

E/11/0077/B – The unauthorised use of former agricultural buildings for various commercial uses at Pound Farm, Hollybush Lane, Datchworth, Herts, SG3 6RE.

Parish: DATCHWORTH AND ASTON

Ward: DATCHWORTH CP

RECOMMENDATION

That the Director of Neighbourhood Services, in consultation with the Director of Internal Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the cessation of unauthorised uses within various units/buildings as shown on the attached plan and detailed as follows:

Unit 3 Office and storage:
Unit 4B Storage of motor cycles:
Unit 4C Workshop for photography:
Unit 9 Storage of furniture:
Unit 9A Storage of machinery:
Unit 10A Storage of water:
Unit 10B Storage of carpets.

Period for compliance: 2 Months

Reasons why it is expedient to issue an enforcement notice:

1. The re-use of the buildings for commercial purposes has resulted in an unacceptable increase in traffic generation to and from the site, including heavy goods and commercial vehicles, accessing the site by very narrow country lanes with poor alignment and visibility. The development is therefore detrimental to highway safety in the area, contrary to policy TR20 of the East Herts Local Plan Second Review April 2007.
2. The unauthorised uses, by reason of the additional comings and goings at the site, and the additional heavy goods and commercial traffic on the surrounding local road network, are detrimental to the amenities of nearby residential properties and to the rural character of the surrounding area. Furthermore, there is no evidence to suggest that the unauthorised uses are necessary to support the continuation of a farming enterprise in the area and no other material considerations are apparent which would outweigh this identified harm. As such, the development is contrary to Metropolitan Green Belt Policy as contained in Planning Policy Guidance 2 – Green Belts and is also contrary to policies ENV1, GBC8, GBC9, GBC10 and GBC1 of the East Herts Local Plan Second Review April 2007 and to the sustainability principles contained in PPS1

1.0 Background

- 1.1 Members may recall that this matter was referred to the Development Control committee in July 2011 when members resolved to approve the recommendation to take enforcement action.
- 1.2 This report seeks to update members on the legal issues involved and offers some minor changes to the stated reasons for issuing the notice, as set out above.
- 1.3 Members may recall that, at the time the previous report was considered, the solicitor acting for the owners of the site had queried whether enforcement action could be taken in this case, because they considered that previous approvals for 'Certificates of Lawfulness' on the farm had the effect of making the current storage and office uses on the site lawful.
- 1.4 Members were advised that the drafting of the Enforcement Notice would be carried out following further legal advice and this advice has now been received. It concurs with Officers view that the uses referred to above are unlawful and can be enforced against. That advice further suggested that the wording of the 'Reasons for issuing the Notice' be expanded to specifically refer to the lack of compliance with PPG2 – Green Belts. The revised wording is therefore set out in the recommendation above.
- 1.5 To remind Members; the site is shown on the attached Ordnance Survey extract. It is located to the north west of Datchworth Village, near to the village church of All Saints and the local primary school, and within the Metropolitan Green Belt.
- 1.6 The site comprises a farm from which a straw and hay business has operated for many years. Within the farmyard, adjacent to residential properties, there are a group of former agricultural buildings used for car servicing and repair. This operation was granted a Certificate of Established use, under reference 3/82/1518/EU, in 1982.
- 1.7 A further Certificate of Lawfulness (Existing), under reference 3/06/1010/CL, was granted in August 2006 for the use of unit 9C as office accommodation and a storage area at the northern end of the site used for the storage of plant and machinery for a company called Contract Surfacing Ltd.
- 1.8 In 2006 a retrospective application was submitted for a change of use of further existing buildings on the farm for the storage and sale of cars by appointment only. This application was, however, refused for the following

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reason:

The proposal would represent an inappropriate use in the rural area which, in terms of sustainability, would more appropriately be located in an urban area. It would generate additional traffic on the surrounding rural roads to the detriment of the rural character of the area and would thereby be contrary to the aims and objectives of Policy RA6A (l) (d) and (l) (f) of the adopted East Herts Local Plan; Policy GBC10 (l) (d) and (f) of the second review of the East Herts Local Plan, the sustainability principles contained in national Planning Policy Statement PPS1.

- 1.9 Following the refusal as above, an enforcement notice was issued and served on the 11th June 2007. However, before the appeal inquiry, the council withdrew the notice due to a technical error in the drafting.
- 1.10 A further application, reference 3/08/1044/FP, was submitted seeking retrospective planning permission for the change of use of existing buildings for the storage and sale of cars by appointment only. The change of use referred to parts of unit 4 and 7. However, after due consideration, this application was again refused for the following reason:

The proposal represents an inappropriate use in the rural area which, in terms of sustainability, would more appropriately be located in an urban area. It would generate additional traffic on the surrounding rural roads to the detriment of the rural character of the area and would thereby be contrary to the aims and objectives of Policy GBC9 and TR20 of the East Herts Local Plan Second Review April 2007 and the sustainability principles contained in national Planning Policy Statement PPS1.

- 1.11 Following this refusal, and the issue and service of an Enforcement Notice, the Planning Inspectorate, on the 17th March 2009, dismissed the appeal against the refusal and upheld the notice with corrections and variations. The Inspector substituted the plan attached to the enforcement notice with another plan clearly identifying the units the subject of the action and he varied the time for compliance from 2 months to 6 months. The notice was complied with.
- 1.12 In March 2011, a concern was raised with the council that further units at the site were being rented out to businesses not associated with agriculture, mainly storage of carpets, aqua water bottles, fire protection equipment and robotic machinery.
- 1.13 Following long correspondence the owner of the site, he referred the matter to his solicitors, who stated that, in their view, the entire site was a single planning unit and as a number of Certificates of Lawfulness (Existing) had

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been granted on it, they covered the whole farm site and therefore there were no current breaches of planning control as the current unauthorised uses were all within the B1, B2 or B8 uses. They considered that the Planning Inspector's 2009 appeal decision (referred to in paragraph 1.11 above) and his amended plan supported them in this view.

- 1.14 However, your officers did not agree with this assertion, as the previously granted Certificates of Lawfulness all clearly defined the subject unit/area under consideration. Legal advice has since confirmed that the uses certified as lawful in previous Lawful Use Certificates extend only to those parts of the site shown within the parameters of the plans accompany them. Furthermore, it is not considered that the interpretation that the owner's solicitor's put on the inspector's decision letter or amended enforcement plan is correct. The 2006 Certificate of Lawfulness for office and storage use on part of the site does not authorise the use of any other part of the site for those purposes regardless of whether or not the site comprises a single or multiple planning units.
- 1.15 The following table details the uses carried out in each of the various units. These were confirmed following the service of Planning Contravention Notices:-

Unit 3	Office and storage*
Unit 4A	Office
Unit 4B	Storage of motor cycles*
Unit 4C	Workshop for photography*
Unit 5	Stables
Unit 6	Toilet
Unit 7	Hay storage for stables
Unit 8	Storage for hay/straw
Unit 9	Storage of furniture
Unit 9A	Storage of machinery*
Unit 9B	Office storage
Unit 9C	Office
Unit 10	Storage.
Unit 10A	Storage of water*
Unit 10B	Storage of carpets*.

* Unauthorised uses

2.0 Planning History

- 2.1 The recent planning history at Pound Farm can be summarised as follows:

3/82/1518/EU	Established use in respect of repair and servicing of vehicles	Granted
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3/06/1010/CL	Certificate of lawfulness for existing use of unit and storage area for machinery and storage	Granted
3/06/2237/FP	Change of use of existing building for sale of cars	Refused
3/06/2242/CL	Certificate of lawfulness for existing operation of Maytree Developments	Refused
3/08/1044/FP	Change of use of existing building for the storage and sale of cars by appointment	Refused Appeal Dismissed

3.0 Policy

3.1 The relevant saved policies of the adopted Local Plan in this matter are:-

GBC1	Appropriate Development in the Green Belt
GBC8	Rural Diversification
GBC 9	Adaptation and re-use of Rural Buildings
GBC10	Change of use of an Agricultural Building
TR20	Development Generating Traffic on Rural Roads.

The following National Planning Guidance is also relevant:

PPG2	Green Belts
PPS1	Delivery Sustainable Development
PPS7	Sustainable Development in Rural Areas
PPG13	Transport

Consideration has also been given to the National Planning Policy Framework. However, as this document is still in draft form, little weight can be given to it.

4.0 Considerations

4.1 The determining issues in this case relate to : -

- a) Metropolitan Green Belt policy and the adaptation and re-use of rural buildings.
- b) The impact on the character and appearance of the area.
- c) Highways issues.

Green Belt policy and re-use of buildings.

- 4.2 In terms of the Green Belt policy, PPG2 indicates that the re-use of existing rural buildings is not, in principle, inappropriate development subject to certain criteria being met. However, paragraph 3.9 of PPG2 goes on to state that there may be other planning reasons such as traffic impact that would render the development unacceptable.
- 4.3 In this case, it is considered that the commercial use of these former agricultural buildings causes a substantial increase in traffic generation to and from the site and is detrimental to the character and appearance of the surrounding rural area. It is therefore unacceptable and contrary to the national planning policy guidance in PPG2
- 4.4 In particular, there is serious harm resulting from the cumulative traffic generation to and from the site and the use of the narrow country lanes by large heavy goods and commercial vehicles. This is clearly detrimental to the free flow and safety of vehicles on the local road network and is also detrimental to the amenities of nearby residents and the rural character of the surrounding area.
- 4.5 In terms of policy GBC9: the adaptation and re-use of rural buildings, the policy supports this in principle provided that certain specified criteria are met. It is considered by Officers that a very limited number of the current unauthorised businesses may meet these criteria in that they could be carried out with limited alteration of the buildings; no external storage; and limited, light traffic generation. In this respect, Officers have sought the submission of planning applications for these individual uses. To date, however, no such applications have been submitted for consideration.
- 4.6 However, most of the unauthorised uses on the site are, in the opinion of Officers, unlikely to be acceptable in this location because they result, both individually and cumulatively, in significant commercial traffic generation including heavy goods vehicles on the very narrow surrounding rural roads.
- 4.7 As such, the development on the site is considered to be contrary to policy GBC9 of the Local Plan. Furthermore, it results in significant harm to the character of the surrounding area; to the amenities of local residents and to highway safety. No material considerations have been put forward by the owners of the site, or are apparent, that would outweigh this significant harm or justify the grant of permission contrary to the policies of the Development Plan.

Highway Implications

- 4.8 As mentioned above, it appears to officers that many of the unauthorised units on the farm generate unacceptable levels of traffic, both in terms of vehicle movements and in terms of the size of the vehicles.
- 4.9 Complaints have been received by local residents that these traffic movements, particularly by HGVs have caused damage to the highway verge and have caused disturbance to their lives in the early morning by the lorries passing within feet of their properties due to the narrowness of the highway, and by the noise and number of lorries trying to negotiate their way to the site via these narrow and winding lanes.
- 4.10 The Herts Highway Development Control Engineer was asked to visit the area and commented that the Highway Authority *“would welcome enforcement action against the unauthorised uses. The public highways in the vicinity of the site are no more than single width rural roads totally unsuitable for regular unwarranted HGV movements. I acknowledge that the former/existing agricultural uses generate traffic movements including a number by HGVs but I would argue that those are existing and are there by necessity and are a consequence of historic development and land use. Unlike those generated by the unauthorised uses, which could be located elsewhere. These unauthorised uses are contrary to our Local Transport Plan in respect of policies resisting development on rural roads and your own Local Plan Policy TR20.....Obviously HGV traffic causes the most concern and stress on the fabric of the highway, but I would still question the suitability of the site for commercial use in view of the limited width of the surrounding highway network. Not only are the roads largely single width, passing places are limited and the alignment is such that forward visibility around the bends is restricted at numerous locations”*.
- 4.11 Your officers consider that in this particular case policy TR20 of the Local Plan is relevant. This policy suggests that permission will not be granted for any development where the road is poor in terms of width, alignment, and construction. It is evident that the surrounding roads are very narrow, without many passing places, and with a number blind bends. The traffic generated by the unauthorised uses is both large vans and lorries and it is considered by planning officers that the development does not meet the criteria of this policy.
- 4.12 TR20 also suggests that permission will not be granted where increased traffic would have a significant adverse effect on the local environment, either to the rural character of the road or residential properties along it. As suggested by local residents, some of whom live within and on the edge of the site and directly adjacent to the entrance, the current uses of the site

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have increased the amount of traffic to the farm with inappropriate large vans and lorries, causing a significant loss of amenity.

Impact on character and appearance of the area

- 4.13 As mentioned above, the development has a detrimental impact on the character of the rural area by reason of the use of the narrow rural lanes for large amounts of inappropriate commercial traffic. Furthermore, it is also clear that the development results in harm to the amenities of local residents by reason of noise and disturbance from the additional commercial activity at the site.

Other issues

- 4.14 Policy GBC8 refers to Rural Diversification. This policy generally supports proposals that would support the continuation of a farm enterprise as a whole and not result in the inappropriate and unsuitable subdivision of the farm unit. Officers consider, however, that Pound Farm has not operated as a 'farm' for some years and the current unauthorised uses do not therefore appear to be justified on the basis of any genuine rural diversification scheme. In any event, Officers consider it unlikely that any such scheme would be of such merit as to outweigh the harm that is caused by this development.
- 4.15 Whilst Officers accept that there are some lawful commercial uses on the site, these are limited in extent and became lawful through the passage of time. They were not the subject of planning applications and their impact on the surrounding area could not be considered. Even accepting their presence, however, does not lend support for further intensifying the commercial use of the site.
- 4.16 The unauthorised development that exists at present is inappropriate for the area and results in considerable harm that is not outweighed by any other material considerations.

5.0 Recommendation

- 5.1 It is therefore recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the cessation and removal of the unauthorised commercial uses on the site.