



PLANNING COMMITTEE
13th November 2014

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

119 Pool Hayes Lane, Willenhall Walsall WV12 4PX

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the use of the property as a hair and beauty salon.

2.0 RECOMMENDATION

2.1 That authority is granted for 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 below in 2.4.

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 or the non-return of Requisitions for Information or a Planning Contravention Notice; and to make the decision as to the institution of Injunctive proceedings in the event of a continuing breach of planning control.

2.3 To authorise the Head of Planning and Building Control, to amend, add to, or delete from the wording set out below at 2.4 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, in the interests of ensuring accurate and up to date notices are served.

2.4 Details of the Enforcement Notice

The Breach of Planning Control:-

Without the required planning permission the change of use of the property from a doctor's surgery to a hair and beauty salon.

Steps required to remedy the breach:-

Cease to use the property as a hair and beauty salon and remove all signage to the property associated with the use.

Period for compliance:-

One month.

Reason for taking Enforcement Action:-

The use of the property as a hair and beauty salon will increase the problem of lack of car parking at the site with associated traffic problems and road safety issues. The use is contrary to the aims and objectives of the Black Country Core Strategy (2001) in particular policy TRAN2 and saved policies GP2, T7 and T13 of Walsall Unitary Development Plan (2005).

3.0 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 in making an appeal if it was considered that the Council had acted unreasonably.

4.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

The Black Country Core Strategy (BCCS)

http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm

This was adopted under the current Local Development Framework system, and the NPPF says that for 12 months from the publication of the national framework "*decision-takers may continue to give full weight to relevant policies*". However, it is more than 12 months since the NPPF was published in March 2012. Now (as with the saved policies of Walsall's UDP) the NPPF advises that "*... due weight should be given to relevant policies ... according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*." To consider the conformity of the BCCS with the NPPF the four Black Country councils have completed a 'Compatibility Self-Assessment Checklist' (published by the Planning Advisory Service) and have discussed the results with a Planning Inspector. Whilst there is no formal mechanism to certify that the BCCS is consistent with the NPPF the discussions led officers to the conclusion that the exercise identified no issues that would conflict with the NPPF or require a review of the BCCS in terms of conformity. The results of this assessment are to be published on the BCCS and Council websites and it is planned to report to the Council's Cabinet to confirm this view. In the absence of evidence to the contrary it is considered that the BCCS policies should be given full weight in planning decisions.

The relevant policy is:

TRAN2: Planning permission will not be granted for development likely to have significant transport implications.

It is considered in this case that the relevant provisions of the BCCS can be given full weight.

Walsall's Unitary Development Plan (UDP)

www.walsall.gov.uk/index/environment/planning/unitary_development_plan.htm

Policies that have been saved and not replaced by the BCCS remain part of the development plan. However, in such cases the NPPF says “*due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*”.

The relevant policies are:

GP2: Environmental Protection

The Council will expect all developments to make a positive contribution to the quality of the environment and will not permit development which would have an unacceptable adverse impact on the environment. Considerations to be taken into account in the assessment of development proposals include:

- I. Visual appearance.
- II. Creation of pollution of any kind
- VI. Traffic impact

T7 – Car Parking

All development should satisfy the car parking standards set out in Policy T13. This will involve providing an adequate level of parking to meet operational needs while not exceeding any maximum parking standards that are specified.

T13: Development will provide adequate on-site parking to meet its own needs, and that there will be no adverse effect on highway safety and the environment.

It is considered in this case that the relevant provisions of Walsall’s saved UDP policies are consistent with the NPPF

5.0 LEGAL IMPLICATIONS

Pursuant to section 171A(a) of the Town and Country Planning Act 1990 (as amended) the carrying out of development without the required planning permission or failing to comply with a condition or limitation subject to which planning permission has been granted constitutes a breach of planning control. 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. 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 dwellinghouse, in which case a four year period applies.

It appears to officers that the breach of planning control occurring at this site commenced within the last ten years.

Section 172 of the Town and Country Planning Act 1990 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.

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.

Non-compliance with an Enforcement Notice 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.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

Article 8 of the Convention for the Protection of Human Rights and Article 1 of the First Protocol to the Convention 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 freedoms of others. In this case, the wider impact of the use and the appearance of the land overrules the owner's rights.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Short Heath

9.0 CONSULTEES

None.

10.0 CONTACT OFFICER

Barbara Toy - Tel: 01922 652615
Development Management

11.0 BACKGROUND PAPERS

Enforcement file not published

David Elsworthy
Head of Planning and Building Control

Planning Committee
18th September 2014

12.0 BACKGROUND AND REPORT DETAIL

119 Pool Hayes Lane is situated on the corner of Lucknow Road and Pool Hayes Lane and comprises a detached single storey flat roofed building (approx 49sqm). The building is set in line with the building line of the two storey houses to the north in Lucknow Road and was formerly used as a doctors surgery for a number of years. The site has an existing vehicle access off Pool Hayes Lane with space for two tandem parking spaces, with grassed area to the side and frontage of the building.

Immediately to the west (117 Pool Hayes Lane) is a two storey detached house with semi detached houses beyond. On the opposite side of Lucknow Road are further two storey houses. To the south on the opposite corner of Pool Hayes Lane is a local shopping precinct with two storey residential flats above some of the shop units. Uses within The Precinct include a hair dressing salon, convenience store, vets and a hot food takeaway. A service area for the precinct sits to the rear off Pool Hayes Lane and a small parking bay is located on the opposite side of Pool Hayes Lane to the site. The Precinct is not designated as a local centre. The site sits within a predominantly residential area.

A retrospective planning application for the change of use from a doctor's surgery to a hair and beauty salon was submitted following a complaint and investigations by an Enforcement Officer.

The use has been operating since October 2013 and operates with two full time staff, open 0900 – 1800 Monday to Saturday. The internal layout provides a reception/waiting area, two treatment rooms (one small and one large room), a store area and a WC. The use operates predominantly by appointment but some walk in customers are accommodated when appointments allow. The use has only resulted in minor internal alterations as the previous layout lent itself to the new use. A new entrance door has been provided to the Lucknow Road elevation (in place of a previous window) and a new pathway from Pool Hayes Lane provided across the grassed area to direct customers to the new doorway. Two non-illuminated signs have been installed, one on the side and one on the front elevation.

The retrospective planning application was reported to the Planning Committee on 18th September 2014 when members resolved to refuse consent contrary to the officer recommendation, for the following reason:

The development will increase the problem of lack of car parking at the site with associated traffic problems and road safety issues. As such the proposals would be contrary to the aims and objectives of the Black Country Core Strategy (2011), in particular policy TRAN2 and saved policies GP2, T7 and T13 of Walsall's Unitary Development Plan (2005).

It is considered expedient that enforcement action is now taken because of the harm the unauthorised use is causing to parking problems at the site and associated traffic and road safety issues and an enforcement notice is issued to rectify the breach of planning control. Officers also suggest that should any enforcement notice not be complied with prosecution proceedings are undertaken.

119 Pool Hayes Lane

