



Development Control Committee
10th March 2009

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

168 to 170A Lichfield Road, Brownhills

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the expansion of the curtilage at a vehicle repair and vehicle recovery garage.

2.0 RECOMMENDATIONS

- 2.1 That authority is granted for the issuing of 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 that the decision as to the institution of 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 control; be delegated to the Assistant Director - Legal and Constitutional Services in consultation with the Head of Planning and Building Control .
- 2.3 That, in the interests of ensuring an accurate and up to date notice is served, authority be delegated to the Assistant Director - Legal and Constitutional Services in consultation with the Head of Planning and Building Control 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.:

Details of the Enforcement Notice

The Breaches of Planning Control:-

Change of use of part of curtilage of hot food takeaway and flat, to become an extension to a vehicle repair garage.

Relocation of fences to give effect to the change of use.

Laying of a new hard surface comprising tarmacadam scalplings

Steps required to remedy the breaches:-

Cease to use the curtilage of the takeaway and flat for purposes connected with the vehicle repair garage, and remove all vehicles and equipment connected with the repair garage from the land.

Restore a physical boundary between the takeaway and flat and the vehicle repair garage, by erecting a fence exceeding 1 metre in height but not exceeding 2 metres in height and of concrete panel construction.

Period for compliance:-
2 months

Reasons for taking Enforcement Action:-

The expansion of the vehicle repair and recovery use is harmful to the amenities of the area, including its residents, but with particular effect on residents of the flat above the takeaway at 170/170A Lichfield Road and the house at 172 Lichfield Road, by reason of visual impact, increased vehicle parking, noise and disturbance, contrary to policy GP2 in the Walsall Unitary Development Plan.

3.0 FINANCIAL IMPLICATIONS

None arising from the report.

4.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies.

5.0 LEGAL IMPLICATIONS

None arising from the report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Brownhills

9.0 CONSULTEES

None

10.0 CONTACT OFFICER

Philip Wears or James Fox
Planning Enforcement Team: 01922 652411, 652527

11.0 BACKGROUND PAPERS

Enforcement file not published

D. Elsworthy, Head of Planning and Building Control

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12 BACKGROUND AND REPORT DETAIL

Present position

- 12.1 Number 168 Lichfield Road is a vehicle repair and vehicle recovery garage with a rear area used for the parking and storage of vehicles, including vehicle recovery trucks, vehicles awaiting repair and staff parking. The adjacent premises 170 and 170A Lichfield Road are a hot food takeaway with a separately occupied flat above. These have a rear area used partly as a garden and at the rear of the garden a hard-surfaced area with some garages. Adjoining driveways running between the garage and the takeaway to the rear of the buildings. A plan showing the approximate area of the change of use is attached.
- 12.2 The repair garage and the takeaway are in separate ownerships. A concrete panel fence on the boundary used to separate the repair garage from the takeaway/flat.
- 12.3 In the vicinity of the takeaway's garages, the concrete panel fence has been removed, some small trees felled and tarmacadam scalplings laid, so the repair/recovery garage has full access to the takeaway's garage area. This is now used mainly for the parking of vehicles in connection with the repair garage. A new concrete panel fence (less than 2 metres in height) has been erected to separate this area from the takeaway / flat's garden.
- 12.4 Between the buildings, the fence has been moved so that the driveways are shared. The curtilage of the takeaway/flat was about 0.25 metres lower and tarmacadam scalplings have been laid to match the levels of the two drives.
- 12.5 The owners of the repair garage have suggested that they intend to use the area at the rear of the takeaway for the parking of private employee vehicles only and all commercial vehicles will remain on the lawful part of their site. They argue this is comparable to the existing use of the parking at the rear of the takeaway / flat. Although this improves the situation slightly, in the absence of planning control through a planning application, the question of whether conditions could be devised to effectively control this in perpetuity is only theoretical. In addition officers are concerned at the whole principle of the vehicle repair/recovery use expanding in this location.

Legal position

- 12.6 Although the repair/recovery garage is only parking vehicles on those areas of the takeaway/flat curtilage which used to be used by vehicles, it is still an unauthorised change of use for two reasons. Legally, where a building and land form a single entity, the planning unit, they share the same use rights. In this case, part of the takeaway/flat planning unit has become part of the vehicle repair/recovery garage planning unit. These uses are substantially different, and a change of use has occurred.

Relevant planning history

- 12.7 In 1991 planning permission was sought for the change of use of 170 / 170A to a restaurant and takeaway with a car park at rear (the area now being considered). The application was refused and appealed. The appeal was dismissed, and one reason was that the proposed customer car park would result in an unacceptable increase in activity at the rear of the site to the detriment of the amenity of residents.
- 12.8 More recently an application in 2000 proposed the change of use to taxi base (24hr operation), again with parking on the land currently in question. It was refused and appealed and again the appeal was dismissed. The Inspector referred to the significant additional noise and disturbance to the area immediately behind the residential accommodation at 170 Lichfield Road and the adjoining house and back garden at 172 Lichfield Road which borders the land.

Assessment

- 12.9 The current situation following the change of use has parallels with these appeal decisions. The general expansion of the vehicle repair/ recovery use in this location would erode the level of amenity in the area by reason of the visual impact of more and larger vehicles, and the noise and disturbance they generate, and because they are closer to residents at 170 and 172 Lichfield Road.
- 12.10 As already set out, the owners of the repair garage have suggested that they intend to use the area at the rear of the takeaway for the parking of private employee vehicles only and all commercial vehicles will remain on the lawful part of their site. They argue this is comparable to the existing use of the parking at the rear of the takeaway / flat.
- 12.11 Officers visited the site on 23rd January 2009 and witnessed two commercial vehicles parked on the land.
- 12.12 Using the rear of the takeaway / flat for employee parking improves the situation slightly, but in the absence of planning control through a planning application, this is clearly unreliable.
- 12.13 Parking for the takeaway /flat has involved the cars of staff and residents of the flat. In contrast parking associated with the repair/recovery garage involves a greater number of vehicles and also larger, more visually intrusive vehicles such as vehicle recovery trucks. The impact of the parking is increased significantly.
- 12.14 Given that the present situation is not acceptable, enforcement action is recommended seeking the cessation of the use and reinstatement of the boundary.



Walsall Council

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