



Planning Committee  
5<sup>th</sup> January 2017

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION

38-40 West Bromwich Street, Caldmore, Walsall, WS1 4BW

**1.0 PURPOSE OF REPORT**

- 1.1 To request authority to take planning enforcement action in respect of the installation of an ATM and the display of an internally illuminated advertisement.

**2.0 RECOMMENDATION**

- 2.1 That authority is granted for the Head of Planning, Engineering and Transportation to issue an Enforcement Notice under the Town and Country Planning Act 1990 (as amended), to require remedial actions to be undertaken as shown below in 2.5.
- 2.2 To authorise Head of Planning, Engineering and Transportation to institute prosecution proceedings in the event of non-compliance with an Enforcement Notice or the non-return of Requisitions for Information or a Planning Contravention Notice; and the decision as to the institution of Injunctive proceedings in the event of a continuing breach of planning control.
- 2.3 To authorise the Head of Planning, Engineering and Transportation, to amend, add to, or delete from the wording set out below stating the nature of the breach(es) the reason(s) for taking enforcement action, the requirement(s) of the Notice, or the boundaries of the site, in the interests of ensuring the accurate and up to date notices are served.
- 2.4 To authorise the Head of Planning, Engineering and Transportation to instigate legal proceedings to prosecute the owner(s) and/or occupier(s) and other relevant persons, under Section 224 of the Town and Country Planning Act 1990, in respect of displaying advertisements without the consent required under the Town and Country Planning (Control of Advertisements) Regulations 2007, for the reasons set out in the report.
- 2.5 Details of the Enforcement Notice

**The Breach of Planning Control:-**

Without the required planning permission the installation of an Automated Teller Machine (ATM).

**Steps required to remedy the breach:-**

- Permanently remove the ATM machine and associated equipment, fixtures and fittings from the front of the building and make good the resultant aperture.

**Period for compliance:-**

One month

**Reasons for taking Enforcement Action:-**

Automated Teller Machine

1. The installation of the ATM is detrimental to the personal safety of those who use the facility and replenish it, by virtue of it being in an area of high crime rates and the lack of a high quality and robust system of security in place to protect its users. The ATM fails to provide for a safe and secure environment for those using and servicing the ATM contrary to the National Planning Policy Framework which identifies that crime and disorder and the fear of crime are material planning considerations and contrary to the aims and objections of policies CSP4 and ENV3 of the Black Country Core Strategy saved policies GP2 and S15 of the Walsall Unitary Development Plan

2. The ATM results in indiscriminate parking either on the double yellow parking restrictions on West Bromwich Road or on the pavement outside the site, to the detriment free flow of traffic on the public highway and to the free passage of pedestrians on the public footway. Accordingly the development would give rise to conditions prejudicial to highway safety and is therefore contrary to the aims and objectives of the National Planning Policy Framework, policy TRAN2 of the Black Country Core Strategy and saved policies GP2, 3.6, ENV32 and S15 of the Walsall Unitary Development Plan.

Advertisement

1. The location of the ATM with its illuminated surround and signage will encourage parking at this locality which will result in indiscriminate parking either on the double yellow parking restrictions on West Bromwich Road or on the pavement outside the site, to the detriment free flow of traffic on the public highway and to the free passage of pedestrians on the public footway. Accordingly the development would be to the detriment of public safety as it would give rise to conditions prejudicial to highway safety and is therefore contrary to the aims and objectives of the National Planning Policy Framework, policy TRAN2 of the Black Country Core Strategy and saved policies GP2, 3.6, ENV32 and S15 of the Walsall Unitary Development Plan.

**3.0 FINANCIAL IMPLICATIONS**

An appeal against an enforcement notice could be subject to an application for a full or partial award of the appellant's costs in making an appeal if it was considered that the Council had acted unreasonably.

An application for costs could also be made at Court in the event any prosecution proceedings are found to be unnecessary. The Council could make an application to recover its costs.

**4.0 POLICY IMPLICATIONS**

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

**National Planning Policy Framework (NPPF)** [www.gov.uk](http://www.gov.uk)

The NPPF sets out the Government's position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a "*presumption in favour of sustainable development*".

All the **core planning principles** have been reviewed and those relevant in this case are:

- Proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs;
- Always require high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- Contribute to conserving and enhancing the natural environment and reducing pollution

**Key provisions** of the NPPF relevant in this case:

- ***NPPF2 – Ensuring the vitality of town centres***
- ***NPPF 4 - Promoting sustainable transport***
- ***NPPF 7 - Requiring good design***
- ***NPPF 8 – Promoting healthy communities***

**Local Policy**

**Black Country Core Strategy**

- TRAN2: Managing Transport Impacts of New Development
- CSP4: Place making
- ENV3: Design Quality

**Unitary Development Plan**

- GP2: Environmental Protection
- 3.6: Environmental improvement
- ENV32: Design and Development Proposals
- S15: Banking and Cashpoint Facilities

**Policies are available to view online:**

[http://cms.walsall.gov.uk/planning\\_policy](http://cms.walsall.gov.uk/planning_policy)

**5.0 LEGAL IMPLICATIONS**

Pursuant to section 171A(a) of the Town and Country Planning Act 1990 (as amended) the carrying out development without the required planning permission or failing to comply with a condition or limitation subject to which planning permission has been granted constitutes a breach of planning control. Section 171B adds that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken

after the end of the period of four years beginning with the date on which the operations were substantially completed. In respect of any other breach (such as change of use or breach of condition) no enforcement action may be taken may be taken after the end of the period of ten years from the date of the breach except where the breach of planning control consists of a change of use of any building to use as a single dwellinghouse, in which case a four year period applies. It appears to officers that the breach of planning control occurring at this site commenced within the last ten years.

Section 172 of the Town and Country Planning Act 1990 provides that the local planning authority may issue an Enforcement Notice where it appears to them:  
(a) that there has been a breach of planning control; and  
(b) that it is expedient to issue the notice, having regard to the development plan and to any other material considerations.

The breach of planning control is set out in this report. Members must decide whether it is expedient for the enforcement notice to be issued, taking into account the contents of this report. Non-compliance with an Enforcement Notice constitutes an offence. In the event of non-compliance the Council may instigate legal proceedings. The Council may also take direct action to carry out works and recover the costs of those works from the person on whom the Enforcement Notice was served. Any person on whom an Enforcement Notice is served has a right of appeal to the Secretary of State.

#### **6.0 EQUAL OPPORTUNITY IMPLICATIONS**

Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In this case, the wider impact of the appearance of the land overrules the owner's right to the peaceful enjoyment of his property.

#### **7.0 ENVIRONMENTAL IMPACT**

The report seeks enforcement action to remedy adverse environmental impacts.

#### **8.0 WARD(S) AFFECTED**

Palfrey

#### **9.0 CONSULTEES**

None

#### **10.0 CONTACT OFFICER**

Paul Hinton 01922 652607  
Development Management

#### **11.0 BACKGROUND PAPERS**

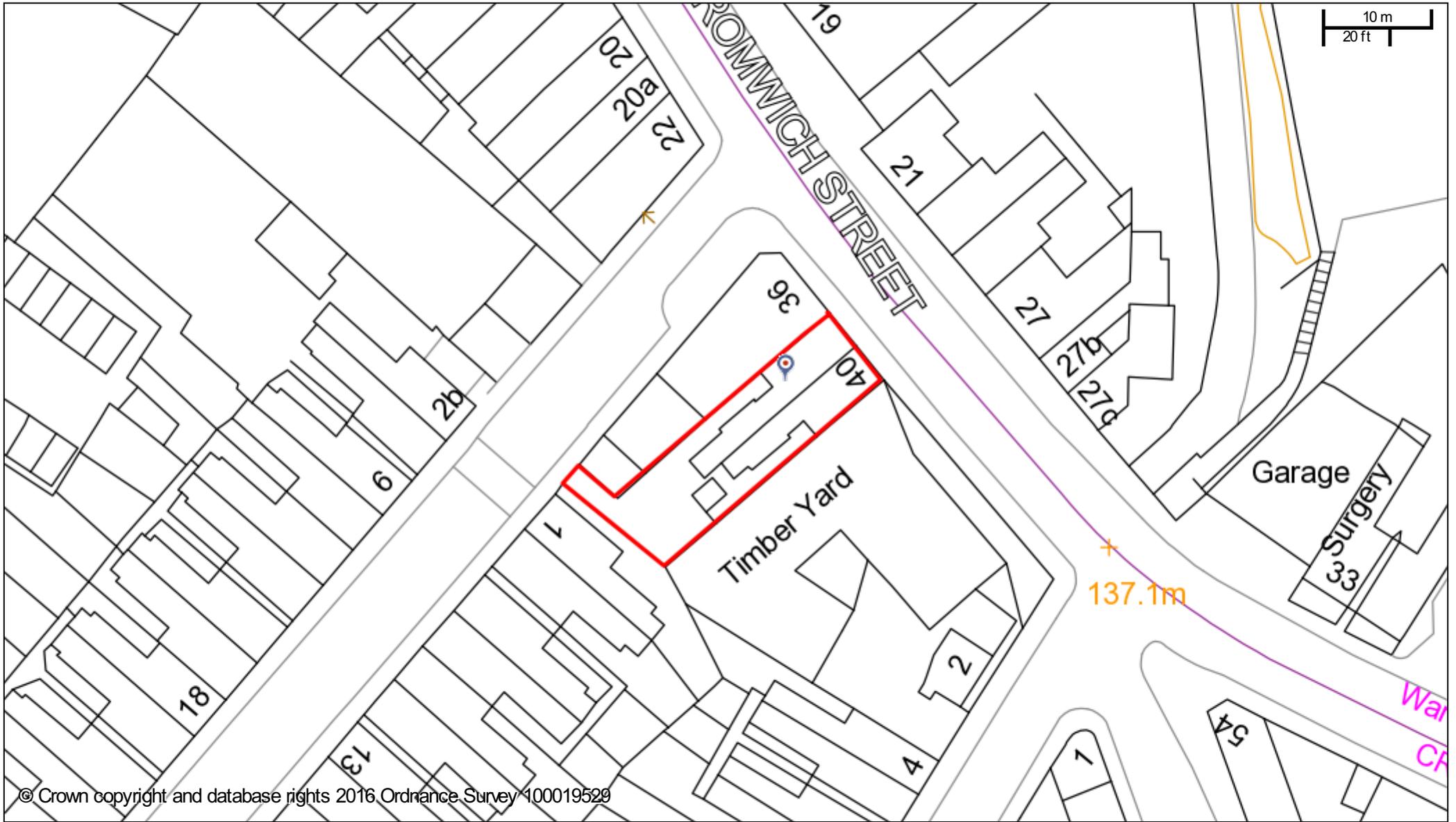
Enforcement file not published - E16/0174  
Planning refusals 16/0825 and 16/0826

**Steve Pretty**  
**Head of Planning, Engineering and Transportation**

**Planning Committee**  
**5<sup>th</sup> January 2017**

**12.0 BACKGROUND AND REPORT DETAIL**

- 12.1 38-40 West Bromwich Street is a two storey building, with the ground floor used as an off-licence. The unit is within a row of commercial premises and is within Caldmore Local Centre.
- 12.2 It is understood that an ATM and advert were installed within the shop frontage on 28<sup>th</sup> April 2016. In June 2016 retrospective planning and advertisement applications were submitted to the Council, they became valid in July 2016.
- 12.3 On 18<sup>th</sup> October 2016 planning permission and advertisement consents were refused on the grounds of security and highway safety. Officers sought confirmation from the applicant on how they were going to resolve the issues. Officers were advised that they were preparing an appeal against the refusals. At the time of writing no appeals have been lodged.
- 12.4 A Request for Information (RFI) was sent to the land owner in November 2016 seeking confirmation of the interested parties in preparation for formal action. The cover letter also explained the opportunity to resolve the matter without the need for formal action. At the time of writing the RFI has not been returned and the installations remain.
- 12.5 For the reasons explained earlier in the report it is considered that the installations raise security concerns and give rise to conditions prejudicial to highway safety. Due to this harm it is considered expedient that enforcement action is now taken through the issue of an enforcement notice seeking the removal of the ATM. Authorisation to instigate prosecution proceedings in regard to the advertisement is also requested. As the RFI has not been returned, which in itself is an offence, authorisation to prosecute on this ground is also sought in the event of other court proceedings. Officers therefore request that authorisation is given to take this course of action.



© Crown copyright and database rights 2016 Ordnance Survey 100019529

 <b>Walsall Council</b>	<b>38-40 West Bromwich Street</b>		
	Walsall Metropolitan Borough Council		
	Scale: 1:500	Printed on: 19/12/2016 at 9:10 AM	