

Kettering Borough Council

TOWN AND COUNTRY PLANNING (ENFORCEMENT)(INQUIRIES PROCEDURE) (ENGLAND) RULES 2002

Appeal by: **Mr L Thomas**

Land at: **Lyndon Thomas, Birchfield Spring Nursery, Rushton Road,
Desborough**

Notice is hereby given that an appeal has been lodged with the Planning Inspectorate in respect of an Enforcement Notice issued by Kettering Borough Council relating to:

Without planning permission the material change of use of the land to a mixed sui generis use comprising of:

- A) the use of the land for the winning, working, storage and sale of minerals;
- B) the use of the land for the unauthorised importation, storing, processing, sorting, transferring and depositing of waste materials;
- C) the use of the land for the storage of plant, machinery and vehicles associated with uses A and B above (processors/crushers);
- D) the use of the land for the storage of plant hire machinery and storage of parts for the purpose of hire;
- E) the residential use of the land, through the stationing of a timber lodge marked A on the Plan with decking, a shed and a caravan;
- F) the use of the land for a fishing lake business; ENFO/2016/00136 A
- G) the erection of a building, patio and boundary walls hatched in yellow on the Plan, which is part and parcel to the mixed use.
- H) the use of the land for mechanical repairs, vehicle maintenance, plant maintenance and the storage of mechanical tools;
- I) the erection of a building hatched in blue on the Plan, which part and parcel to use (H);
- J) the unauthorised formation of a pond and two lakes, laying down of hardstanding and access roads, pillars and toppings, perimeter walls and gates above 1m adjacent to the high road part and parcel with use (F) above;
- K) the creation of a haul road that is shown on the Plan hatched in orange, that is part and parcel of the mixed use; and
- L) the siting and stationing of a portacabin on the land marked B on the Plan for the purpose of an office that is part and parcel of the mixed use.

The Council considered it expedient to issue the Notices for the following reasons:

It appears to the Council that the above breach of planning control has occurred within the last ten years.

The Council previously issued an enforcement notice in respect to the Site on 12 March 2020. Subsequent to this, the Council received a pre-action protocol letter, which sought to challenge the legality of the enforcement notice.

The pre-action protocol letter raised two issues: (i) the minimum 28 days had not been provided before the notice took effect and (ii) the Council had enforced against county matters.

In order to avoid potentially lengthy litigation to resolve this, the Council agreed to withdraw the notice. Indeed, any such litigation would only serve to further delay the breach of planning control being curtailed. Thus, the enforcement notice was withdrawn on the express basis that there would be no attempt to seek costs against the Council.

The Council consider it expedient, having regard to the development plan and all other material considerations, to issue the enforcement notice in exercise of its powers contained in sections 172 and 171B(4)(b) of the 1990 Act, where the original date of the first enforcement notice applies for the purposes of determining whether any development is immune from enforcement, in accordance with the 'second bite' provisions.

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On the 19th August 2010 under reference KET/2010/0242 planning approval was granted for the: for the formation of 2 no. specimen trout fishing lakes, a junior lake, stock pond, the erection of a facilities building, a machinery store, hatchery, the change of use of the land, for the (temporary) siting of a mobile home for the occupation by the site manager, formation of car parking and access areas, plus landscaping.

On the 15th July 2015 under reference KET/2015/0523 planning approval was granted for a non-material amendment for the: KET/2010/0242 (Formation of 2 no. specimen trout fishing lakes, a junior lake, stock pond, the erection of a facilities building, a machinery store, hatchery, the change of use of land for the siting of a mobile home, formation of car parking and access areas, landscaping): Increase of function room area, reduction of decking area, and alterations to doors.

The unauthorised development did not implement this planning permission, which has now lapsed.

The unauthorised material change of use of the land, and associated operational development to facilitate this mixed use, has failed to enhance the environment for its location and does not respect the environmental quality and is out of character with of the Ise valley and the surrounding rural area. The site is within the Sub Regional Green Infrastructure corridor as shown on the North Northants Joint Core Strategy 2016, Policy 19 states that 'safeguarding the identified sub regional GI infrastructure corridor by not permitting development that compromises their integrity'. This development plainly does compromise the integrity of the GI corridor.

Furthermore, the storage and hire of large industrial plant machinery upon the land grants an unsightly industrialised setting to the Countryside and exposes the local amenity of Desborough and Pipewell to uncontrolled disturbance that includes shaking, noise and pollution when being delivered.

Pipewell Village is defined as a scattered village by the saved Policy RA4 of the Local Plan 1995, which states there is no village boundary and as such Pipewell is in the open countryside, where planning permission would not be granted except for where the proposal is appropriate to the form, character and setting of the existing village. Policy 8 of the JCS 2011 states that (e) it should ensure quality of life and safer, healthier communities by protecting amenity by not resulting in unacceptable impact on the amenities and future occupiers, neighbouring properties or the 'wider area' by reason of noise, vibrations or

other pollution. The unconditioned use of large low loaders and transporters to deliver hired plant machinery represents a precedence of negative damage in the long term by noise and vibrations to the local amenity in both directions contradicts the measures required by these policies and therefore the site in its current form fails Policy RA4 of the saved local plan 1995 and Policy 8 of the JCS 2011.

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Saved Policy 7 of the Local Plan for Kettering 1995 aims to protect the open countryside and states that 'Planning permission for development in the open countryside will not be granted except where otherwise provided for in this plan.' This Policy seeks to protect the countryside from unjustified development. It allows only limited development otherwise provided for in the Plan, such as rural exception sites and is consistent with Paragraph 215 of the NPPF, in particular one of the core planning principles which recognises the intrinsic character and beauty of the countryside. Policy RA5, states that planning permission will not normally be granted for residential development in the open countryside though states a number of exceptions including housing to meet local needs and replacement dwellings. The reinstatement of residential use and the facilitation of a Timber Lodge, decking and Caravan for the purpose of occupation occurred is without planning permission. The circumstances of the residential use does not rely on a special need that supersedes these policies and there are no special reasons as to why permanent residential use should be allowed to continue and therefore fails in Policies 7 and RA5. Furthermore, the residential use is in an unsustainable location having regard to access to local facilities and services and the isolated nature of the site.

The site is within the Rockingham Forest National Character Area. Key characteristics of this area include broad undulating plateau and ridge, woodland areas forming a prominent feature in the skyline, a patchwork of large to medium size fields and a network of shallow streams and remnant unimproved grassland.

Local landscape character has been assessed by Kettering Borough Council, as the Rolling Ironstone Valley Slopes Landscape Type within which the Kettering and Wellingborough Slopes forms the largest character area. This comprises a gentle rolling landscape of ridges and valleys.

The area is bordered by the River Ise to the east and from the upper slopes of the valleys wide views are possible across surrounding landscapes. From lower slopes views along the valleys are more channelled and contained, in particular along the valley of the River Ise south of Desborough.

The site is not subject to any landscape designations. However, the Council consider that the site has a local value in terms of its contribution to the landscape and setting of Desborough.

The EIA screening opinion is based if an application was submitted today with the current haulage uses and largescale excavations on site, it would be highly probable to fall within EIA development.

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The site is not subject to any landscape designations. However, the Council consider that the site has a local value in terms of its contribution to the landscape and setting of Desborough, contrary to Policy 3 of the JCS. Policy 10 of the Northamptonshire Minerals & Waste Local Plan (July 2017) (MWLP) identifies the waste management needs of the County over the plan period. Policy 14 of the MWLP specifically deals with the strategy for waste

disposal including non-inert landfill and inert landfill and recovery by setting out the indicative capacity requirement. Evidence gathered at the site identifies that wastes are being deposited on the land which comprises a mixed non-inert waste and (also known as non-hazardous) and inert wastes contrary to these policies. Policy 15 deals with the development criteria for waste disposal (noninert and hazardous) and sets criteria which development proposals for noninert waste must demonstrate. These requirements of Policies 14 and 15 have not been demonstrated for this site and in the absence of this being an extension to an existing site it does not achieve in principle support having regard to these policies. Policy 16 states that where proposals for the disposal or recovery of inert waste does not relate to the restoration of a committed or allocated site for mineral extraction, it must demonstrate that: (i) it will not prejudice the restoration of other mineral sites and (ii) there is clear engineering, agricultural, landscape or recreation amenity justification for the development. These items have not been demonstrated. Policy 18 of the MWLP lists criteria of matters which should be considered and addressed in proposals for minerals and waste development. These have not been demonstrated, including the requirement to demonstrate that local amenity is protected and ensuring the access is sustainable, safe and environmentally acceptable. The fact that the only route available to the site for HGVs is through residential areas in Desborough is an issue.

It has also not been demonstrated that the development does not give rise to ecological harm and it is thus contrary to Policy 4 of the JCS.

It has also not been demonstrated that the development does not have adverse impacts in terms of contamination and thus it is contrary to Policy 6 of the JCS.

The council do not consider that planning permission should be granted as planning conditions would not overcome these objections because of the substantial planning harm resulting from the development.

The appellant has appealed on the following grounds:

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| Ground A | Planning permission should be granted |
| B | Breach of planning control alleged has not occurred |
| C | Matters alleged do not constitute a breach |
| D | Too late to take enforcement action against the matters stated in the notice |
| F | Steps required by enforcement notice go further than is necessary to remedy the alleged breach or alleviate injury to amenity |
| G | Compliance period is unreasonably short for what is required |

The appeal will be determined by an Inspector, appointed by the Secretary of State, and will be dealt with by a Local Public Inquiry, which will include a site visit by the Inspector, and is to be held at a time/date & venue to be arranged. The Secretary of State, or

Inspector appointed on his behalf, has the power to grant planning permission and quash the enforcement notice.

Any interested person who wishes to make representation may attend the Inquiry (personally or through a representative) and at the Inspector's discretion present evidence or give their views on the possible grant of planning permission. Written representations can additionally or alternatively be made. Any written representations will be disclosed to the parties at the appeal and may be read out at the Inquiry.

Written representations should be sent to both the Planning Inspectorate and the Council to arrive before 20/01/2021 at the addresses listed below. Representations received after this date may not be considered. The Planning Inspectorate will not acknowledge your letter unless you specifically ask them to do so. They will, however, ensure that your letter is passed on to the Inspector dealing with the appeal.

Development Services
Kettering Borough Council
Bowling Green Road
KETTERING
Northamptonshire
NN15 7QX

The Planning Inspectorate
3/26b
Temple Quay House
2 The Square
Temple Quay
BRISTOL
BS1 6PN

Quoting reference : APP/L2820/C/20/3253535

If you wish to inspect any documents please contact Development Services on (01536) 534316. The Planning Inspectorate will notify the decision of the appeal only to those who make a written request.

Dated: 23 December 2020

James Wilson
Interim Head of Development Services
Kettering Borough Council
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