

**South
Derbyshire
District Council**

Stuart Batchelor
Head of Community and Planning Services

Civic Offices, Civic Way,
Swadlincote, Derbyshire DE11 0AH

Please ask for: Gaynor Richards (Mrs)
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Our Ref: E/2011/00308

Date: 11 January 2012

BY HAND

Dear

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 172
ENFORCEMENT NOTICE – OPERATIONAL DEVELOPMENT
BROOKSIDE, HEAGE LANE, ETWALL, DE65 6LS**

This Council has issued an enforcement notice relating to the above land and I now serve on you a copy of that notice, in view of your interest in the land. I also enclose a second copy of the notice and a pre-paid envelope. Please sign and return the second notice to me to acknowledge receipt.

Unless an appeal is made to the Secretary of State, as described below, the notice will take effect on **10 February 2012**. You must then ensure that the required steps, for which you may be held responsible, are taken **by midnight on 10 May 2012** (the period specified in paragraph 6 of the notice). If you fail to comply within that time you may be liable to prosecution and, on conviction, to a fine. Continuing contravention after conviction can lead to a further fine for each day the offence continues. The Council may also carry out remedial action.

If you wish to appeal against the notice, you should first read carefully the enclosed information sheet. Then you or your agent should complete the official appeal forms and send one copy, together with a copy of the enforcement notice enclosed with this letter, to the address shown on the appeal form and one copy to the Development and Building Control Manager, South Derbyshire District Council, Civic Offices, Civic Way, Swadlincote, Derbyshire, DE11 0AH.

You may have to pay a fee for the deemed planning application that arises on an enforcement appeal, which the Council calculate to be two payments each of £70, one amount being paid to the Planning Inspectorate and one amount to the Council, but the Secretary of State will notify you of the appropriate fee after the appeal has been lodged. To be valid, the Secretary of State must receive your appeal **before 10 February 2012** (the date given in paragraph 7 of the notice), the date when the notice takes effect.

Yours sincerely

Gaynor Richards (Mrs)
Senior Enforcement Officer
Development Management and Building Control

Brookside, Heage Lane, Etwall, DE65 6LS

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)**

ENFORCEMENT NOTICE – OPERATIONAL DEVELOPMENT

Issued to:

Issued by: South Derbyshire District Council, Civic Offices, Civic Way, Swadlincote, South Derbyshire, DE11 0AH ("the Council").

1. **This notice** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(2) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of this notice and the enclosures to which it refers contain important additional information.

2. The land to which this notice relates

The land known as Brookside, Heage Lane, Etwall, DE65 6LS shown edged in red on the attached plan. ("the Land").

3. The matters, which appear to constitute the breach of planning control

The partial erection of a detached building.

4. Reasons for issuing this notice

The Council considers it expedient to issue this notice for the following reasons:

- It appears to the Council that the above breach of planning control has occurred within the last four years.
- The site occupies a location in the countryside outside the confines of the village of Etwall. Due to the size of the smallholding, which is approximately 0.27 acres, the erection of the detached building, for agricultural purposes, is not permitted development under the terms of the Town and Country Planning (General Permitted Development) Order 1995. The scale, design and appearance of the building are such that it does not appear reasonably necessary for the purposes of agriculture within the unit.
- The size and design of the building are such that it is considered to be unsympathetic to its surrounds and does nothing to protect the character of the countryside or the landscape quality in which it is situated.
- It is reasonable to consider whether the building is designed, or is capable of use, for the purposes of agriculture in terms of its physical appearance and layout, which is consistent with the decision of the Court of Appeal in the case of *Belmont Farm Ltd v MHLG [1962] 13 P and CR 417*.
- In comparison to the built-form of modern agricultural buildings, the building, even though it is not yet complete, is more akin to a residential property because of its overall appearance and design. If taken as capable of becoming a dwelling, the building is not considered to be necessary to the operation of an established, viable, long term rural based activity, given the limited ability of the smallholding to generate sufficient income to justify a new dwelling in this countryside location. The

detached building does not relate well to any other development, it represents an unnecessary intrusion into and detracts from the character of the countryside.

- A Planning Contravention Notice has established that the building is being erected as an animal shelter for pigs with a hayloft above, but the building has none of the attributes normally associated with such use, including a lack of drainage within the floor. It is contended that the first floor will be used for the storage of hay, whilst this may be a traditional method; the roof trusses are domestic attic trusses that are not normally capable of bearing the load that would arise from hay/straw storage, which adds further weight to the fact that the building does not appear reasonably necessary for the purposes of agriculture within the unit.
- The site lies within flood zone 3A defined by Planning Policy Statement 25 as having a high probability of flooding. Paragraph D5 of PPS25 requires decision-makers to steer new development to areas at the lowest probability of flooding by applying a 'Sequential Test'. In this instance no evidence has been provided to indicate that this test has been carried out or that the development has been flood proofed.
- Saved Environment Policy 1 of the South Derbyshire Local Plan, adopted May 1998 states that "outside settlements new development will not be permitted unless it is essential to a rural based activity; unavoidable in the countryside; and safeguards and protects the character of the countryside. If development is permitted it should be designed and located so as to create as little impact as practicable on the countryside. Saved Environment Policy 5 of the South Derbyshire Local Plan states that "agricultural development, that is subject to planning control, will be permitted, provided that," amongst other things, "the development is of an appropriate scale; it does not significantly detract from views across the countryside; the visual effect of the development is minimised by appropriate attention to design and materials." Due to the domestic design and appearance of the building, the development has also been assessed against saved Housing Policy 8 of the South Derbyshire Local Plan that offers support to new dwellings outside settlements provided that it is necessary to the operation of an established, viable, long term rural based activity and can be demonstrated as necessary to the efficiency of the activity.
- The development, due to its scale, design and materials of construction is contrary to saved Environment Policies 1 & 5 and Housing Policy 8 of the adopted Local Plan, PPS 7 – Sustainable Development in Rural Areas, PPS 25 – Development and Flood Risk, PPG 18 – Enforcing Planning Control
- The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections.

5. What you are required to do

- (1) Cease development to build the partially erected detached building.
- (2) Demolish the partially erected detached building, including removal of all footings.
- (3) Permanently remove all resultant material from the land.

6. Time for compliance

3 months beginning with the day on which this notice takes effect.

7. When this notice takes effect

This notice takes effect on **10 February 2012**, unless an appeal is made against it beforehand.

Dated: 11 January 2012

Signed:

Development and Building Control Manager
(the Council's authorised officer)

on behalf of: South Derbyshire District Council, Civic Offices, Civic Way, Swadlincote, Derbyshire, DE11 0AH.

Annex

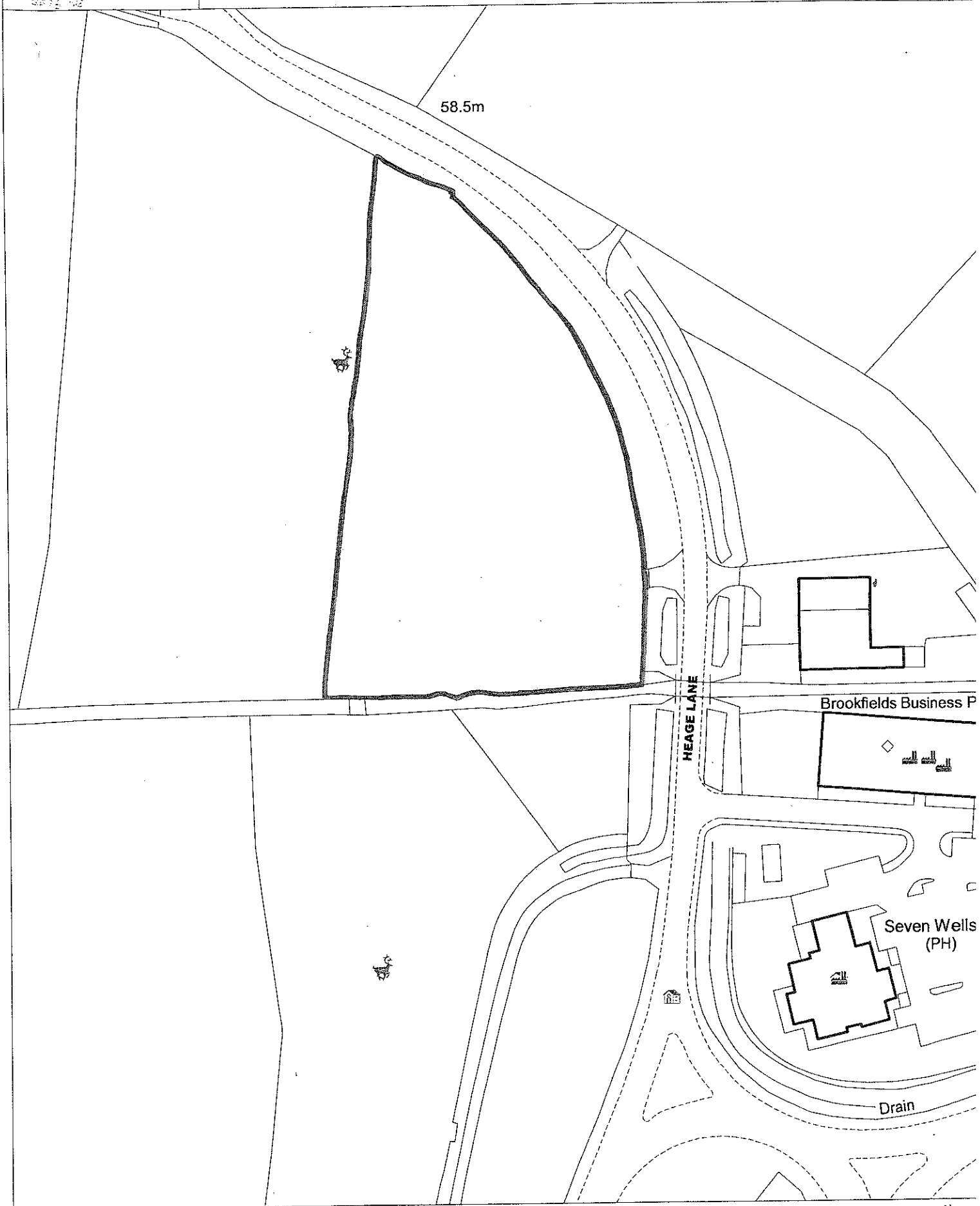
YOUR RIGHT OF APPEAL

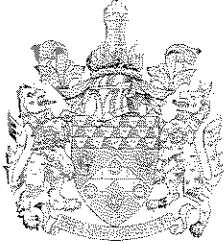
You can appeal against this Notice, but any appeal must be received, or posted in time to be received, by the Secretary of State **before** 10 February 2012, the date specified in paragraph 7 of this notice.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of this notice, 10 February 2012, and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken by midnight on 10 May 2012, the period specified in paragraph 6 of this notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

Brookside, Heage Lane, Etwall





**South
Derbyshire
District Council**

Stuart Batchelor
Head of Community and Planning Services

Civic Offices, Civic Way,
Swadlincote, Derbyshire DE11 0AH

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E-mail: gaynor.richards@south-derbys.gov.uk

Our Ref: E/2011/00308

Date: 11 January 2012

BY HAND

Dear

**RE: TOWN AND COUNTRY PLANNING ACT 1990 (as amended) – Section
183 STOP NOTICE – BROOKSIDE, HEAGE LANE, ETWALL, DE65 6LS**

I write to inform you that the Council has issued a Stop Notice relating to the above and accordingly, I now serve on you a copy of that notice, in view of your interest in the property.

There is no right of appeal to the Secretary of State against the notice and if you fail to comply with the notice you will be at risk of immediate prosecution.

If you need independent advice about this notice, you are advised to contact a lawyer urgently.

Should you require any further information please contact me as above.

Yours sincerely

Gaynor Richards (Mrs)
Senior Enforcement Officer
Development Management & Building Control

CC: , Brookside, Heage Lane, Etwall, Derby, DE65 6LS

IMPORTANT –THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)**

STOP NOTICE

SERVED BY: SOUTH DERBYSHIRE DISTRICT COUNCIL herein referred to as **“the Council”**

TO:

1. On **11 January 2012** the Council issued an enforcement notice (of which a copy is attached to this notice) alleging that there has been a breach of planning control at Brookside, Heage Lane, Etwall, Derby, DE65 6LS
2. **THIS NOTICE** is issued by the Council, in exercise of their power in section 183 of the 1990 Act, because they consider that it is expedient that the activity specified in this notice should cease before the expiry period allowed for compliance with the requirements of the enforcement notice on the land described in paragraph 3 below. The Council now prohibits the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.

3. THE LAND TO WHICH THIS NOTICE RELATES

Land known as Brookside, Heage Lane, Etwall, Derby, DE65 6LS shown edged red on the attached plan.

4. ACTIVITY TO WHICH THIS NOTICE RELATES

The partial erection of a detached building.

5. WHAT YOU ARE REQUIRED TO DO

1. Stop all development to build the partially erected detached building.

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on **14 January 2012** when all the activity specified in this notice shall cease.

Date: *11/1/2012*

Signed:

(Development and Building Control Manager)

On behalf of: South Derbyshire District Council, Civic Offices, Civic Way,
Swadlincote, Derbyshire, DE11 0AH (“the Council”)

Annex

WARNING

THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 6.

THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT AGAINST THIS NOTICE.

It is an offence to contravene a stop notice after a site notice has been displayed or the stop notice has been served on you. (Section 187(1) of the 1990 Act). If you then fail to comply with the stop notice you will be at risk of **immediate prosecution** in the Magistrate's Court, for which the maximum penalty is £20, 000 on summary conviction for a first offence and for any subsequent offence. The fine on conviction on indictment is unlimited. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with Gaynor Richards. If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.