desecrated the Historic Park and its setting particularly when viewed from the local public footpaths.

Similar comments were made by two members of the public.

Mr Booth – the promoter of the development made representations in support of the applications and these were reported both in the agenda report and in supplementary reports issued with respect to both applications.

Maer and Aston Parish Council have since written indicating that due to the historic conservation aspect of the land in question, they are anxious that earthworks already undertaken are reversed and the landscape returned (to) as it was as soon as possible. They indicate that they would like to see enforcement action to ensure that the land is restored within 28 days.

Relevant Planning History

Planning applications for (a) retention of groundworks and erection of timber framed building (Application 11/00599/FUL) and (b) retention of groundworks and development of a 1,500 sq.m private manège (Application 11/00601/FUL) were refused by the Planning Committee on the 14th February 2012. At the time of writing no appeals have yet been lodged but the applicant has until 21st August 2012 to lodge such appeals.
Has there been a breach of planning control?

The first question the planning authority must consider in each case is whether there has been a breach of planning control.

Extensive photographs of the works taken close to the time when the works were undertaken will be available for members to view if they wish. It is important to note that as a result of the establishment of grass – at least on the slopes of the plateaus their appearance is now different. Again more recently taken photographs will be available for members to view.

The groundwork undertaken to date – the formation of the lower and upper plateaus - were undertaken at the same time and almost certainly the works involved the moving of material from the upper area (where there was a greater amount of excavation) to form at least part of the lower plateau. The lower plateau however did also involve an element of excavation.

In both cases groundwork of excavation and infill have been undertaken of an extent that makes them acts of development. The level surface created on the lower plateau (item A) has an area of about 830 square metres (on the basis of the drawings submitted with application 11/00599/FUL which show a proposed concrete oversite apron of 16 metres by 52 metres). The upper plateau covers a more extensive area of about 28 metres by 50 metres or 1,400 square metres with a greater additional area affected by works of excavation and retaining slopes.

Planning permission is however granted (as “permitted development”) for certain works by reason of Schedule 2 to the Town and Country Planning (General Permitted Development Order) (the “GPDO”) subject to certain limitations and conditions being met. Part 6 of Schedule 2 to the above concerns agricultural Buildings and Operations.

At the time of the recent applications it was established that Maerfield Gate Farm is an agricultural unit of more than 5 hectares. Members will be aware that a number of horses graze upon the Maerfield Gate Farm unit. Although there is no suggestion that the horses in question are used in the farming of the land, the definition of agriculture includes the use of land for grazing (including by “non-agricultural” horses). By reason of its size Maerfield Gate Farm would at the time the works were undertaken have enjoyed the rights set out within Class A of Part 6 to the GPDO.

Class A sub-section (b) permits inter alia the carrying out on agricultural land in an agricultural unit of this size of any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit. Similarly works for the erection of a building can be permitted development.

These rights are subject to a number of limitations and conditions. As far as this case is concerned the significant ones are that such development is not permitted if the works are not designed for agricultural purposes and development consisting of the erection of a building is at minimum subject to a requirement to give appropriate prior notice to the Local Planning Authority.

It is the circumstances at the time when the works were undertaken which need to be considered in determining whether there has been a breach of planning control and those circumstances include the applicants intentions with respect to the development when undertaken by him.

The upper plateau was formed with the stated intention of it providing the platform upon which a horse exercise area or manege would then be formed. There are no conceivable grounds for accepting that such works – the formation of a 1,400 square metre flat surface - were also “reasonably necessary for the purposes of agriculture within the unit” or that they were “designed for agricultural purposes”. Accordingly there is no doubt that there has been a breach of planning control with respect to the formation of the upper plateau.

The lower plateau is somewhat smaller. The circumstantial evidence is that it was formed to provide a level surface upon which the intention was to build a concrete oversite apron with a building on that apron. In the first instance it is appropriate to consider the works to be part of the erection of a building (which could not have been constructed in this particular location without the associated groundwork, given the slope on the site). The applicant ceased work upon being notified that the works were in breach of planning control at a
point where only the groundworks had been completed. The building required planning permission for various reasons. The works thus viewed cannot be considered to have been permitted development.

If notwithstanding the above the works were viewed as a separate operation and not a constituent part of the erection of a building, could they be considered not to have been a breach of planning control – bearing in mind the right to carry out excavation and engineering works on agricultural land forming part of an agricultural unit of this size? In terms of the area covered the works fall well below the 0.5 hectare (5,000 sq.m limit) but it is not accepted by your officers that the works were either “reasonably necessary for the purposes of agriculture within that unit” or “designed for the purposes of agriculture”.

Based upon the above deliberations there is thus grounds to consider that with respect to the lower plateau, it too was a breach of planning control.

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 LPA is required by legislation to have regard to the provisions of the approved development plan for the area, and any other material considerations. The relevant provisions of the approved development plan are indicated above, as are other material considerations. The Authority must not take into account any immaterial considerations in deciding whether or not it is expedient to take enforcement action. 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.

PPG18 indicates that in assessing the need for enforcement action 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. 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.

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, specifying what steps need to be taken and by when.

Given the terms of the Council’s previous decisions on the two applications, and the fact that there have been no material changes in either planning policy or planning circumstances since February the only consideration that there can be in these two cases is the impact of the works upon the character and appearance of the Conservation Area.

With respect to the upper plateau the works undertaken to date on site are in fact substantially similar in appearance to those referred to in the refused planning application (although the final top surface and fencing around the manege itself have not been formed). That application was refused in February on the following grounds:-

By reason of its shelved profile, elevation and skyline location the development would have an adverse impact upon the character and appearance of the Maer Conservation Area and upon the landscape within which it is located. The development would fail to preserve or enhance the character and appearance of the Conservation Area. The development is therefore contrary to policies NC19, NC1 and NC2 of the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011, policies B9, B10, N17 and N19 of the Newcastle-under-Lyme Local Plan 2011 and policies CSP1, CSP2 and CSP4 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 as well as the aims and objectives of national policy including PPS5 and PPS7.
Given part of the site is within the Maer Conservation Area the Authority must pay special attention in the exercise of its planning functions to the desirability of preserving or enhancing the character or appearance of this Conservation Area. NLP Policy B10 indicates a range of criteria that should be met in this regard including the following:-

- Open spaces important to the character or historic value of the area are protected.
- Important views within, into and out of the area are protected.
- Trees and other landscape features contributing to the character or appearance of the area are protected.

NLP Policy N19 states that within these areas the Council will support, subject to other plan policies, proposals that will seek to maintain the high quality and distinctive character of the area's landscape. Any development should demonstrate that it would not erode the character or harm the quality of the landscape.

To assist members a series of photographs from public vantage points will be available at the meeting.

Whilst your officers have had discussions with Mr Booth since the Committee meeting on 14 February, no alternative proposals with respect to the upper plateau have been submitted by him to date and the indications are that he now intends to pursue an appeal against the refusal of the planning permission. There is no apparent new consideration which needs now to be taken into account. The authorisation and issue of an Enforcement Notice will not prevent him bringing forward alternative proposals, but it will make the Council's position with respect to the existing works on the upper plateau clear – that they are unacceptable and should be removed – and ensure that should the matter proceed to appeal that the matter is brought to a more prompt conclusion than would otherwise be the case. The concerns indicated in the reason for refusal for the upper plateau could not be addressed by the attachment of conditions and in the circumstances it is expedient to take enforcement action with respect to the upper plateau.

With respect to the lower plateau the position is however different, in that the refused planning application related to not only the groundworks, but also the concrete oversite apron and the building. That more extensive and indeed different development was refused for the following reason:-

“The development, by reason of its scale, location, elevation, and skyline location in certain views, would have an adverse impact upon the character and appearance of the Maer Conservation Area and upon the landscape within which it is located. The development would fail to preserve or enhance the character and appearance of the Conservation Area. The development is therefore contrary to policies NC19, NC1 and NC2 of the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011, policies B9, B10, N17 and N19 of the Newcastle-under-Lyme Local Plan 2011 and policies CSP1, CSP2 and CSP4 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 as well as the aims and objectives of national policy”

Due to the scale and location (adjacent to the tree and hedgerow lined ‘old road’), the lower plateau is not, unlike the upper plateau, readily visible within the landscape. This is illustrated in a series of photographs (Nos.1, 2 and 3) taken from the public vantage point that is the closest and most prominent view of the development. In these it can be seen that only part of the new landform comprising the lower plateau is barely noticeable within the landscape and the small amount of embankment that is visible is naturalising and in a short period of time is unlikely to be visible at all within the surrounding topography. A further photograph (No.4) taken from Maer Lane illustrates how this limited impact quickly reduces as one moves further away taking into account the development’s limited scale, the surrounding topography and the backdrop of the trees and vegetation. From the A51 (photograph No. 5) due to the position of the existing tree line and the alignment of the road, no views are visible of the lower plateau at all. When viewed from further afield including from a higher vantage point within the Historic Park and Garden looking down towards the site with Maer Lake in the foreground (photograph No.6) it is very difficult for the naked eye to see the site let alone pick up this particular alteration to the land form.

Therefore whilst your officers do have concerns about the upper plateau and are recommending that enforcement action be taken with respect to it, the lower plateau has a very different, lesser and acceptable impact.

However as already indicated some of the material comprising the lower plateau almost certainly came from the area within which the upper plateau was created. It would not be desirable to require works to be
undertaken (the reinstatement of the upper plateau) that would require the importation of significant amounts of material onto the site. Some importation of topsoil is likely to be required to comply with the proposed Notice. As members may recall the Highway Authority have concerns about the additional use of the access onto the A53 (because of the speed of traffic onto road and visibility at the point of access). The importation of material would involve larger more slow moving vehicles manoeuvring onto and off the A53 at this point which would not be in the interests of highway safety, so it should be kept to a minimum.

Accordingly it is proposed that the enforcement action only require such works to the lower plateau as are required to achieve the reinstatement of the upper area’s contours. That will leave an area (part of the lower plateau) which will not be fully reinstated to the original contours, but that will, in your officer’s view, cause no harm to the character and appearance of the Conservation Area, for the reasons stated above.

Date Report Prepared
14 March 2012
Earthworks associated with refused application
11/0602/FUL Maerfield Gate Farm

11/00155/207C2

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Newcastle under Lyme Borough Council
Planning & Development Services
Date 27.03.2012

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Erection of an 11KW Wind Turbine at Hillberry, Hill Crescent, Alsagers Bank. Mr & Mrs Fagan.

Application Number: 11/00551/FUL

LPA’s Decision: Refused under delegated powers on 18 November 2011

Appeal Decision: The appeal was dismissed

Date of Appeal Decision: 29 February 2012

The full text of the appeal decision is available to view on the Council’s website (as an associated document to application 11/00551/FUL) and the following is only a brief summary.

The Inspector considered the main issues to be:

- Whether the proposal constitutes inappropriate development in the Green Belt for the purposes of PPG2 and development plan policy.
- The effect on the openness of the Green Belt and the purposes of including land within it.
- The effect on the living conditions of nearby residents in respect of noise and disturbance.
- The effect on protected species.
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

In dismissing the appeal, the Inspector made the following comments:

- The proposal comprises inappropriate development in the Green Belt which is by definition harmful attracting substantial weight against the proposed development. Furthermore the proposal would inevitably lead to a significant loss of openness of the Green Belt, especially given its substantial scale and height, contrary to PPG2 and the development plan.
- Apart from the appeal dwelling itself, the nearest dwelling is the bungalow at Whitewalls, which lies about 65m from the site of the proposed wind turbine. A noise assessment undertaken in accordance with advice set out in recommended guidance demonstrated that the noise from the turbine at the façade of Whitewalls would clearly exceed the suggested limits for single turbine sites.
- The Council sought advice from the manufacturer of the wind turbine however it was established that there were technical difficulties so that a condition could not reasonably be imposed to control the level of noise from the wind turbine to an acceptable limit in accordance with the guidance by ETSU and the BERR guidance published in 2007. The imposition of a condition would be unduly restrictive and unreasonable contrary to the advice in Circular 11/95, the Use of Conditions in Planning Permissions.
- The site is on an exposed hill top where there is background noise from the wind, trees and the motorway. However, in the absence of any contrary technical evidence to that of the Environmental Health Division, material harm to the living conditions of nearby residents in respect of noise and disturbance was found.
- There are groups of mature trees close to the site and these habitats have potential to be used as foraging or as commuting routes by bats, which are a protected species. Although more extensive woodland cover is further distant, there is a reasonable possibility that bats may be present at the appeal site due to the habitats that are present.
- There is no evidence from the submissions of any sightings of bats by the appellants or by nearby residents. However, in the absence of a scoping survey carried out by an appropriate technical expert, it is not possible to be certain whether or not bats may be present, and if so, whether appropriate mitigation could be undertaken to prevent their injury from the appeal proposal. In the absence of a survey there is potential for harm to protected species from the proposed development.
- Although there are other wind turbines in the area, the circumstances of these, including their design and position, differ from the appeal proposal.
- No substantive harm to highway safety was found given that the transportation and erection of the wind turbine, and site preparation, would take place over a limited period of time.
- It is accepted that PPS22 indicates that other considerations may include the wider environmental benefits associated with increased production of energy from renewable sources, and that this hill top site would be well placed to contribute to renewable energy sources, and that these considerations attract...
substantial weight in favour of the appeal proposal. However, these considerations are not of sufficient
merit to clearly outweigh the totality of harm by reason of inappropriateness and to the openness of the
Green Belt, to the living conditions of nearby residents and the potential for harm to protected species.
The very special circumstances necessary to justify the development do not exist.

Recommendation

That the decision be noted.
Two Storey Rear Extension and Single Storey Front Porch at 95 Nantwich Road, Audley. Mr and Mrs Rhodes

Application Number: 11/00514/FUL

LPA’s Decision: Refused under delegated powers on 10 November 2011

Appeal Decision: Appeal dismissed

Date of Appeal Decision: 27 February 2012

The full text of the appeal decision is available to view on the Council’s website (as an associated document to application 11/00514/FUL) and the following is only a brief summary.

The Inspector considered the main issue to be the effect of the proposal on the character and appearance of the existing dwelling and on the surrounding area and the adjoining Green Belt.

In dismissing the appeal, the Inspector made the following comments:

- The existing outrigger does not occupy the whole of the rear facade; it is part one, part two-storey and of irregular form; and is a subordinate feature of the existing house, adding character and form to the otherwise linear building.
- The proposed rear extension would be of a very different character and would be larger than the original dwelling that would remain after the removal of the existing outrigger. The extension would change the footprint of the property to a bulkier form, it would be entirely two storey and it would run across almost the complete width of the rear facade of the house. The ridge of the roof would be only slightly below that of the main roof and its pitch would be shallower and of a different character.
- The extension would extend significantly further out into the back garden than the existing outrigger: consequently it would result in the house having a greater depth than width, a reversal of the current proportions. Overall the proposed rear extension would not therefore be well-related or subordinate to the main building, but would dominate it. It would significantly increase the size and mass of the house, alter its proportions and significantly and harmfully alter its overall character and appearance.
- As it lies to the rear, the proposed two-storey extension would only have a limited impact on the street scene and there would not be a significant visual impact on the surrounding area.
- While the Green Belt boundary runs to the rear of the site, the proposed extension would be screened from long views by trees and other development to the rear of the site. Also, the extension would be seen against the existing mass of the house when viewed from within the Green Belt and this would reduce its visual impact. It was not considered therefore that the proposal would injure the visual amenities of the Green Belt.
- It was concluded that the proposed rear extension would be harmful to the character and appearance of the dwelling.
- The evidence of other extension locally with some similarities does not provide a robust justification for the appeal proposal and the appeal has been determined on its merits.
- No other matters have been raised that overcome concerns about the harm caused by the development.

Recommendation

That the decision be noted.
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