

## Item No. 7

<b>Enforcement No:</b>	E/08/0029	<b>Date of</b>	6 <sup>th</sup> February 2008
<b>Type:</b>	Unauthorised Change of Use	<b>Complaint:</b>	
<b>Developer:</b>	Mr C White		
<b>Breach:</b>	Unauthorised removal of hedge and change of use of land from agricultural land to residential, including the construction of new driveway and installation of lighting apparatus and cabling alongside new driveway		
<b>Location:</b>	Land at Six Acres, 17 The Ridgeway, Rothley, Leicestershire, LE7 7LE		
<b>Parish:</b>	Rothley	<b>Ward:</b>	Rothley & Thurcaston
<b>Case Officer:</b>	Miss S J Coleman	<b>Extension:</b>	01509 634773

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### Introduction

Members will recall determining this item at their last meeting on 19<sup>th</sup> February 2009, when it was resolved to authorise an enforcement notice for the new driveway and take no further action on the removal of the hedge.

However, it has been brought to your officers' attention that it is necessary to amend the description of the breach and the reasons for expediency to include the change of use of the land from agricultural to residential. The material planning considerations set out in this report are in the main the same as previous, however the breach and steps for compliance now also refer to the change of use.

The original report is appended to this as Appendix I.

### Description of the Unauthorised Development

The unauthorised development comprises a tarmac driveway constructed to the northwest of the site accessed by an existing farm gate onto The Ridgeway.

The site comprises of three dwellings (13, 15 and 17 The Ridgeway, which are currently occupied separately, but all land is owned by Mr White) and surrounded by extensive farmland. The land has historically been used for agricultural purposes and has been occupied as 'Westfield Farm', a dairy farm in its recent history and an earlier farmstead possibly from the late 19<sup>th</sup> Century. The current owner has stated that his use for the land is to occupy it for residential purposes and has also stated that it has not been used as an active farm for 8 years.

The site lies outside of the Limits of Development and within The Ridgeway Area of Local Separation as defined in the Borough of Charnwood Local Plan 2004.

The new driveway links to an existing lawful farm access along the north eastern corner of the site and has therefore created a continuous vehicular access between the two access points onto The Ridgeway. The land to which this new driveway

occupies falls to be classed within the lawful agricultural use of the land and as the owner has stated that the driveway is for residential purposes only, it cannot be classed as 'permitted development' under either Class F (Part I) or Class A (Part 6) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended 2008). The change of use of the land from agricultural to residential use is unauthorised.

The owner, however, has produced photographic evidence of a tarmac surface below the grassed area leading from this gate that came to light whilst laying a new water main pipe and maintains that this is clear evidence to suggest that there was an existing lawful 'driveway' on the land. Your officers maintain that, even if it did exist for the whole length of the unauthorised driveway, it is likely to be no more than an agricultural access way and does not justify its reinstatement as a driveway for residential purposes. In any event, the construction of the new driveway is considered to be an engineering operation and cannot be classed as a repair to what was there already based on the information about its construction provided by the owner.

To compliment the driveway lighting apparatus has been installed alongside the new section, nearest to the houses along with other cabling that is to be used to provide power cables to supply a device to open and close the gate by remote control. These are also to supply cables to an entry gate system that will be connected to inside the houses so that visitors can press a button and be let in by the occupiers of the three houses.

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

Policy CT/1 – General Principles for Areas of Countryside, Green Wedge and Local Separation – states that development within these areas of generally open land will be strictly controlled. Planning permission will be granted for small-scale new built development where there would not be a significant adverse environment and sets out the criteria to be met.

The guiding principles within these areas of essentially open land will be to ensure that new development is small scale and does not adversely affect the appearance and character of the landscape.

Policy CT/2 – Development in the Countryside – states that 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.

Policy CT/5 – Local Separation – The Ridgeway Area of Rothley – states that appropriate development within this area will only be granted where the character and appearance of the countryside is not harmed.

Policy CT/6 – Planning Criteria for Development in Areas of Countryside, Green Wedges and Local Separation – sets out criteria for acceptable development within these defined areas.

- **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.

Planning Policy Statement 7 – Sustainable Development in Rural Areas – states that new building development in the open countryside away from existing settlements, or outside areas allocated for development in development plans, should be strictly controlled; the Government’s overall aim is to protect the countryside for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources and so it may be enjoyed by all.

- **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 balance points to protecting the countryside for the sake of its intrinsic character and beauty.

### **Relevant Planning History**

An application was submitted in 1981 (ref: P/81/1169/2) for residential development and although dismissed at appeal following refusal by the Borough Council, the land was described as good agricultural land by the applicants and the Planning Inspector and at no time did anyone describe any other part of the site as, other than within agricultural use.

### **Responses of Statutory Consultees**

Rothley Parish Council have raised concerns about the removal of hedgerows, creation of a new access and the change of appearance of the farmland to residential adjacent to an archaeological site.

### **Other Comments Received**

Although a number of concerned residents contacted the Council verbally when these activities were first being carried out only one local resident has expressed their concerns in writing and is therefore recorded. The resident is concerned about the removal of the hedgerow alongside Westfield Lane and the alleged encroachment onto highway land and regards this site as an 'ugly eyesore'.

The matter of the alleged encroachment into highway land appears to have been resolved as the low fence has now been moved back, although this would have been a matter for the highway authority and not a planning matter.

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

The main points to consider in relation to the driveway are its impact on the visual amenity of the countryside and the protection of the countryside for the sake of its intrinsic character and beauty as mentioned in PPS7.

It is considered therefore that the creation of the new driveway for residential purposes is an unnecessary visual intrusion into this area of open countryside.

Furthermore, the property already benefits from an extensive vehicular access to the dwellings on the site and therefore the unauthorised additional access drive is not necessary to serve the dwellings and results in a harmful form of development in the countryside.

The owner has argued that as there are 3 dwellings on the site which were all being served by the one original driveway, the additional driveway, he claims, is necessary to negotiate the 8 vehicles that access the property on a daily basis.

In assessing this, it is considered that the way the property is accessed by its occupants does not outweigh the need to protect the countryside from over intensive and unnecessary development which would harm its character and beauty.

### **RECOMMENDATION:**

#### **A: CONSTRUCTION OF NEW DRIVEWAY**

##### **Authorise Enforcement Notice**

It is **RECOMMENDED** that the Committee:

authorise the Director of Development and the Director of Risk Management to take enforcement action under the Town and Country Planning Act 1990 and 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.
- b) It is considered that the change of use of the land and creation of a driveway for residential purposes, by reason of its location within agricultural land is an unnecessary visual intrusion into this area of open countryside and as the property already benefits from an extensive vehicular access it is over intensive development within the countryside. In this way, the proposal conflicts with saved Policies CT/1, CT/2, CT/5 and CT/6 of the Borough of Charnwood Local Plan and National Planning Policy Statement 7.
- c) 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:

- a. Cease the use of the land for residential purposes
- b. remove the tarmac surface and any hardcore base layer from the land
- c. remove all associated lighting apparatus including cabling installed along the length of the driveway
- d. reinstate the topsoil and grassed area to its former condition

give the following period for compliance with the notice:

2 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.

**Item No.**

<b>Enforcement No:</b>	E/08/0029		
<b>Type:</b>	Other operations	<b>Date of Complaint:</b>	6 <sup>th</sup> February 2008
<b>Developer:</b>	Mr C White		
<b>Breach:</b>	Unauthorised removal of hedge, construction of new driveway and installation of lighting apparatus alongside new driveway		
<b>Location:</b>	Land at Six Acres, 17 The Ridgeway, Rothley, Leicestershire, LE7 7LE		
<b>Parish:</b>	Rothley	<b>Ward:</b>	Rothley & Thurcaston
<b>Case Officer:</b>	Miss S J Coleman	<b>Extension:</b>	01509 634773

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**Description of the Unauthorised Development**

The unauthorised development comprises a tarmac driveway constructed to the northwest of the site accessed by an existing farm gate onto The Ridgeway and the removal of a hedgerow along its southern extent alongside Westfield Lane.

The site comprises of three dwellings (13, 15 and 17 The Ridgeway, which are currently occupied separately, but all land is owned by Mr White) and surrounded by extensive farmland. The land has historically been used for agricultural purposes and has been occupied as ‘Westfield Farm’, a dairy farm in its recent history and an earlier farmstead possibly from the late 19<sup>th</sup> Century. The current owner has stated that his use for the land is to occupy it for residential purposes and has also stated that it has not been used as an active farm for 8 years.

The site lies outside of the Limits of Development and within The Ridgeway Area of Local Separation as defined in the Borough of Charnwood Local Plan 2004.

The new driveway links to an existing lawful farm access along the north eastern corner of the site and has therefore created a continuous vehicular access between the two access points onto The Ridgeway. The land to which this new driveway occupies falls to be classed within the lawful agricultural use of the land and as the owner has stated that the driveway is for residential purposes only, it cannot be classed as ‘permitted development’ under either Class F (Part I) or Class A (Part 6) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended 2008).

The owner, however, has produced photographic evidence of a tarmac surface below the grassed area leading from this gate that came to light whilst preparing the ground for the driveway and maintains that this is clear evidence to suggest that there was an existing lawful ‘driveway’ on the land. Your officers maintain that, even if it did exist for the whole length of the unauthorised driveway, it is likely to be no more than an agricultural access way and does not justify its reinstatement as a driveway for residential purposes. In any event, the construction of the new

driveway is considered to be an engineering operation and cannot be classed as a repair to what was there already based on the information about its construction provided by the owner.

To compliment the driveway lighting apparatus has also been installed at various points on either side, along the length of the new driveway. At the time of writing it would appear that only one of these columns has been completed with a lamp, the others appear as plastic tubes from the ground.

The hedgerow that has been removed alongside the site boundary with Westfield Lane falls to be considered within the provisions of the Hedgerow Regulations 1997 as it had a continuous length exceeding 20 metres (this is based on aerial photographic evidence) and that it bordered agricultural land and therefore an application to remove the hedgerow should have been submitted prior to the works being carried out. As one was not submitted, this is classed as an offence under the above mentioned Act.

The owner of the land claims that the hedgerow was diseased and although the Borough Council cannot substantiate this claim, the act does not regard this as a reason for exemption under its requirements. However the owner, whilst always maintaining his intention to replant the hedge, undertook this work in late January using a mix of plants suggested by your officers.

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

Policy CT/1 – General Principles for Areas of Countryside, Green Wedge and Local Separation – states that development within these areas of generally open land will be strictly controlled. Planning permission will be granted for small-scale new built development where there would not be a significant adverse environment and sets out the criteria to be met.

The guiding principles within these areas of essentially open land will be to ensure that new development is small scale and does not adversely affect the appearance and character of the landscape.

Policy CT/2 – Development in the Countryside – states that 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.

Policy CT/5 – Local Separation – The Ridgeway Area of Rothley – states that appropriate development within this area will only be granted where the character and appearance of the countryside is not harmed.

Policy CT/6 – Planning Criteria for Development in Areas of Countryside, Green Wedges and Local Separation – sets out criteria for acceptable development within these defined areas.

- **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.

Planning Policy Statement 7 – Sustainable Development in Rural Areas – states that new building development in the open countryside away from existing settlements, or outside areas allocated for development in development plans, should be strictly controlled; the Government’s overall aim is to protect the countryside for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources and so it may be enjoyed by all.

- **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 balance points to protecting the countryside for the sake of its intrinsic character and beauty.

### **Relevant Planning History**

An application was submitted in 1981 (ref: P/81/1169/2) for residential development and although dismissed at appeal following refusal by the Borough Council, the land was described as good agricultural land by the applicants and the Planning Inspector and at no time did anyone describe any other part of the site as, other than within agricultural use.

### **Responses of Statutory Consultees**

Rothley Parish Council have raised concerns about the removal of hedgerows, creation of a new access and the change of appearance of the farmland to residential adjacent to an archaeological site.

### **Other Comments Received**

Although a number of concerned residents contacted the Council verbally when these activities were first being carried out only one local resident has expressed their concerns in writing and is therefore recorded. The resident is concerned about the removal of the hedgerow alongside Westfield Lane and the alleged encroachment onto highway land and regards this site as an 'ugly eyesore'.

The matter of the alleged encroachment into highway land appears to have been resolved as the low fence has now been moved back, although this would have been a matter for the highway authority and not a planning matter.

## **Consideration of the Planning Issues**

### **Driveway**

The main points to consider in relation to the driveway are its impact on the visual amenity of the countryside and the protection of the countryside for the sake of its intrinsic character and beauty as mentioned in PPS7.

It is considered therefore that the creation of the new driveway for residential purposes is an unnecessary visual intrusion into this area of open countryside.

Furthermore, the property already benefits from an extensive vehicular access to the dwellings on the site and therefore the unauthorised additional access drive is not necessary to serve the dwellings and results in a harmful form of development in the countryside.

The owner has argued that as there are 3 dwellings on the site which were all being served by the one original driveway, the additional driveway, he claims, is necessary to negotiate the 8 vehicles that access the property on a daily basis.

In assessing this, it is considered that the way the property is accessed by its occupants does not outweigh the need to protect the countryside from over intensive and unnecessary development which would harm its character and beauty.

### **Hedgerow**

Whilst it is considered that an offence has occurred under the provisions of the Hedgerow Act 1987 and there is no provision within it for hedges that are dead or dying to be exempt from its protection, the owner has expressed at every opportunity that it was always his intention to replant the hedge and the only reason for its removal was that it was diseased.

Your officers can confirm, as stated by the owner in writing, in early January, that a new hedge has been planted and based on this fact it is recommended to members that it would not be expedient, nor within the public interest, to pursue a prosecution for the removal of the former hedgerow.

## **RECOMMENDATION:**

## **A: CONSTRUCTION OF NEW DRIVEWAY**

### **Authorise Enforcement Notice**

It is **RECOMMENDED** that the Committee:

authorise the Director of Development and the Director of Risk Management to take enforcement action under the Town and Country Planning Act 1990 and 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:

- d) It appears to the Council that the above breach of planning control has occurred within the last 4 years.
- e) It is considered that the creation of a driveway for residential purposes, by reason of its location within agricultural land is an unnecessary visual intrusion into this area of open countryside and as the property already benefits from an extensive vehicular access it is over intensive development within the countryside. In this way, the proposal conflicts with saved Policies CT/1, CT/2, CT/5 and CT/6 of the Borough of Charnwood Local Plan and national Planning Policy Statement 7.
- f) 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:

- a. remove the tarmac surface and any hardcore base layer from the land
- b. remove all associated lighting apparatus including cabling installed along the length of the driveway
- c. reinstate the topsoil and grassed area to its former condition

give the following period for compliance with the notice:

2 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.

## **B. REMOVAL OF HEDGEROW**

It is **RECOMMENDED** that the Committee:

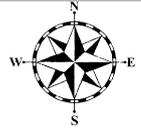
do not pursue a prosecution for the offence of the removal of the hedgerow as it not considered expedient to do so as a new hedge has now been planted.



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**Enforcement No:**

E/08/0029

**Location:**

17 Six Acres, The Ridgeway, Rothley, Leicestershire, LE7 7LE

**Scale:**

1:2500

