



Walsall Council

PLANNING COMMITTEE: 7th January 2021

REPORT OF HEAD OF PLANNING & BUILDING CONTROL

Update on enforcement investigation relating to land adjacent 26 Bradley Lane

1. PURPOSE OF REPORT

To advise Committee of an update on the investigation into works carried out on Land adjacent to 26 Bradley Lane.

2. RECOMMENDATIONS

That committee notes the report.

3. FINANCIAL IMPLICATIONS

None arising directly from this report.

4. POLICY IMPLICATIONS

Consideration of whether to pursue further enforcement action has to consider the expediency of the action in order to seek compliance with planning policies.

5. LEGAL IMPLICATIONS

None arising from the report.

6. EQUAL OPPORTUNITY IMPLICATIONS

None arising from the report.

7. ENVIRONMENTAL IMPACT

None arising from the report.

8. WARD(S) AFFECTED

Darlaston South

9. CONSULTEES

Legal Services
Development Management

10. **CONTACT OFFICERS**
Ryan Harris – Planning Assistant (Enforcement)

11. **BACKGROUND PAPERS**

See attached.

Ryan Harris
Planning Assistant (Enforcement)

PLANNING COMMITTEE: 7th January 2021

Update on Enforcement Investigation into land adjacent to 26 Bradley Lane.

12.0 This report seeks to provide an update to Members regarding the enforcement investigations relating to case reference E13/0063. The case was opened in May 2013 and investigations at that time identified that the land had historically been used for the keeping horses and the siting of stabling. The land had recently changed hands and the following developments carried out:

- Refurbished and extended one existing stabling unit.
- Erected an new stabling unit on a concrete pad
- Started to erect a hay barn
- Widened an unauthorised access into the site off Bradley Lane and erected fencing above 1 metre adjacent to the highway.
- Extensive earth works carried to create driveway – further road chippings brought onto site.
- Started keeping pigs and chickens on the land.

12.1 The investigations in May 2013 concluded that there were no permitted development rights to erect stables on this land and any development other than the right to erect fencing (subject to limitations on height/position) would require consent. In addition, when existing buildings are refurbished in their entirety as opposed to simple repairs, these works can be considered substantial enough to constitute a new building and may therefore require planning consent. The owners were advised of these findings and requested to submit a planning application to retain the works.

12.2 Following Committee support for Enforcement Action to be taken an Enforcement Notice was served on 3rd February 2015 in relation to the following:

- i. Without planning permission the carrying out of engineering works to alter land levels and create access from the land onto the highway
- ii. Without planning permission the laying down of hardstanding
- iii. Without planning permission the erection of boundary gates and fencing adjacent to the highway
- iv. Without planning permission the erection of two stabling blocks
- v. Without planning permission the construction of a storage barn, and;
- vi. Without planning permission the use of the land for the storage of two caravans.

12.3 On 9th April 2015 an appeal against the Enforcement Notice was made on the following grounds:

Ground (a) – that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted;

Ground (f) – that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach

- .12.4** On 27th October 2015 the Appeal decision confirmed the Enforcement Notice was quashed. The notice was quashed by the Planning Inspectorate on the basis that whilst the notice identified an unauthorised change of use and operational development, the remedies to address the breach were only confined to addressing the operational development. Whilst the inspector can amend notices they need to consider if such action would cause injustice to any party in the proceeding. If the notice was upheld as drafted, the unauthorised uses would be deemed to have planning permission and therefore cause injustice to the Council. The other option to amend the notice to identify remedies which addressed the issue of the change of use would significantly expand the scope of the notice and cause injustice to the appellant.
- 12.5** Following the quashing of the Enforcement Notice an application for a Certificate of Lawful Existing Use, reference 16/1096, for use of the land for the keeping of 7 horses was submitted and subsequently granted on 7th June 2018 based on the evidence provided and review of Council records available at that time.
- 12.6** On 1st November 2018 Planning Committee considered a report to update them on the case where the following was noted:
- *Following the determination of the Certificate of lawfulness application, the case has been referred back to planning enforcement to consider what action needs to be taken to address the outstanding breaches in planning control.*
 - *As the Council purported to enforce the breach of planning control through service of the Enforcement notice on the 3rd February 2015. In accordance with Section 171B (4) of the Town and Country Planning Act, the usually 4 year for operational development being immune from action has not expired. Furthermore, the unauthorised change of use of the land carries a 10 year period for enforcement which again has not yet expired.*
 - *Given that immunity from enforcement action will come into effect on the 3rd February 2019, officers will revisit the site to establish if there have been any recent changes to the circumstances at the site and if there are any additional breaches in planning control.*
 - *If there are no new breaches of planning control then Officers can issue a new Enforcement Notice with a revised breach and steps to remedy to take account of the Planning Inspectors comments. This can be issued under the delegated powers planning committee conferred on the 26th June 2014 when this matter was originally considered by this committee.*
 - *However, if the updated site visit gives rise to additional breaches of control not previously considered the matter will be again referred to planning committee in the usual manner to seek authorisation for Enforcement Action.*
- 12.7** Following this committee resolution officers visited the site and found that certain activities had been carried out that involved “development” and would require planning permission for their retention including:
- The bottom stable block is a new build block
 - The top stable block has been repaired and enlarged
 - The barn is a new build

The owner was advised to make an application to regularise these developments.

- 12.8** As a consequence in May 2019 two applications were received:
19/0482 - Certificate of existing lawful operation for the erection of two stable blocks on site - yet to be made valid (fee and block plan insufficient).
19/0476 - Construction of storage barn in association with the keeping of horses (sui generis use) – yet to be determined (further details required relating to coal and access).
These applications will be reviewed by the case officer to progress and bring to a conclusion before pursuing any further enforcement action as whilst there are current applications on hand it is not expedient to proceed with enforcement action at this time.
- 12.9** On 7th February 2020 officers made a site visit to assess the current situation. The site will continue to be reviewed during the process of determining the above applications. Once the applications are determined further consideration of any necessary enforcement action will be made and committee updated accordingly.
- 12.10** In summary there are three key issues in respect of the site regarding the use of the land, creation of a vehicle crossing off Bradley Lane and provision of new structures comprising stables and a barn. The actions described above seek to address these matters.