



PLANNING COMMITTEE

11th December 2014

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

E14/0215 – 72, Whitehall Road, Walsall, WS1 4AP

1.0 **PURPOSE OF REPORT**

To request authority to take planning enforcement action in respect of the erection of a single story rear extension and a rear garden outbuilding to a house.

2.0 **RECOMMENDATIONS**

2.1 **That authority is granted for the Head of Planning and Building Control 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 2.3.

2.2 **To authorise the Head of Planning and Building Control 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 and Building Control, to amend, add to, or delete from the wording** set out below stating the nature of the breaches the reasons for taking enforcement action, the requirements of the Notice, or the boundaries of the site, **in the interests of ensuring the accurate and up to date notices are served.**

Details of the Enforcement Notice

The Breach of Planning Control:-

Without the required planning permission the extending of the rear of a residential property exceeding permitted development allowances for householders.

Steps required to remedy the breach:-

- Reduce the length of the single storey rear extension to a length no greater than 3 metres from the original rear of the existing house.
- Removal of the garden outbuilding
- Ensure all materials arising from the remedial works are removed from the land to leave the site in a clean and tidy condition.

- **Period for compliance:-**
One month

Reason for taking Enforcement Action:-

1. The scale mass and length of the unauthorised extension(s) is excessive and considered to be an unduly dominant, incongruous form of development, being out of character with its surroundings and having an overbearing impact detrimental to the amenity of neighbouring properties. The extension would shadow neighbouring gardens/windows leading to loss of light to neighbouring houses to the detriment of their amenity.
2. In addition, the materials and finish used in the construction are considered to be of a poor quality and appear incomplete, to the detriment of the visual amenity of neighbouring residents due to the very close proximity of the surrounding housing. The development as it exists is contrary to the aims and objectives of Walsall's Unitary Development Plan policies GP2, 3.6 and ENV32; Black Country Core Strategy ENV3 and policy DW3 of the Supplementary Planning Document, Designing Walsall and the National Planning Policy Framework.

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. Planning applications may also be submitted that require an application fee.

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)

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:

- Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas

Key provisions of the NPPF relevant in this case:

7: Requiring Good Design

56. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making better places for people.

57. It is important to plan positively for the achievement of high quality and inclusive design for all development.

58. Planning policies and decisions should aim to ensure that developments meet criteria that include:

- Function well and add to the overall quality of the area
- Establish a strong sense of place
- Respond to local character and history and reflect the identity of local surroundings and materials

64. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

207. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

On **planning conditions** the NPPF says:

Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

On **decision-taking** the NPPF sets out the view that local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development and look for solutions rather than problems and work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

The Development Plan

Planning law requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions but recognises that what it terms 'Local Plan' policies should not be considered out-of-date simply because they were adopted prior to the publication of the framework.

The Black Country Core Strategy (BCCS)

http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm

This was adopted under the current Local Development Framework system, and the NPPF says that for 12 months from the publication of the national framework "*decision-takers may continue to give full weight to relevant policies*. However, it is more than 12 months since the NPPF was published in March 2012. Now (as with the saved policies of Walsall's UDP) the NPPF advises that "*... due weight should be given to relevant policies ... according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*." To consider the conformity of the BCCS with the NPPF the four Black Country councils have completed a 'Compatibility Self-Assessment Checklist' (published by the Planning Advisory Service) and have discussed the results with a Planning Inspector. Whilst there is no formal mechanism to certify that the BCCS is

consistent with the NPPF the discussions led officers to the conclusion that the exercise identified no issues that would conflict with the NPPF or require a review of the BCCS in terms of conformity. The results of this assessment are to be published on the BCCS and Council websites and it is planned to report to the Council's Cabinet to confirm this view. In the absence of evidence to the contrary it is considered that the BCCS policies should be given full weight in planning decisions.

The relevant policies are:

GP2: Environmental Protection

The Council will expect all developments to make a positive contribution to the quality of the environment and will not permit development which would have an unacceptable adverse impact on the environment. Considerations to be taken into account in the assessment of development proposals include:

I. Visual appearance.

VI. Overlooking, loss of privacy, and the effect on daylight and sunlight received by nearby property.

Policy 3.6: Development should help to improve the environment of the Borough.
ENV3: Design Quality

ENV32: Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted.

Supplementary Planning Documents (SPD)

On the basis that relevant UDP policies are consistent with NPPF, the related SPD(s) will also be consistent provided they are applied in a manner consistent with NPPF policy. The relevant SPD's are:

Supplementary Planning Document Designing Walsall (2008)

Aims to achieve high quality development that reflects the borough's local distinctiveness and character, through eight key design principles and ten policies.

The following are the relevant policies

DW3: Character - all new development must be designed to respect and enhance local identity.

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 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. It appears to officers that the breach of planning control occurring at this site commenced within the last four years.

For the reasons set out in this report, officers consider it appropriate to take enforcement steps. Accordingly, officers seek authority to serve an enforcement notice, pursuant to s172.

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.

In the event of non-compliance with a Requisition for Information or non-compliance with a Planning Contravention Notice an offence is also committed and the Council may prosecute.

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 and building 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

Tim Pennifold

Development Management: 01922 652612

11.0 BACKGROUND PAPERS

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
11th December 2014

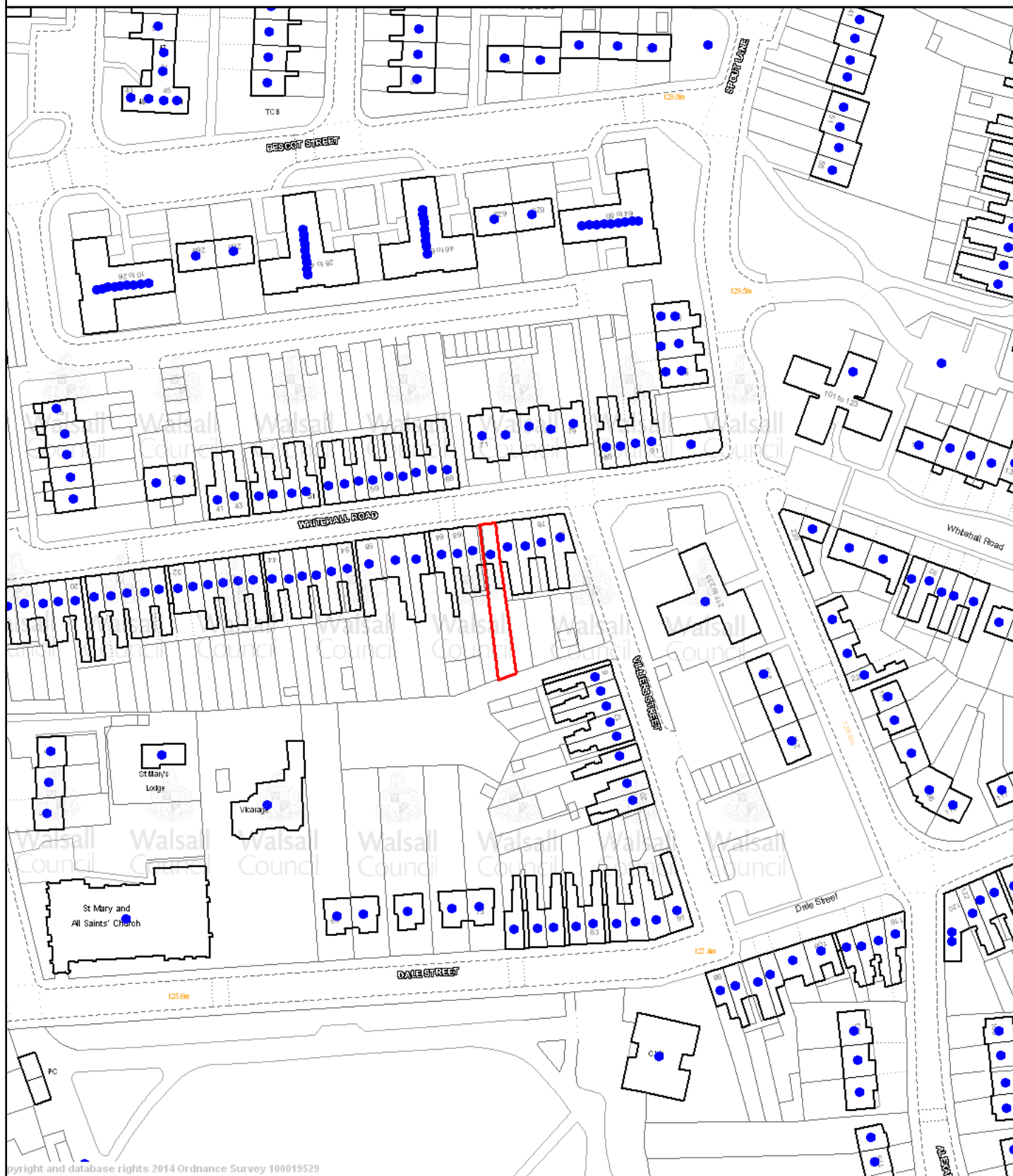
12.0 BACKGROUND AND REPORT DETAIL

- 12.1 72, Whitehall Road is a two storey traditional mid - terraced house located within a residential street with buildings of a predominately similar age and design.
- 12.2 In February 2014 a query was received by Planning Services regarding building works that had both historically and recently taken place to extend the property.
- 12.3 Officers visited the property in May 2014 and were unable to gain access to inspect the works.
- 12.4 Following the May site visit, officer's were contacted by a third party representing the family who had agreed to act as an interpreter and agreed a date when officer's could visit the house.
- 12.5 Officer's met the owner's representative and interpreter at the house on the 4th June 2014 to inspect the works. During the inspection the owner and their representative claimed the extension of the house had been completed approximately 5 years ago. Officers found windows appeared to have recently been fitted to the extension, including two high level windows inserted into the side of the extension opening out onto the neighbouring property, 70 Whitehall Road. It was noted that rendering and the painting of the outside of the extension may have recently taken place. However it was difficult to determine when the works had taken place.
- 12.6 In addition a garden building has been constructed within the rear garden. This would require permission as the combined footprint of the outbuilding and extensions cover an area more than 50% of the land surrounding the original house.
- 12.7 The most recent part of the rear extension to the house measures 8 metres in length and is approx 2.75 m high. The older section of the extension measures 7 metres from the main rear two-storey original rear elevation of the house.
- 12.8 Following the site visit, officer's informed the owners representative to advise of the concerns of when the extension to the property was carried out. There are no planning and building control records for consent for the extension(s) at this house.
- 12.9 On the 18th July a letter requesting the owner to provide evidence of when the works to extend the property were carried out, was to be submitted to the Planning Services within 28 days or risk potential enforcement action. The owner was also advised, within the letter that should a retrospective application be submitted to the council for retention of the extension in its present state, the application may not be supported without substantial alteration.

No response from the owner was forthcoming and neither was any planning or building control application submitted to the council.

- 12.10 Photographic evidence of the rear of the property dated 5th March 2013 confirms the extension was carried out after this date to the house. The photograph pictured the presence of a timber framed garden shelter in the position where the extension has now been built. This is proof that the extension would have been built between March 2013 and the date of the June 2014 visit.
- 12.11 Officers wrote on the 2nd October advising the owners that evidence had been located proving the extension(s) had been carried out between March 2013 and June 2014 and that the extension would require consent. The letter also stated that it was the officer's view, based upon the balance of probability that other extensions to the house would have been carried out within the last 2-4 years. The letter also explains that as the works have been ongoing and have only recently been substantially completed, none of the works would be immune from enforcement action. The owners or their representative have not made contact with officers and no applications have been submitted.
- 12.12 In view of the above it is considered expedient that enforcement action is now taken through the issue of an enforcement notice to rectify the breach of planning control and the harm it is causing. Officers also request that should any enforcement notice not be complied with and prosecution proceedings are undertaken, that proceedings should also be brought in regard to non-return of the Requisition for Information.

E14/0215 - 72 Whitehall Road, Palfrey, Walsall, WS1 4AP



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Walsall Council

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