



## **DEVELOPMENT CONTROL COMMITTEE**

**10<sup>th</sup> September 2009**

### **Report of Head of Planning and Building Control**

#### **Vehicle Wash at Temple, 4-15 Fletchers Lane , Willenhall**

##### **1.0 PURPOSE OF REPORT**

To inform Members of the progress being made to secure compliance with the enforcement notice, and to seek authority to apply to the County Court for an Injunction under section 187B of the Town and Country Planning Act 1990.

##### **2.0 RECOMMENDATIONS**

Authorise the Assistant Director - Legal and Constitutional Services to seek an Injunction under section 187B of the Town and Country Planning Act 1990, to prevent use of the site as a vehicle wash, as set out in the enforcement notice dated the 17<sup>th</sup> of September 2007.

##### **3.0 FINANCIAL IMPLICATIONS**

Officer time, and the potential for a costs application by the defendant.

##### **4.0 POLICY IMPLICATIONS**

The enforcement notice seeks 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 adverse effects which justified the enforcement action.

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

Willenhall South.

##### **9.0 CONSULTEEs**

Legal Services.

##### **10.0 CONTACT OFFICER**

Bob Scrivens: 01922 652488, Phil Wears: 01922 652411

##### **11.0 BACKGROUND PAPERS**

Enforcement file not published.

D. Elsworthy  
Head of Planning and Building Control

**Development Control Committee**  
**10<sup>th</sup> September 2009**

**12 BACKGROUND AND REPORT DETAIL**

- 12.1 An enforcement notice was issued on 17 September 2007 requiring the cessation of the use of the site as a vehicle wash. There was no appeal. The use should have ceased by 17<sup>th</sup> December 2007.
- 12.2 Prosecution action has been undertaken, in respect of failure to comply with the Enforcement Notice. A Summons was issued for a person identified as one of the Temple's Trustees, and who was also the Correspondent for the Temple. This person was also known to officers as dealing with the vehicle wash since before the Enforcement Notice was issued. The person did not attend the Magistrates Court and a Warrant was issued. When attending subsequently a 'not-guilty' plea was entered, and the case came to trial on 15<sup>th</sup> July 2009. As well as Council witnesses, there was a witness from the Charities Commission.
- 12.3 The person was found guilty and fined £8,000 plus costs of £1,554. He stated in the Court that he would appeal to the Crown Court against the Magistrates' decision. The appeal was lodged within the required period and the case is expected to be heard within 3 months. This will involve the witnesses and solicitor again, and a Barrister has been engaged. A preliminary hearing is scheduled to take place on 4<sup>th</sup> September.
- 12.4 Officers have confirmed that the use as a vehicle wash is continuing. There is no evidence that it has been affected by the prosecution so far. This is in part inherent in the legislation because prosecution punishes for failing to comply, but does not directly require the use to cease, and relies instead on the potential to bring repeated prosecutions. However a factor in this particular case is that the person found guilty in the Magistrates Court stated that he recently ceased to be a Trustee. It would appear therefore that a repeat Prosecution action against this person would not be effective in ceasing the use.
- 12.5 It is open to the Council (in addition or as an alternative to prosecution for breach of the enforcement notice) to apply for an Injunction in the County Court,, requiring all parties with an interest in the site, or who are otherwise involved, and, who are in a position to comply with such an order, to cease the unauthorised use as a vehicle wash.
- 12.6 Failure to comply with an Injunction, if the courts grant one, is sometimes a more serious matter than non-compliance with an enforcement notice, and is likely to increase the prospects for success in controlling this activity on the site. Having identified the use as harmful, bringing about its cessation is the main objective.
- 12.7 Whilst the Prosecution action was an essential stage to go through, and officers are now following-through to defend the case against the Appeal, it is recommended that in the circumstances, an application for an Injunction is also made, and that officers be authorised to take that action.