



Walsall Council

PLANNING COMMITTEE.

Date: 12 November 2020.

REPORT OF HEAD OF PLANNING

AND BUILDING CONTROL.

Address: Foley Wood, Egerton Road, Streetly, Walsall.

Reference no. E20/0033.

1.0 PURPOSE OF REPORT

1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against:

- Without planning permission, the material change in the use of the land from open space land to domestic garden.

2.0 RECOMMENDATIONS

2.1 **That authority is granted to the Head of Planning and Building Control 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 and Building Control to institute prosecution proceedings** in the event of non-compliance with an Enforcement Notice.

2.3 **To authorise the Head of Planning and Building Control, 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

Without planning permission, the material change of use of the land from open space land to domestic garden.

Thereby now referred to as “the unauthorised development”.

3.2 Steps required to remedy the breach:

- i. Cease the use of the open space land for the purposes of domestic garden;
- ii. Permanently remove all domestic paraphernalia from the land, including but not limited to, paving slabs and edging stones, refuse bins, wooden fence panels and posts, green metal mesh fencing and posts, concrete posts, processed timber, roof tiles, ladders, building bricks and/or paving blocks, composting bins.
- iii. Remove all waste materials arising from steps 3.2(i) and 3.2 (ii) above to an approved site licensed to accept such materials.

3.3 Period for compliance:

To undertake the works set out in paragraph 3.2 parts (i)-(iii) within **3 months** from when the notice takes effect.

3.4 Reasons for taking Enforcement Action.

- 3.4.1 It appears to the Council that the above breach of planning control has occurred within the last 10 years, and no planning permission has been granted for a material change of use of the land from open space to domestic garden land

- 3.4.2 The site is the last remaining section of historic woodland in Streetly, formerly occupying a significantly larger area since Circa 1830. Its loss to domestic garden land would have a detrimental impact on the character and appearance of the woodland area. .
- 3.4.3 Streetly is a semi-rural area, the character of which is in part established by the presence of Foley Wood. Further erosion of the woodland by development will cause harm to the visual amenity of the area and historic value of the remaining, largely broad leafed deciduous native, species found within the woodland.
- 3.4.4 The unauthorised material change of use of woodland to domestic garden serves to reduce the quality and character of the area by reason of the loss of an important area of trees. In 1964, the importance of the woodland to the area lead to the Aldridge Tree Preservation Order No 10 1964, (subsequently amended by 17/2005) being made, which seeks to preserve the woodland; enhance views, help define the character of the area; promote a sense of place; and support endemic ecology.
- 3.4.5 The site is an area of open space and accordingly the material change of use to a residential garden is contrary to the aims and objectives of local policies CSP4, ENV1, ENV2, ENV3 of the Black Country Core Strategy; GP2, ENV16, ENV18, ENV23, ENV24, and paragraph 3.11 of the Walsall Unitary Development Plan; OS1, EN1: of the Walsall SAD; and policies NE2, NE3, NE5, NE6 of the Walsall SPD; and NPPF 15 of the National Planning Policy Framework.

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. It states that the purpose of the

planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a “*presumption in favour of sustainable development*”.

Key provisions of the NPPF relevant in this case:

- NPPF 15 – Conserving and enhancing the natural environment

5.2 Local Policy

Black Country Core Strategy

- CSP4: Place Making
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

‘Saved Policies’ Unitary Development Plan

- GP2: Environmental Protection
- 3.11 Forestry and Trees.
- ENV16: Black Country Urban Forest
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV24: Wildlife Corridors

Walsall SAD

- OS1 - Open Space, Sport and Recreation
- EN1: Natural Environment Protection, Management and Enhancement

Supplementary Planning Documents

Natural Environment SPD:

- NE2 – Protected and Important Species
- NE3 – Long Term Management of Mitigation and Compensatory Measures
- NE5 – Habitat Creation and Enhancement Measures
- NE6 – Compensatory Provision

Policies are available to view online:

https://go.walsall.gov.uk/planning_policy

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 In respect of any other breach (such as change of use or breach of condition) no enforcement action may be taken after the end of the period of ten years from the date of the breach except where the breach of planning control consists of a change of use of any building to use as a single dwelling house, in which case a four-year period applies.
- 6.4 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.
- 6.5 Section 191 (2)
Lawfulness is defined in section 191(2) of the 1990 Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

- 6.6 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.
- 6.7 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.
- 6.8 Non-compliance with an Enforcement Notice once it takes effect, 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, protect the environment and remedy the adverse environmental impacts.

9.0 WARD(S) AFFECTED

Streetly Ward

10.0 CONSULTEES

None.

11.0 CONTACT OFFICERS

Rich Stokes - Enforcement Officer.

12.0 BACKGROUND PAPERS

Enforcement file E20/0033 not published.

13.0 BACKGROUND AND REPORT DETAIL

Background

- 13.1 Foley Wood occupies an area between, Blackwood Road, Egerton Road and Foley Road West, Streetly. It is the last remaining section of historic woodland within the Streetly ward, which historically occupied a much greater area since the 1830's. To date the remaining woodland covers an area in the region of 25640m².
- 13.2 Foley Wood is considered to be an important area of trees, and was originally included in the Aldridge Tree Preservation Order No 10 1964, since superseded by Tree Preservation Order 17/2005. The orders sought to preserve the woodland in order to enhance views, help define the character of the area; promote a sense of place; add colour and seasonal interest; and support wildlife.
- 13.3 The site lies within an area allocated for public open space on the Walsall Local Plans Policies Map, adopted January 2019 and forms part of the Site Allocation Document.
- 13.4 A plan showing the location of the site considered to be in breach of planning control is attached to this report.
- 13.5 On 15th April 2020, the Council received information that the woodland was being developed and sections were being fenced off for use as residential gardens by a number of residents whose properties adjoin the woodland.
- 13.6 On 27th July 2020, a Case Officer visited the woodland to find that areas of the woodland had been domesticated and sectioned off by the installation of 3m x 1.9m (high) weld/V-mesh fencing panels and posts.
- 13.7 Upon the initial visit, the Officer noted that some trimming of trees had taken place during the installation of the fencing. However, a large amount of young trees and ground flora had been stripped from within the fenced area at the rear of 29 Blackwood Road, together with low level trimming near to the fence at the

rear of 25a Blackwood Road. The fencing area at 29 had been expanded so as to include a larger area of woodland at the rear of both 29 and 27 Blackwood Road.

- 13.8 During a subsequent visit, an area of woodland was also found to have been enclosed adjacent to 147 Foley Road West, also by means of 1.9m high green V-mesh fencing.
- 13.9 In addition to the trimming/ground clearance, at the rear of 25a Blackwood Road, slabs had been placed along the rear fence and the remnants of a bonfire were present. A gate affords access from the original rear garden to the newly enclosed garden within the woodland.
- 13.10 Signs attached to the mesh fencing at Blackwood Road read, 'Warning – Dogs Running free; Private Land – stay out; No tipping or dumping; Warning. Criminal damage to this fence will lead to prosecution; Warning – CCTV in operation ('wildlife cameras' are attached to 3 trees within the garden extension at the rear of 31 Blackwood Road).
- 13.11 Rear garden fences were removed from three of the four highlighted addresses, thereby enabling unabated pedestrian access to Foley Wood from the original back gardens of 29 and 31 Blackwood Road and 147 Foley Rd West. A wooden gate has been fitted in the rear fence of 25a Blackwood Road which affords access to the garden extension in the woodland.
- 13.12 Overall, the fencing encloses a combined area of some 2,787m² of Foley Wood, which itself occupies an area of approx. 25,640m². No planning permission has been sought or granted for such development.
- 13.13 In June 2020, the occupiers of 25a, 29, and 31, Blackwood Road received correspondence from the Council, informing them of the alleged breach of planning control and requiring the removal of the fencing and associated domestic paraphernalia.

- 13.14 On 29th October 2020, the agent acting on behalf of the owners of 29 and 31 Blackwood Road, wrote to the Council. The letter expressed their client's position that no breach of planning control existed, because no *material change of use* had taken place.
- 13.15 In October 2020 the occupier of 147 Foley Rd West received similar correspondence from the Council, informing them of the alleged breach of planning control and requiring the removal of the fencing and associated domestic paraphernalia..
- 13.16 Since the letters, the shed at the rear of 31 Blackwood Road has been removed from the garden extension in the woodland and a small trellis and gate have been erected across the original rear garden.
- 13.17 In addition to the weld mesh fencing, evidence of domestication remains as follows at the rear of:
- i. 31 Blackwood Road – turf/lawn, planting of a row of approx. 8 leylandii to form a boundary hedge, wooden fencing panels, 2 x composting bins.
 - ii. 25a Blackwood Road – paving slabs.
 - iii. 147 Foley Road West - bricks, roof tiles, ladders, timber, concrete post, bucket, plastic/refuse bag
- 13.18 Officers have obtained ownership details of all of the residential properties referred to in this report but the woodland is not registered at HM Land Registry and so the owner's names and addresses are unknown. Therefore, if authority is given to pursue enforcement action, notices relating to the woodland will be displayed on site rather than served upon the owners.

