



PLANNING COMMITTEE

9th July 2015

REPORT OF THE HEAD OF PLANNING AND BUILDING CONTROL

Hydesville Tower School, Broadway North, Walsall, WS1 2QG

1.0 PURPOSE OF REPORT

1.1 To update Planning Committee members of the current position regarding the Section 106 Legal Agreement entered into by Hydesville Tower School in conjunction with planning permission 08/0520/FL for the provision of car parking for the parents of children attending the nursery. This was discussed by the 13th February, 13th March, 15th May, 26th June 2014 and 5th February 2015 Planning Committees as a consequence of the Park Tavern Public House redevelopment (13/1529/FL). The McCarthy & Stone development at the former Park Tavern site is nearing completion. The planning committee had asked for regular updates on this matter. Given the time taken to identify an alternative car park by the school, members agreed that the updates should be given when there is progress to report.

1.2 On the 22/1/15 the agent provided a signed lease agreement for the 30-space car park between Lower Rushall Street and Dogkennel Lane confirming the permitted use as; *'the parking of cars and school mini-buses for private purposes for use by staff of the tenant only (but not for a taxi or hire business)*. A side letter to the lease confirms that the lease relates to Hydesville Tower School. What the lease does not permit is the use of the car park by the parents of nursery children at the school, or by anyone other than staff. It was confirmed at the 5th February 2015 planning committee, that this would be insufficient to confirm Hydesville School had met the legal requirements of the Section 106 to provide an alternative car park for the parents of pupils of the nursery. The consequence of not meeting the requirement of the Section 106 meant that the school would have to cease the intake of new nursery pupils from September 2015.

1.3 Following planning committee, a meeting with the school was held to set out clearly what was required to meet the legal requirements of the section 106 agreement. On the 19/6/2015 the school provided a deed of variation to the lease, which serves to extend the permitted use of the car park to include the use by parents of nursery children; *"The parking of motor vehicles by Parents/Carers of Nursery Pupils of Hydesville Tower School and the parking of motor vehicles associated with Hydesville Tower School. For the avoidance of doubt reference to motor vehicles includes school mini-buses"*. This coupled with the revised car park plan provided on the 22/5/2015 is now considered sufficient to meet the legal requirements of the section 106 in relation to the obligations to provide parking for vehicles bringing nursery children to school. Consequently the Council will not pursue injunctive

proceedings against the school to prevent a new intake of nursery pupils in September 2015.

In addition, the school have provided a statement confirming how they intend to operate the car park, which includes Elite Management (Midlands) Ltd managing the car park through a permit basis, the use of school mini buses to shuttle nursery children between the car park and the school at the beginning and the end of the day.

In relation to other aspects of the school's travel plan the school's statement confirms that they use a daily 'walking bus' supported by 3 staff members through the arboretum. The school has sought funding for 10 bikes for ages 5 to 8 years and 2 adult bikes, plus a bike shed for storage to support and promote healthy life styles and in March 2015, the school met with parents responding to safety concerns about vehicular access to the school during peak times. Vehicular access to the school during peak times is now restricted with the school encouraging the walking bus and explaining to parents the road safety concerns. These are considered positive steps forward by the school, continuing and improving upon their travel plan and, whilst there is no legal requirement for the school to make additional provisions, the continued work towards addressing safety, parking and traffic concerns is noted.

2.0 RECOMMENDATION

2.1 To note that the Head of Planning and Building Control had served notice on the School pursuant to the terms of the Section 106 Agreement. This provided the School with a 6-month period to arrange alternative suitable car parking for parents of Nursery Pupils. The 6 month period expired on the 17th December 2014; and

2.2 To note that the School has now procured suitable alternative car parking provision for nursery parents in accordance with the terms of the Section 106 Agreement.

The breach of the Section 106 Agreement

On 16 July 2010 the Council and the School entered into a Section 106 agreement which made provision for steps to be taken by the School in relation to the parking of staff and visitors vehicles, amongst other things. Specifically, paragraph 4.3 of the Schedule required a Car Park Facility to be made available for Parents of Nursery Pupils. This was required in order to balance the interests of the school with those of the surrounding residents and highway safety.

In the event that the parking facility became unavailable at any point in the future, the School would have 10 days to notify the Council, after which the Council would serve notice on the School to commence a 6-month period for the School to put alternative provision in place. If the School failed to establish a replacement car parking facility within the given 6 month period, the School would cease taking new nursery pupils from the commencement of the next following academic year.

Notice was served by the Council in June, the 6 month period expiring on the 17th December 2014. The School had not provided sufficient information regarding alternative parking for parents of nursery pupils and staff by this deadline date. As such, the School is to cease taking new nursery pupils from the commencement of the next following academic year (September 2015) until such time as a replacement car park facility has been agreed with the Council and is available for use in accordance with the terms of the agreement.

The breach of agreement, which had occurred by the school's failure to meet the deadline date, is adequately dealt with by the provisions of the agreement. Now that the school is in compliance with the Section 106, it is considered appropriate to confirm to Committee that the Council will now not be pursuing injunctive action through the courts for non-compliance of the Section 106 agreement. Should the School, again breach the terms of the Section 106 Agreement, a report will be brought before planning committee to seek injunctive action to cease the school's new intake of nursery pupils at the start of the academic year.

3.0 FINANCIAL IMPLICATIONS Legal costs for pursuing the injunctive action against the school should the need arise.

4.0 POLICY IMPLICATIONS The following planning policies are relevant in this case:

National Planning Policy Framework (NPPF)

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*".

All the **core planning principles** have been reviewed and those relevant in this case are:

- Seek to secure high quality design and good standards of amenity for all existing and future occupants
- Take account of the different roles and character of different areas
- Conserve heritage assets in a manner appropriate to their significance.

Key provisions of the NPPF relevant in this case:

4: Promoting Sustainable Transport

32 All development should have safe and suitable access to the site for all people. Development should only be refused on transport grounds where the residual cumulative impacts of development are severe.

207 LPAs should act proportionately in responding to suspected breaches of planning control.

On **planning conditions** the NPPF says: Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

On **decision-taking** the NPPF sets out the view that local planning authorities

should approach decision taking in a positive way to foster the delivery of sustainable development and look for solutions rather than problems and work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

The Development Plan

Planning law requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions but recognises that what it terms 'Local Plan' policies should not be considered out-of-date simply because they were adopted prior to the publication of the framework.

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. It is more than 12 months since the NPPF was published in March 2012. 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.

This checklist has been published on the BCCS and Council websites. Cabinet on 24th July 2013 endorsed the assessment undertaken by officers from the four local authorities and agreed that the Black Country Core Strategy is consistent with the National Planning Policy Framework, so that the Core Strategy policies should be given full weight in planning decisions. The relevant policies are:

ENV2: Development proposals will be required to preserve and, where appropriate, enhance local character.

ENV3: Development proposals across the Black Country will deliver a successful urban renaissance through high quality design that stimulates economic, social and environmental benefits. Implementation of the principles of "By Design" to ensure the provision of a high quality networks of streets, buildings and spaces.

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. The NPPF states "*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.

T4: The Strategic Highway Network is for long distance and strategic traffic

T8: Developments should promote walking

T9: Developments should promote cycling

T13: Unless otherwise justified developments should provide appropriate car parking to meet their needs. Schools should provide 2 spaces per classroom and 4 bike lockers per parking space.

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 The consequences of breaching the agreement by the failure to meet the 6 month deadline set out in the notice and within the existing section 106 agreement. Under section 106(5) of the Town and Country Planning Act 1990 a planning obligation made under section 106 may be enforced by injunction. Whilst it is possible to seek an injunction to prevent an apprehended breach of control before it occurs (as opposed to an injunction granted following a breach and preventing its continuance) such injunctions are rare and less likely to be granted unless there is compelling evidence that the breach is about to occur and will result in significant damage.

6.0 EQUAL OPPORTUNITY IMPLICATIONS There are none arising directly from this report. The date by which the School was to secure alternative parking was the 17th December 2014. The School has secured alternative suitable parking, consequently the School can take new nursery children from September 2015. The terms of the Section 106 Agreement are considered reasonable and well balanced with the interests of those residents within the locality and necessary in the interests of highway safety. Furthermore, the School agreed to the terms of the Section 106 Agreement by entering into it. The School has been able to provide sufficient information to the Council to satisfy the terms of the Section 106 agreement. Consequently, injunctive action will not now be required to prevent the School from taking in new pupils at the beginning of the next academic year.

7.0 ENVIRONMENTAL IMPACT None arising from this report.

8.0 WARD(S) AFFECTED St Matthews

9.0 CONSULTEES None.

10.0 CONTACT OFFICER Andrew White – 01922 652609 Development Management

11.0 BACKGROUND PAPERS Planning permission 08/0520/FL and Section 106 Agreement dated 16 July 2010

David Elsworthy
Head of Planning and Building Control

Planning Committee
9th July 2015

12.0 BACKGROUND AND REPORT DETAIL

12.1 Planning permission at Hydesville School was granted planning permission (08/0520/FL) for the following development description:

- A) Extension to Art and Technology Building
- B) change of use of 33 Broadway North to part of school (years 1 and 2)
- C) Use of vacated year 1 and 2 for nursery provision.

12.2 The previous application (07/1476/FL/W3) noted that the UDP parking standards require 2 parking spaces per classroom, plus 4 cycle lockers per car space. The number of classrooms or rooms available for teaching at the school was given as 35, excluding the library, dining and music practice rooms. This resulted in a UDP maximum parking requirement of 70 spaces for the existing school plus eight additional spaces for the 08/0520/FL application proposal.

12.3 There is a shortfall in the parking available for the site. Residents had highlighted, and continue to highlight, the difficulties of parking in the vicinity of their homes and also that inconsiderate parking of parents dropping off and collecting their children is an ongoing issue. The Park Tavern car park was being used at the time of the 2008 Planning Application by the School. Despite this provision, parents regularly dropped off children outside the School or in the adjoining residential streets.

12.4 The changes proposed by the 08/0520/FL application were considered to make the parking situation for the School worse which was already unsatisfactory. In addition to increased numbers of children the application also proposed the increase to the nursery. It was considered that children of nursery age are the most likely to be brought to school by car and cannot just be dropped off. The parents of these children are likely to require longer stay parking than more independent older children and could reduce the availability of spaces for shorter stays.

12.5 There were 6 objectors to the 2008 application all of whom were concerned that some parents park in an inconsiderate or illegal manner and other parents or staff occupy on-street parking that is needed by residents of the area who have no alternative parking. Broadway North is a red route and the streets opposite the school have restricted parking and many of the houses have no alternative but to park on street. Parking derived from the red route scheme cannot be counted as these are essentially for public use.

12.6 Given these circumstances, it was considered that this development, which would increase the parking requirement of the school with a detrimental effect upon highway safety, could be approved at face value, because the school worked on the production of a Travel Plan, which was submitted as part of the 2008 application. In order to effectively support the application, the Plan needed only to make modest improvements in travel patterns, sufficient to compensate for the 8 extra car spaces created by the application. It was considered likely that such improvements could be achieved in other parts of the School, not the nursery.

12.7 The 2008 planning application Travel Plan set targets for a reduction in single car journeys and an increase in most other means of transport, allied to a growth in school size to 400 pupils. To encourage compliance/delivery of the targets the Plan proposed that, if the targets were not met, the intake of the nursery would be reduced by 5% in the following year. The Travel Plan was for a 4-year period, which expired May 2014.

12.8 In addition to the Travel Plan and its targets, the School and the Council agreed that there was a need to provide car parking for parents of nursery students. The School proposed that it used the Park Tavern car park, or its equivalent, to ensure that there was parking for the parents of nursery pupils who would be less able to take advantage of other means of transport.

12.9 The Travel Plan targets were set out, to be monitored and delivered in conjunction with parking at the Park Tavern car park to be secured, or a suitable replacement. A Section 106 Agreement was signed by School and entered into with the Council.

12.10 The Park Tavern Car Park is now unavailable for the School's use, due to the redevelopment of the Park Tavern. Consequently, clause 4.3 of the S106 Legal Agreement required the following actions from the School:

4.3.1. to notify the Council within 10 working days that the car park facility (Park Tavern) is no longer available.

4.3.2 within 6 calendar months identify for use a replacement car park facility for the use of Parents of Nursery Pupils at an Approved Site

4.3.3 provide evidence that 30spaces are available and that the school has a legal right to use the replacement facility

4.3.4 to make the replacement available for the use of Parents of Nursery Pupils

4.3.5 defines the subsequent agreed replacement as the car parking facility.

4.3.6 In the event of a failure to establish a replacement car park facility to cease taking new nursery pupils from the commencement of the next following academic year until such time as a replacement facility is made available.

12.12 Written notice was served on the 17/06/14 that the school had 6 months until the 17th December 2014 to find alternative parking. At the end of the six months, the School had been unable to find alternative parking to fully satisfy the Section 106 clauses. Discussions have continued with the School

regarding alternative car park provision. The Local Planning Authority have continued to receive complaints from residents in adjacent roads regarding staff parking outside resident's houses during the school day and additional chaos from parents dropping off and collecting their children on the road, causing problems for residents parking near to their houses during the day and especially at peak times of the school opening and closing times.

12.13 The School was expected to provide the following;

- a lease agreement confirming the use of the car park for Parents of Nursery Pupils and a management plan for the operation of the new 30 space car park,
- a location plan illustrating the position of the new 30 space car park
- a car park layout illustrating 30 parking spaces and the car park laid out according to the plan provided.

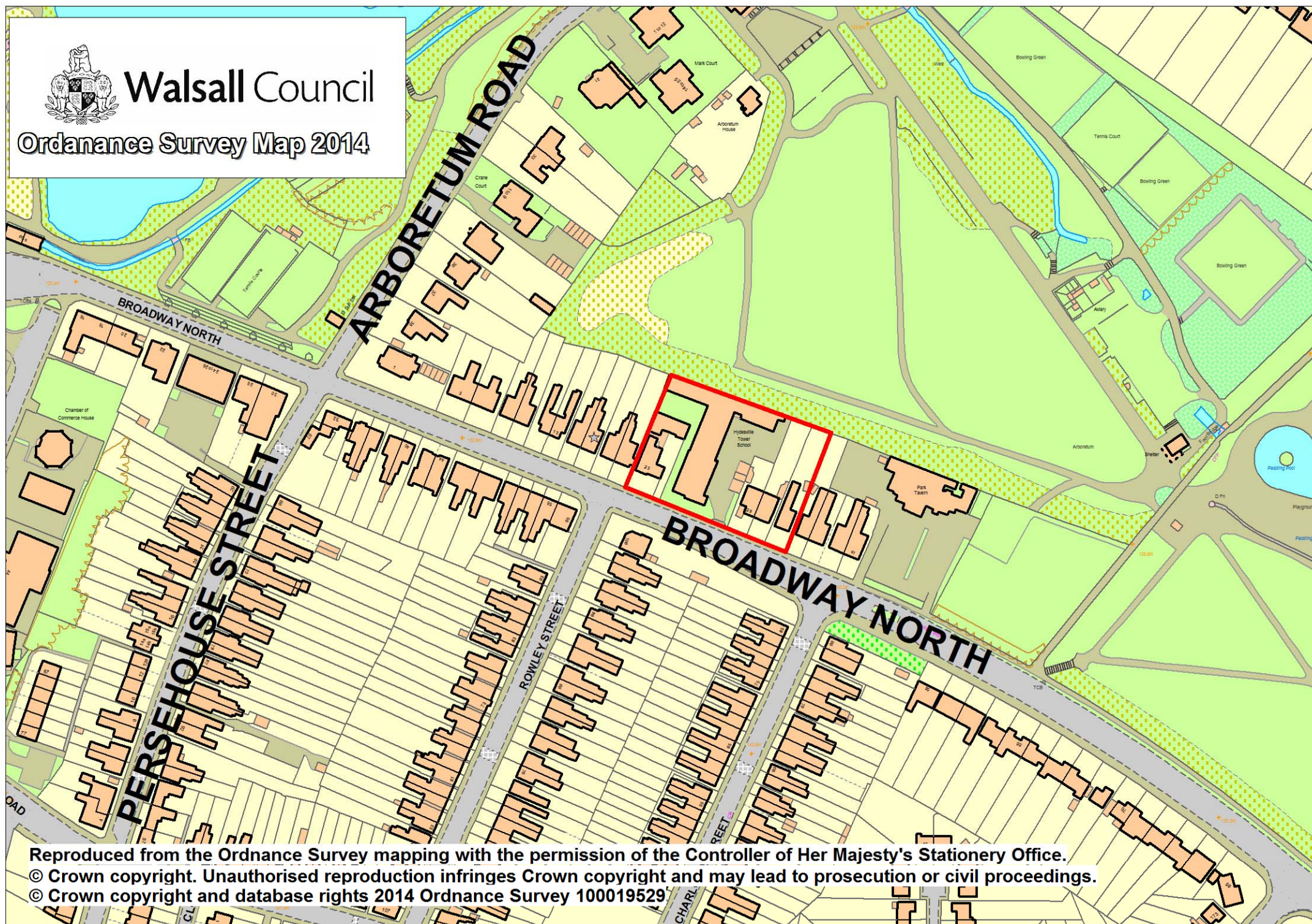
12.14 The School then identified an alternative car park and provided a layout plan illustrating 30 car parking spaces. The School also provided a copy of a completed lease agreement. As a consequence of continued discussions between the school's lawyers and the Council in relation to the lease terms the Council has provided with a deed of variation confirming the permitted use as; *The parking of motor vehicles by Parents/Carers of Nursery Pupils of Hydesville Tower School and the parking of motor vehicles associated with Hydesville Tower School. For the avoidance of doubt reference to motor vehicles includes school mini-buses.* The school has provided sufficient information through the lease agreement, deed of variation of the lease agreement and the provision of an amended Lower Rushall Street car park layout to confirm that the School has met the legal requirements of the S106 to find an alternative car park for parking of parents of nursery pupils. It has also provided a statement indicating how the use of the car park will be monitored and enforced.

12.15 The Local Planning Authority are confirming that Hydesville School have provided sufficient information to comply with the Section 106 Agreement and can continue with the intake of new nursery pupils from September without the Council pursuing injunctive action. Should the School not comply with this obligation in the future, a new report will be brought before Planning Committee.



Walsall Council

Ordnance Survey Map 2014

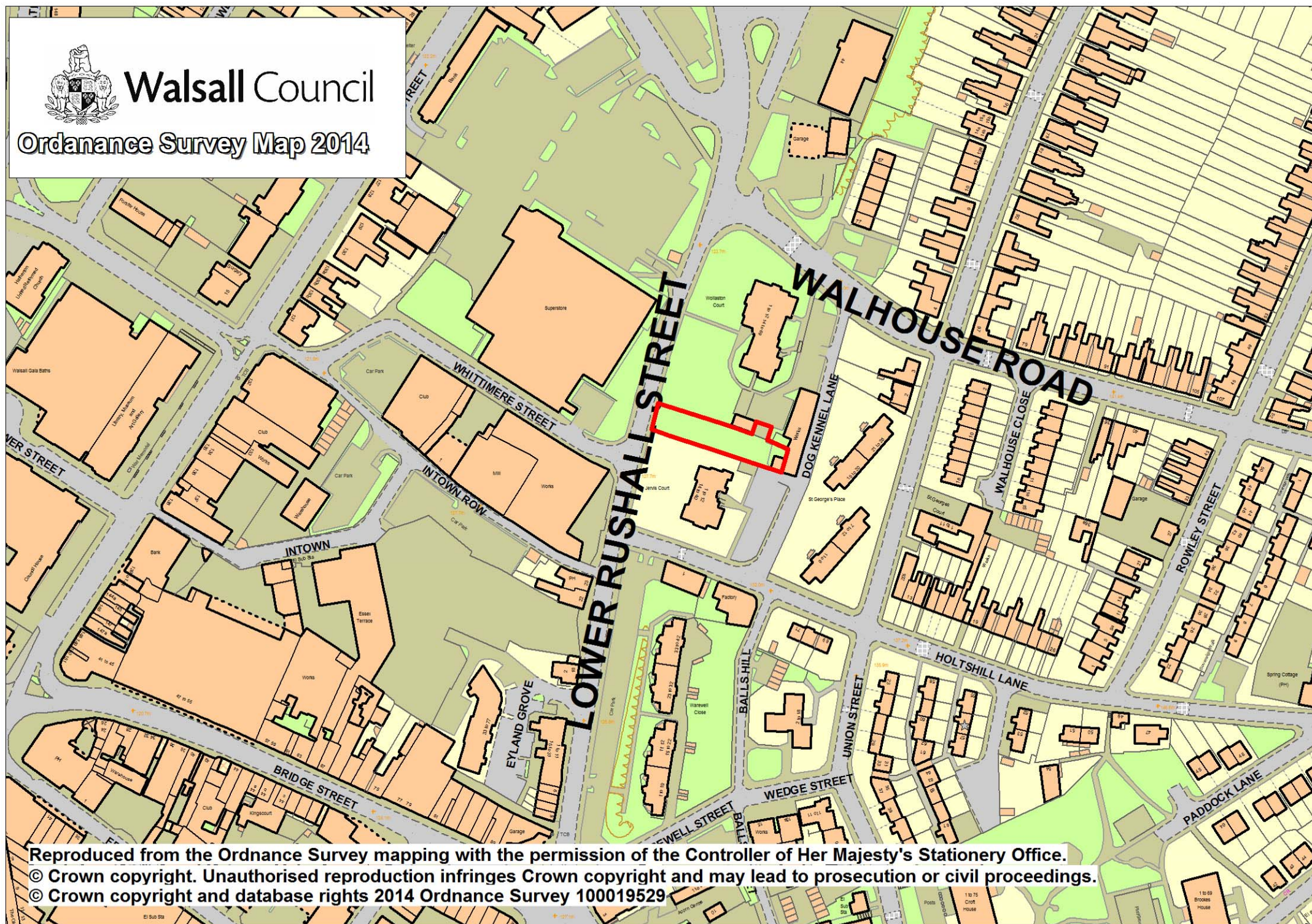


Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office.
© Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.
© Crown copyright and database rights 2014 Ordnance Survey 100019529



Walsall Council

Ordnance Survey Map 2014



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office.
© Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.
© Crown copyright and database rights 2014 Ordnance Survey 100019529