



PLANNING COMMITTEE

Date: 12th July 2018

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.

Address: Land east of Cartbridge Lane South, Walsall.

Reference no. E17/0463

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against the unauthorised change of use of land for the storage of a tractor quad bike and other equipment unrelated to the lawful use of the land for grazing and the unauthorised development comprising of the erection of an open sided metal framed structure and two transit/storage containers in a Green Belt designated site

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

- a) Without the required planning permission within the last 10 years the change use of the land from grazing use to use for storage
- b) Without the required planning permission within the last 4 years the installation of an open sided metal framed structure (approx. 3.7m high) and the erection of two metal transit/storage containers adjacent to the open sided metal framed structure

3.2 Steps required to remedy the breach:

- a) Permanently cease to use any part of the land for storage;
- b) Permanently remove from the land the open sided metal framed structure;
- c) Permanently remove from the land two metal transit/storage containers;
- d) Reinstatement of the land to the condition it was prior to the unauthorised change of use and unauthorised development; and
- e) Dispose of all waste materials generated from the above works to a suitable facility licensed to accept these items.

3.3 Period for compliance:

1. Cease the use of the land for storage of **within 2 months** from the date that the notice takes effect;
2. Remove the open sided metal framed structure and two transit/storage containers **within 2 months** from the date that the notice takes effect; and
3. Reinstatement of the land to the condition it was in prior to the change of use and unauthorised development and , dispose of any waste materials generated from the above works to a suitable facility licensed to accept these items **within 2 months** from the date that the notice takes effect

3.4 Reasons for taking Enforcement Action.

The government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt.

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.

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:

- 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

- 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 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.
- 6.4 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.
- 6.5 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, particularly in this sensitive Green Belt location. The removal of the structures and reinstatement of the land will protect the environment, safeguard the greenbelt and remedy the adverse environmental impacts.

9.0 WARD(S) AFFECTED

Rushall/Shelfield

10.0 CONSULTEES

None

11.0 CONTACT OFFICERS

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

12.0 BACKGROUND PAPERS

Enforcement file E17/0463 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 December 2017, an Enforcement Officer visited the site in order to investigate a complaint that a large mobile home had been installed upon the land East of Cartbridge Lane South, Walsall. The site is located within the 'Green Belt'. The mobile home has since been removed.
- 13.3 During the visit in December 2017, the Enforcement Officer noted that Operational Development had taken place, in addition to the presence of the mobile home. This included the erection of a metal framed barn/shelter with a single pitched roof and one side wall – approx. 3.7 metres. Also within the structure and forming part of it, were two metal transit/storage containers. Both containers measure 6m x 2.35m approx. Several of the vertical 'legs' of the metal framed structure are welded onto the containers.
- 13.4 The transit containers are utilised for the storage of a 'Kibuta' Tractor and quad bike and associated farm equipment. The site is also used for the storage of a JCB 'back hoe' excavator and a DAF LF horse box/lorry. This constitutes a change of use of the land from grazing land to storage.
- 13.5 The site presently hosts grazing for 2 horses and 2 donkeys (present at 27/06/18), and associated equipment including, stabling, shelter, storage & tack room, water trough and 4 metal transit/storage containers for hay/straw/feed and storage of fencing repair products & timber posts. Also present is a hard standing yard area and access driveway. The investigation has determined that these 'uses' and structures do not benefit from a Planning Permission, but given the passage of time (for the 'use' - in excess of 10 years and for the structures and other operational development - in excess of 4 years), these are now lawful.
- 13.6 Following consideration of the activity on site it is considered that there are the following breaches of planning control. Without planning permission:
- a) The installation of the metal framed structure.
 - b) The installation of two additional metal transit/storage containers.
 - c) The change of use of the land from grazing use to use for the storage.
- 13.7 The unauthorised siting of the additional items mentioned and use for storage is inappropriate development within the Green Belt. When combined with the existing lawful development at the site there is an additional harm to the visual appearance and the openness of the greenbelt, which is contrary to the fundamental aim of the green belt, i.e., *to prevent urban sprawl by keeping land permanently open*. Accordingly, the unauthorised uses are considered contrary to national guidance relating to the protection of Green Belt in the NPPF and the absence of *very special circumstances*, sufficient to negate the potential harm to the Green Belt by reason of inappropriateness, and any other harm.

Also relevant is policy ENV3 of the Black Country Core Strategy and 'saved policies' GP2, ENV2, ENV3, ENV5, ENV6 and ENV7 of the Walsall Unitary Development Plan.

13.8 The continued unauthorised change of use and retention of these structures in combination with the lawful development on site, represents an intensification of inappropriate development and does not accord with National and Local Planning Policy in Green Belt.

13.9 Throughout January, February and March 2018, the Case Officer has been in liaison with the land owner and his representative about the alleged breaches, requesting the removal of the structures. Whilst they have also been offered the opportunity to submit a Planning Application, the Council have made it clear that this could not be supported due to the Policy objections. The land owner has indicated that the land and associated development/ paraphernalia was for use for their livestock (currently 2 horses and 2 donkeys) and it has been in their ownership for some 30 years. The landowner explained that the metal framed structure was due to be used for the storage of hay/feed for their livestock. No planning application has been forthcoming.

13.10 On 26th March 2018, the Land Owner indicated that the metal framed structure now has feed and bedding stored within. The land owner considers the metal framed structure is not a *'permanent structure and is only 12' high for a hay barn'*. They advised that the metal framed structure was completed in 2011/2012' and was therefore beyond the limitation of Enforcement proceedings. Officers can demonstrate this is not the case. The land owner has been advised that this matter is being considered by Planning Committee.

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.

13.11 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

13.12 It is considered that the unauthorised development and material change of use has resulted 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.

