

## Item No. 10

**Enforcement No:** E/08/0187

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<b>Type:</b>	Change of use & operational development	<b>Date of Complaint:</b>	5 <sup>th</sup> August 2008
<b>Developer:</b>	Mr C Shutt/Mr D Van-Hien		
<b>Breach:</b>	Unauthorised Change of Use from agricultural use to a mixed use of agricultural and builders/scaffolders yard.		
<b>Location:</b>	Beeby Paddocks, Barkby Road, Beeby, Leicestershire, LE7 3BQ		
<b>Parish:</b>	Beeby	<b>Ward:</b>	Queniborough Ward
<b>Case Officer:</b>	Mr J Short	<b>Extension:</b>	4736

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### Description of the Unauthorised Development

The site off Barkby Road, Beeby is currently being used, without the benefit of planning permission, for a mixed use of agricultural and a builder's scaffold yard and storage area. The site is accessed via a single track lane and is within the High Leicestershire Area of Particularly Attractive Countryside.

It appears a large hardstanding area has been created and is currently being used as a turning and operating area for vehicles associated with the unauthorised scaffolding business. A large scaffold construction has also been erected as a storage rack for scaffolding poles.

The unauthorised change of use was brought to the attention of Officers when the operator applied to the DVLA for a Heavy Goods Vehicle Operators Licence for 3 vehicles. This application was granted despite objections from the Head of Development Control on behalf of CBC and an objection by Leicestershire Highways.

- **Development Plan Policies**

#### Borough of Charnwood Local Plan (adopted 12<sup>th</sup> January 2004)

EV/1 – Design – The Borough Council will seek to ensure a high standard of design in all new developments.

CT/1 – General Principles for Areas of Countryside, Green Wedge and Local Separation – Land lying outside the defined Limits to Development is variously identified on the Proposals as Countryside, Green Wedge or Areas of Local Separation. Development within these areas of generally open land will be strictly controlled.

CT/2 – Development in the Countryside – In areas defined as Countryside, development(s) acceptable in principle will be permitted where it would not harm

the character and appearance of the countryside and provided it could safeguard its historic, nature conservation, amenity, and other local interest.

CT/7 – Areas of Particularly Attractive Countryside – Within the designated Areas of Particularly Attractive Countryside planning permission will be granted for uses where the proposal would not detract from the essentially undeveloped rural character of the landscape, damage natural features and landform or diminish the visual amenities afforded by important viewpoints.

TR/17 – The Impact of Traffic on Minor Rural Roads - Planning permission will not be granted for development in locations where it would result in a significant change in the amount or type of traffic using rural roads or roads through villages.

TR/25 – Heavy Goods Vehicle Operations - Proposals for new heavy goods vehicles operating centres and depots or proposals involving the additional development or extension of an existing site, which require planning permission, will not be permitted unless all the required criteria are met.

- **Other Policies**

PPG 18, Enforcing Planning Control, gives advice about planning enforcement. It advises that the decisive issue in considering enforcement action should be whether the breach of control is unacceptably affecting public amenity or the existing use of land or buildings.

PPS 1, Delivering Sustainable development, sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system. The Statement includes the advice that planning should facilitate and promote sustainable and inclusive patterns of urban and rural development by, amongst other things, protecting and enhancing the natural and historic environment, the quality and character of the countryside.

PPS 7, Sustainable Development in Rural Areas, sets out the Government's planning policies for rural areas, which local authorities should have regard to when preparing local development documents, and when taking planning decisions.

- **Other Material Considerations**

The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the authorisation of enforcement proceedings.

The issue of **human rights** is a material consideration in the determination of planning applications and enforcement issues. Article 8 of the Human Rights Act 2000 requires respect for private and family life and the home while Article 1 of the First Protocol provides an entitlement to peaceful enjoyment of possessions.

However, these rights are “qualified”. It is necessary to consider whether refusing planning permission and/or issuing an enforcement notice would interfere with the developer’s human rights. If it would, the Committee must decide whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The impact on the human rights of the developer must be balanced against the public interest in terms of protecting the environment and the rights of other people living in the area. In this case, the development is unauthorised and enforcement action to remedy the breach of planning control and protect the character of the High Leicestershire Area of Particularly Attractive Countryside would represent a proportionate response which can legitimately override the developer’s human rights under Article 8.

### **Relevant Planning History**

No planning applications or applications for Certificate of Lawfulness have been received despite Mr Van-Hein suggesting that this was his intention.

### **Responses of Statutory Consultees**

Leicestershire Highways would not support any application were one to be received due the poor access and visibility onto Barkby Road. An objection to the DVLA application for a HGV operators licence was raised at the time by Highways.

### **Other Comments Received**

No other comments have been received.

### **Consideration of the Planning Issues**

Satellite photographs from 2001 clearly show that the area in question could not have been in use continuously for more than 10 years as a builders/scaffolders yard as claimed by the owner Mr Van-Hien as the evidence shows the site as an area of vegetation and clear of any materials of any sort.

Mr Van-Hien has been given the opportunity to submit an application for a Certificate of Lawful Use or Existing Development, indeed he has stated his intention to submit an application on more than one occasion but to date, no such application has been received. In a recent response to a planning contravention notice Mr Van Hien has stated again it is his intention to compile evidence and submit a Certificate application.

The development site is within the High Leicestershire Area of Particularly Attractive Landscape and the operation of a scaffolder’s yard is considered inappropriate given the remote and rural nature of the site and the issues of poor access and visibility into the site from Barkby Road and the rural lanes leading to the site.

The associated scaffold storage structure is considered incongruous within the rural setting and is clearly visible from the lane as you approach.

The development of a scaffold storage tower, is a visible and unattractive feature in the landscape and as a result the use and associated structure conflicts with; PPS 1, PPS 7 and with Saved Policies in the Borough of Charnwood Local Plan; EV/1, CT/1, CT/2 and CT/7.

## **RECOMMENDATION:**

### **Authorise Enforcement Notice**

It is **RECOMMENDED** that the Committee:

authorise the Director of Development and the Director of Governance and Procurement to take enforcement action under the Town and Country Planning Act 1990 and the Director of Governance and Procurement to institute and conduct any legal proceedings necessary to secure compliance with the enforcement notice;

give the following reasons why it is expedient to authorise enforcement action:

- a) It appears to the Council that the above breach of planning control has occurred within the last 10 years.
- a) The development site is within the High Leicestershire Area of Particularly Attractive Landscape and the operation of a scaffolder's yard is considered inappropriate in this remote rural location . The development of a scaffold storage tower is considered a visible and intrusive feature in the landscape. The development conflicts with; PPS 1, PPS 7 and with Saved Policies in the Borough of Charnwood Local Plan; EV/1, CT/1, CT/2, CT/7, TR/17 and TR/25
- b) The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections.

confirm that the notice will require the following steps to be taken:`

- 1) Cease the use of the site for the operation of a scaffolding business and storage of scaffolding equipment.
- 2) Remove from the land any scaffolding poles, and related equipment.
- 3) Remove the hardcore from the land shown edged in blue on the attached plan and return the site to its condition prior to when the use changed from agricultural.

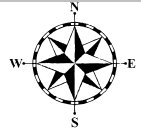
give the following period for compliance with the notice:

4 Months

for the purposes of any appeal proceedings, resolve that, had a planning application been received in relation to the unauthorised development described above, permission would have been refused for the reasons set out in the preceding section of this report.



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E/08/0187

**Location:**

Beeby Paddocks, Barkby Road, Beeby, Leicestershire, LE7 3BQ

**Scale:**

1:5000

