



DEVELOPMENT CONTROL COMMITTEE

31st March 2009

Report of Head of Planning and Building Control

Unit 3, Woodlands Centre, Bloxwich Road North, Willenhall

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of a hot food takeaway and its system for treating cooking fumes.

2.0 RECOMMENDATIONS

- 2.1 That authority is granted for the issuing of enforcement notices 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.
- 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(s)

The Breaches of Planning Control:-

Operational development comprising the installation of an external fume extraction flue and fan-unit.

Change of use to a hot food takeaway shop, without implementing planning permission 04/0727FL, (granted for change of use to hot food takeaway on 16th March 2005), by reason of failure to comply with a pre-commencement condition attached to the permission.

Steps required to remedy the breaches:-

Dismantle the fume extraction flue, and brick up the opening on the side of the building with bricks and mortar to match that existing.
Remove all resultant components and debris from the land.

Cease to use the premises as a hot food takeaway shop, and remove all equipment connected with this use.

Period for compliance:-
3 months.

Reasons for taking Enforcement Action:-

Failure to comply with condition 3 of planning permission 04/0727/FL (which is a pre-commencement condition) has resulted in the planning permission not being implemented and the use is therefore unauthorised.

The continued use of the premises as a hot food takeaway shop without an acceptable treatment system for cooking fumes (including flue and extractor fan) would be likely to expose neighbouring premises and residents to nuisance from cooking odours. The use is therefore contrary to policies GP2 and S10 in the Walsall Unitary Development Plan (2005).

By reason of its size, appearance, and location the fume extraction flue is harmful to the visual amenities of the area, and also harmful to the quality of outlook enjoyed at the adjacent houses. Its retention would therefore be contrary to policies GP2, ENV32 and S10 in the Walsall Unitary Development Plan (2005).

Note for Recipient;
Case law provides that if the information required to secure compliance with the conditions is approved by the Local Planning Authority, and implemented, the status of the planning permission is restored, and the use ceases to be unauthorised

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 from this report.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Short Heath

9.0 **CONSULTEES**

Environmental Health

Related planning application 04/0727/FL was subject to normal publicity.

10.0 **CONTACT OFFICERS**

James Fox / Philip Wears

Planning Enforcement Team: 01922 652527 / 01922 652411

11.0 **BACKGROUND PAPERS**

Planning permission file 07/0727/FL

Enforcement file not published.

David Elsworthy

Head of Planning and Building Control

Development Control Committee
31st March 2009

12 BACKGROUND AND REPORT DETAIL

- 12.1 The Woodlands Centre comprises a modern block of shops with flats above, and a basement storey visible at the rear only. Ground levels slope steeply down to the rear service area and rear gardens of houses in Woodside Way. The flats are accessed from a roof terrace at the rear, which is served by an external staircase.
- 12.2 Unit 3 was granted planning permission in 2005, on appeal, for change of use to hot food takeaway and installation of an extraction duct. Its current use is as a fish and chip shop, and adjoining at Unit 1 is another takeaway which was permitted on appeal in 2004.
- 12.3 When granting permission for the change of use at Unit 3 the Inspector attached conditions including :-

Prior to the first use of the premises, adequate facilities for treatment of fumes to reduce smell, and for their extraction, shall be installed, details of which shall be first approved in writing by the Local Planning Authority. The approved facilities shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

Prior to the use of any extractor fan in the premises, it shall be fitted with an atmospheric silencer in accordance with details to be first approved in writing by the Local Planning Authority, and shall be operated thereafter in accordance with the approved details.

- 12.4 The required details were not submitted for approval. A fume extraction flue and extractor fan were installed and the use as a hot food takeaway commenced, all without compliance with the conditions. Officers began to receive complaints of failure to comply with conditions. Subsequently there were complaints of cooking fume odours affecting local residents, which have continued.
- 12.5 Officers consulted Environmental Health on the treatment facilities required and sought to obtain the submission of satisfactory details to discharge the above conditions retrospectively. (The fume extraction flue and fan-unit were different in appearance and position to that permitted by the Inspector, but officers interpreted the conditions as potentially allowing these aspects of the permission to be amended without a further full application being necessary.) Some incomplete / inadequate information was received from the then leaseholders . The leaseholders then left the premises and new leaseholders took over the takeaway.
- 12.6 Given this sequence of events officers reviewed the situation and concluded:-
- In planning case law, in the case of conditions requiring additional details to be submitted and approved before the development can be undertaken, ('pre-commencement' conditions) if the condition is not complied with the planning permission has not been implemented.
 - The development as a whole is therefore unauthorised and vulnerable to an Enforcement Notice.

- In this particular case, the condition appearing first in paragraph 12.3 above is a 'pre-commencement' condition, and as the fume treatment facilities (including external flue/fan-unit) have not been approved as part of the Inspector's decision, nor subsequently under the condition, both the change of use and the flue/fan-unit lack planning permission, and are vulnerable to Enforcement Notices.
- Court cases have established what a developer can do to correct matters. In this case if the owners or present leaseholders tenant were to retrospectively obtain approval for the necessary details, and then implement them, that would re-instate the planning permission given.
- If they take no action, the use and the treatment facilities including the external flue/fan-unit remain unauthorised.

12.6 Following site meetings with a ventilation engineer some further details were recently shown to officers but officers requested greater clarity and information before consideration could be given. This problem appeared capable of remedy but at the time of writing no further details have been received. The freeholders have also been made aware of the breach of control and what is necessary to remedy it.

12.9 In relation to the unauthorised use as takeaway, officers consider that it would be inappropriate for the use to continue without a satisfactory treatment system for cooking fumes. Environmental Health officers consider that the cooking fumes require considerably more treatment than is currently provided by the de-odorising unit and this deficiency is the likely cause of cooking odours. In the present circumstances the use as a takeaway is harmful to the amenities of the area including that of residents in houses to the rear.

12.10 The appeal permission approved a flue emerging through the rear roof terrace. As built the flue and fan-unit emerge through the rear wall at basement level and then run up the wall to well above the roof terrace. They are therefore considerably more visible and give rise to a visually cluttered rear elevation which causes harm to the amenity of neighbours in the area. At the same time, owing to the lack of information and approval under the condition for the fume treatment system as a whole, there is no known technical justification for accepting the particular design and appearance of the flue and fan-unit. In addition, as officers recommend an enforcement notice against the use as a takeaway, it follows that there is no justification for retaining external equipment of this nature which inevitably is not ideal in visual terms. On balance officers therefore recommend that enforcement action is also taken to secure the removal of the external flue and fan-unit.

12.10 Whilst officers now recommend enforcement notices against the flue and the use as takeaway, if further proposals are received under the Inspectors conditions this late stage, the potential to avoid enforcement notices remains if the freeholders or leaseholders can quickly obtain approval for a scheme under the conditions and implement this.

Unit 3, The Woodlands Centre, Bloxwich Road North, Willenhall

