



PLANNING COMMITTEE

Date: 26th April 2018

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.

Address: Land rear of 171 Erdington Road, Walsall.

Reference no. E17/0441

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against:
- a) The unauthorised Material Change of Use of the site from agricultural to siting of caravans and associated domestic paraphernalia: and horse grazing and livery stables and associated fencing, structures and equipment and storage of farm machinery and associated container in a Green Belt designated site without planning permission.

2.0 RECOMMENDATIONS

- 2.1 **That authority is granted to 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 in 3.2.
- 2.2 **To authorise the Head of Planning, Engineering and Transportation to institute prosecution proceedings** in the event of non-compliance with an Enforcement Notice.
- 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 breaches, the reasons for taking enforcement action, the requirements of the Notice, or the boundaries of the site, in the interests of ensuring that accurate and up to date notices are served.

3.0: DETAILS OF THE ENFORCEMENT NOTICE

3.1 The Breach of Planning Control

Without planning permission the Change of Use of the site:

- a) for the siting of caravans and associated domestic paraphernalia,
- b) for the grazing of horses and livery stabling and the siting of associated structures, fencing and equipment.
- c) for the storage of farm machinery and container and associated equipment.

Thereby now referred to as “the unauthorised uses”.

3.2 Steps required to remedy the breach:

1. Permanently cease use of the site for the siting of caravans and remove the caravans and all associated domestic paraphernalia, including but not limited to seating, fencing and barbeque.
2. Permanently cease the use of the site for horse grazing and livery stables and remove all associated fencing, structures and equipment.
3. Permanently cease the use of the site for the storage of farm machinery and container and remove all farming equipment, structures and containers.
4. Leave the site in a clean and tidy condition, disposing of any waste materials generated from the above works to a suitable facility licensed to accept these items.

3.3 Period for compliance:

1. Cease use of the site for the siting of caravans and remove the caravans **within 2 months** from the date that the notice takes effect.
2. Cease the use of the site for horse grazing and livery stables and remove all associated fences structures and equipment **within 2 months** from the date that the notice takes effect.
3. Cease the use of the site for the storage of farm machinery and container and remove all farming equipment, structures and containers **within 3 months** from the date that the notice takes effect.

4.0 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 against the Council in making an appeal if it was considered that the Council had acted unreasonably.

5.0 POLICY IMPLICATIONS

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

5.1 National Planning Policy Framework (NPPF) 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.

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

- Find ways to enhance and improve places in which people live their lives

- Always seek to secure high quality design and good standards 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; and
- Encourage the effective use of land by reusing land that has previously been developed.

Key provisions of the NPPF relevant in this case:

- NPPF 6 – Delivering a wide choice of high quality homes
- NPPF7 – Requiring good design
- NPPF 9 - Protecting Green Belt Land

NPPF Consultation

In March 2018 the Ministry of Housing, Communities and Local Government issued consultation proposals for revisions to the National Planning Policy Framework. The consultation ends on 10 May 2018. The text has been revised to implement policy changes previously consulted upon and further changes to planning policy announced in the Budget 2017. Whilst proposals should be considered in light of this draft consultation at this stage it can be afforded little weight as a material consideration in the determination of the application

5.2 Local Policy

Black Country Core Strategy

- CSP4: Place Making
- ENV3: Design Quality

‘Saved Policies’ Unitary Development Plan

- GP2: Environmental Protection
- ENV1: The Boundary of the Green Belt
- ENV2: Control of Development in the Green Belt
- ENV3: Detailed Evaluation of Proposals within the Green Belt
- ENV5: Stabling and Riding of Horses and Ponies
- ENV6: Protection and Encouragement of Agriculture
- ENV7: Countryside Character

Policies are available to view online:

http://cms.walsall.gov.uk/planning_policy

Designing Walsall SPD

6.0 LEGAL IMPLICATIONS

- 6.1 Pursuant to section 171A (1a) of the Town and Country Planning Act 1990 (as amended) the carrying out of development without the required planning permission.
- 6.2 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.
- 6.3 In respect of any other breach (such as change of use or breach of condition) no enforcement action 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 dwelling house, in which case a four-year period applies.
- 6.4 Officers consider that the breach of planning control occurring at this site is development commenced without the benefit of planning permission within the last year in connection with the unauthorised uses which is within the 10 years period, within which unauthorised material changes of use may be enforced against.
- 6.5 Section 191 (2)
Lawfulness is defined in section 191(2) of the 1990 Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.
- 6.6 Section 172 of the Town and Country Planning Act 1990 (as amended) 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.
- 6.7 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.
- 6.8 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.

7.0 EQUAL OPPORTUNITY IMPLICATIONS

- 7.1 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 development and its use overrules the owner's right to the peaceful enjoyment of his property.
- 7.2 The Equality Act 2010. The Council has had regard to its duties under the Equality Act 2010 and considers that the issue of the notice will not affect the exercise of those duties under S149 to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b). advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c). foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.0 ENVIRONMENTAL IMPACT

Enforcement action will improve the visual amenities of the environment, protect the environment, safeguard the greenbelt and remedy the adverse environmental impacts.

9.0 WARD(S) AFFECTED

Streetly

10.0 CONSULTEES

Not Applicable.

11.0 CONTACT OFFICERS

Rich Stokes - Enforcement Officer.
Emma Green. Senior Enforcement Officer

12.0 BACKGROUND PAPERS

Enforcement file E17/0441 not published.

13.0 BACKGROUND AND REPORT DETAIL

Background

- 13.1 Below is a chronology of the enforcement history of the site which gives greater detail.
- 13.2 In October 2017, the Planning department received a complaint that during May 2017, a large collection of farming machinery and equipment, together with three dwelling caravans had appeared on farmland at the rear of 171 Erdington Road. The land is jointly owned by two parties. It is located within the Green Belt.
- 13.3 Following a site visit on 21st November 2017 it was found that one of the owners had taken up residence in one of two static caravans/mobile homes present on the site. The other caravan/mobile home was also occupied.
- 13.4 The second mobile home currently has a small area defined by paddock fencing fitted in order to create a curtilage/seating area for recreational/ancillary use to the mobile home. A portable barbeque and two plastic chairs are placed therein.
- 13.5 A third touring style caravan was also present on site.
- 13.6 The site has a significant number of pieces of farm machinery including but not limited to: 3 x motor cars; Half size shipping container; Standen potato picker – green; Potato picker – red; Trailer - Blue; Trailer black; Potato Picker – unknown; Hopper – green; tank and stand; Rotary lawn mower; Chisel type plough; Chisel type plough; 2x Twin axel trailer; Ride on mower; Semi mounted reversible plough; Semi mounted reversible plough; Claas rotary bailer – green; Wooden sided trailer; 2 x Farm rollers; Blue trailer high sided x 2; Green trailer
- 13.7 In addition the land was being used for horse grazing for at least 10 horses (present at 13/04/18), and associated equipment including, water trough and a stable/store/box (former 'Luton' style commercial vehicle body) and associated fencing.
- 13.8 Following consideration of the activity on site it is considered that there are the following breaches of planning control. Without planning permission the use of the site for the following:
- a) Change of use for the siting of caravans and associated domestic paraphernalia,
 - b) Change of use for the grazing of horses and livery stabling and the siting of associated structures, fencing and equipment.
 - c) Change of use for the storage of farm machinery and container and associated equipment.
- 13.9 The unauthorised uses for siting of caravans, horse grazing and stables, and storage of farming machinery and associated container are inappropriate and, when combined with equipment and paraphernalia relating to each of these uses, results in harm to the visual appearance and the openness of the Green Belt. This is contrary to the fundamental aim of the Green Belt which is to prevent urban sprawl by keeping land permanently open. The provision of new dwellings within

the Green Belt is also considered inappropriate development. The unauthorised uses are therefore inappropriate in the Green Belt and, as no very special circumstances have been provided to justify support for this inappropriate development in the Green Belt, it is expedient to take enforcement action. The continued use of the site for the unauthorised uses also erodes the availability of agricultural land.

- 13.10 Accordingly, the unauthorised uses are considered contrary to national guidance relating to the protection of Green Belt in the NPPF, and policies CSP4 and ENV3 of the Black Country Core Strategy and 'saved policies' GP2, ENV2, ENV3, ENV5, ENV6 and ENV7 of the Walsall Unitary Development Plan.
- 13.11 On 22nd November 2017, the owners received written correspondence from the Council, informing them that their residency on the site represented a change of use of the land and that a planning application would not be supported in this instance as it was contrary to the policy requirements for the protection of the openness of the Green Belt. It is considered that there is no justification for exceptional circumstances. The owner was advised to either cease the use; remove the three dwelling vans and any associated residential paraphernalia; or submit a planning application, although this is unlikely to be supported by the Council, by 22nd February 2018.
- 13.12 On 23rd November 2018, the resident was also referred to Walsall Housing Services, in the event the residents presented themselves to the Council as homeless as a consequence of this action.
- 13.13 On 26th January 2018, the Council received correspondence from the owners appointed agent requesting an extension in time beyond 22nd February 2018, in order to obtain instruction from the owner.
- 13.14 On 5th March 2018, in the absence of a response from the landowner, an Officer spoke with the agent, who stated they would chase their client regarding their instructions, and conformed no work had commenced on collating information for the submission of a planning application.
- 13.15 On 16th March 2018, the Council delivered to the owners, a further letter seeking compliance to rectify the planning breach within 7 days, because no correspondence or application had been received in response to the earlier requests. To date no further engagement has been received in response to Council efforts to seek informal resolution.
- 13.16 On 13th April 2018, the case Officer undertook a monitoring site visit and noted that the three caravans, farm machinery and horse grazing and associated structure are still in situ. He delivered three letters to the three dwelling vans on site, which were accepted by both occupiers. The letters highlighted all of the breaches subject of this report, together with the date of the Planning Committee before which the case will be presented.
- 13.17 Following the aforementioned site visit further correspondence has been sent to the owners and occupiers of the site advising that the breach can still be rectified

before formal action and informing them that the matter has been forwarded to the next available Planning Committee.

- 13.18 Enforcement action should be commensurate with the breach of planning control to which it relates. It will normally be inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity or the environment. This is often referred to as the **expediency** test.
- 13.19 When assessing whether to instigate enforcement action the committee are advised that the following needs to be considered:
- i. the proposed action must be in the public interest
 - ii. the breach must be sufficiently harmful to justify taking action
 - iii. the proposed action must be reasonable and commensurate with the breach in planning control to which it relates
 - iv. the action undertaken should be cost effective
 - v. whether or not the development is in accordance with planning policies
- 13.20 It is considered that the unauthorised uses result in harm to the visual amenity of the area and fail to protect the openness and character of the Green Belt and is contrary to the adopted policies of the development plan and relevant policies in the NPPF. It is expedient and in the public interest for action to be taken, and the steps required by the Notice are reasonable and commensurate with the breach, cost effective and in accordance with planning policies.

