



PLANNING COMMITTEE
16th October 2014

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

Former GKN Factory, Middlemore Lane West, Aldridge, WS9 8DT

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the creation of an earth embankment with associated retaining structures on the boundary of Middlemore Lane West and the adjacent service road to the west.

Due to the risks to public safety notably pedestrians and road users along Middlemore Lane West, the Council is also seeking to use other enforcement powers to limit the risk of harm arising in the immediate future. This action is being undertaken in parallel to any planning enforcement that may be agreed in respect of the recommendations of this report.

The purpose of the planning enforcement action is dual purpose. Firstly to ensure the works are undertaken not only in a manner which ensures immediate public safety but also to address long term impacts to the environment especially with regard to potential contamination, damage to the natural environment and the visual harm that arises from the appearance of the development.

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 2.3.
- 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 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 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 the accurate and up to date notices are served.

Details of the Enforcement Notice

The Breach of Planning Control:-

Without the required planning permission the undertaking of engineering works to create an earth embankment with level plateau above used for the parking of vehicles with associated retaining structures.

Steps required to remedy the breach:-

1. With immediate effect to cease works to create the embankment and plateau.
2. Within one month from the enforcement notice coming into effect, a scheme to be submitted to the Local Planning Authority for approval detailing the timescales for the start and completion of works to achieve the reduction in size or complete removal of the bank and any materials which have become contaminated as a result of contact with the tipped materials landscaping and a fully justified methodology for the removal of imported materials, from the site and the removal of the unauthorised structures and the parking area above and leaving the final surface in a stable condition, either level or at a safe angle of repose, which would not hold ponded surface water. .
3. Within six months from the enforcement notice coming into effect, the material, structures, parking area and other associated works will be completed to the satisfaction of the Local Planning Authority.

Period for compliance:-

The scheme shall be submitted within 1 month from the enforcement notice coming into effect The works shall be commenced within 1 month of approval of the submitted scheme. After commencement the works shall be completed within 4 months.

Reason for taking Enforcement Action:-

The embankment presents an immediate risk in the view of the Local Planning Authority to public safety with regard to the potential collapse of the bank onto the public highway. The works undertaken have not been supported by the submission of any evidence from a recognised civil engineer or other qualified person able to verify the stability of the bank and are likely to present a risk to users of adjacent property and the public highway .

The works to construct the bank have also resulted in harm to the trees surrounding the edge of the site detrimental to their well being and long term survival. The consequential damage to the trees would necessitate their removal to the detriment of the overall character of the surrounding area.

The parking of vehicles atop of the embankment on the elevated plateau created through the unauthorised works has resulted in an unsafe form of parking provision on land believed by the Local Planning Authority to be

unstable and unsecured through the provision of suitable safety barriers to prevent falling.

The Local Planning Authority has reason to believe that the proposed works have impacted on existing services located on the edge of the site and which may now be damaged or at risk of future failure.

In the absence of any verification on the materials used in the construction of the embankment, concern is raised by the Local Planning Authority with regard to the materials that may have been used in the construction of the earth bank which may by their inherent nature or interaction with the environment or other materials present a risk to human health or the natural environment including protected species.

The earthworks in their current form with exposed soil and exposed waste materials represents an unsightly form of development detrimental to the character of the surrounding street scene.

The works undertaken therefore fails to have a positive impact on the character of the area and is contrary to the aims and objectives of policies GP2, paragraph 3.6, paragraph 3.7, ENV10, ENV14, ENV18, ENV32, ENV33, ENV40 and T7 of Walsall Unitary Development Plan, policy ENV3 of The Black Country Core Strategy and the National Planning Policy Framework.

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:

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
- Protection of public health and the wider environment
- Highway safety
- Ensure a safe form of development

Key provisions of the NPPF relevant in this case:

4: Promoting Sustainable Transport

40. Local authorities should seek to improve the quality of parking in town centres so that it is convenient, safe and secure, including appropriate provision for motorcycles.

7: Requiring Good Design

58. Developments should function well and add to the overall quality of the area.

64. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

11: Conserving and enhancing the natural environment

109. The planning system should prevent both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability

120. To prevent unacceptable risks from pollution decisions should ensure that new development is appropriate to its location. The effects (including cumulative effects) of pollution on health or general amenity and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

121. Planning policies and decisions should also ensure that:

- the site is suitable for its new use taking account of ground conditions and
- land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural
- environment arising from that remediation;
- after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and
- adequate site investigation information, prepared by a competent person, is presented.

123. Planning decisions should aim to:

- Avoid noise from giving rise to significant adverse impacts
- Mitigate and reduce to a minimum other adverse impacts on health and quality of life.
- Recognise that development will often create some noise
- Identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value.

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 "*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.

This checklist has been published on the BCCS and Council websites. Cabinet on 24th July 2013 resolved to endorse 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.

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
- 3.6 Development and redevelopment schemes should, as far as possible, help to improve the environment of the Borough.
- 3.7 In considering proposals for development or redevelopment, the Council will seek to protect people from unacceptable noise, pollution and other environmental problems. The Council will encourage the relocation of bad neighbour uses from residential and other sensitive areas and will assist the identification of alternative sites.
- ENV10 The development of an industry or facility which may cause pollution will only be permitted if it would not:-
- I. Release pollutants into water, soil or air, whether on site or elsewhere, which would cause unacceptable harm to health and safety or the natural environment.
 - II. Cause unacceptable adverse effect in terms of smoke, fumes, gases, dust, steam, heat, light, vibration, smell, noise or other polluting emissions.
- ENV14 Where either the site or adjoining land is found to have been occupied or underlain by uses or activities which may have:
- I. contaminated the site;
 - II. affected the stability of the site; or
 - III. led to the generation of landfill gas;
- the application must also be accompanied by a site investigation report which identifies the hazards actually present on the site, assesses the level of risk for the proposed development and sets out a strategy and timescale for dealing with them as part of the

- proposed development.
- ENV18 The Council will ensure the protection, positive management and enhancement of existing woodlands, trees and hedgerows.
- ENV32 (a) Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted.
 III. On a visually prominent site.
 (b) When assessing the quality of design of any development proposal the Council will use some or all of the following criteria:-
 I. The appearance of the proposed development.
 II. The height, proportion, scale, and mass of proposed buildings / structures.
 III. The materials proposed for buildings, external spaces and means of enclosure.
 X. The maintenance requirements of the development.
- ENV33 Development proposals meeting any of the following criteria will also be required to be supported by full details of external layout and landscape proposals:-
 IV. Larger development proposals
- ENV40 (c) The quality of all water resources will be protected and, where possible, improved. Development will not be permitted if the drainage from it poses an unacceptable risk to the quality or usability of surface or ground water resources. In particular the Council will need to be satisfied that:-
 I. Adequate foul and surface water drainage infrastructure is available to serve the proposed development.
 II. Appropriate pollution control measures are incorporated to reduce the risks of any water pollution.
 III. Appropriate use will be made of sustainable urban drainage techniques that reduce the volume of surface water runoff by allowing this to replenish groundwater or surface watercourses by natural seepage.
- T7 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

Supplementary Planning Documents (SPD)

On the basis that relevant UDP policies are consistent with NPPF, the related SPD(s) will also be consistent provided they are applied in a manner consistent with NPPF policy. The relevant SPD's are:

Designing Walsall (SPD) (Feb 2008)

Aims to achieve high quality development that reflects the borough's local distinctiveness and character, through eight key design principles and ten policies. The following are the relevant policies;

DW3: Character - all new development must be designed to respect and enhance local identity

DW9: High Quality Public Realm - new development must seek to ensure it creates places with attractive environmental quality

5.0 LEGAL IMPLICATIONS

Pursuant to section 171A(a) of the Town and Country Planning Act 1990 (as amended) the carrying out 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 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 appearance of the land overrules the owner's right to the peaceful enjoyment of his property.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Aldridge Central And South

9.0 CONSULTEES

None.

10.0 CONTACT OFFICER

Shawn Fleet - Tel: 01922 650453

Development Management

11.0 BACKGROUND PAPERS

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
16th October 2014

12.0 BACKGROUND AND REPORT DETAIL

This recommendation forms part of a range of enforcement action that the Council is considering in respect of the unauthorised works. These different measures should not be seen as alternatives to each other but as serving different purposes.

The role of this recommended planning enforcement is to address both the immediate and long term impact arising from the work undertaken. This is being supplemented by emergency action being taken under highways legislation in respect of the risks being presented to users of the adjacent highway. As a precaution Highway Engineers have closed and fenced off the footway adjacent to the embankment. The Health and Safety Executive have also been informed in relation to the potential risks to users of the site.

An update will be provided to Committee with regard to any additional action that is being undertaken.

In assessing the grounds for any planning enforcement, it is noted that the GKN Factory has benefited from a series of planning approvals for improvements to the operation of the site when it was an operational factory. More recently, consent was granted under application 13/0858/FL for the change of use of the building to a range of class B uses together with alterations. The full planning history is set out below.

Ref. No.	Proposal	Address	Decision	Date
03/0859/FL/E7	Demolition of existing dilapidated office building, provision of additional car parking, extension to existing factory building, overcladding of existing factory frontage	GKN Driveline Limited, Middlemore Lane West, Aldridge, Walsall,	Grant Permission Subject To Conditions	07/10/2003
03/0859/FL/E7	Demolition of existing dilapidated office building, provision of additional car parking, extension to existing factory building, overcladding of existing factory frontage	GKN Driveline Limited, Middlemore Lane West, Aldridge, Walsall,	Grant Permission Subject To Conditions	07/10/2003
11/0648/PD	Prior Notification for Demolition of Existing Industrial Building.	GKN Driveline Limited, Middlemore Lane West, Aldridge, Walsall,	Demolition Approved	17/06/2011
13/0858/FL	Change of Use of Building to B1(c), B2 and B8 with Associated Works and Alterations to the East and West Elevations to Insert new Roller Shutters and openings	Former GKN Factory, Middlemore Lane West, Aldridge, WS9 8DT	Grant Permission Subject To Conditions	30/09/2013
13/1628/FL	Removal of conditions 6, 8, 10, 13, 15, 16 & 19; and submission of details required for condition 12a of planning permission 13/0858/FL.	Former GKN Factory, Middlemore Lane West, Aldridge, WS9 8DT	Grant Permission Subject To Conditions	12/03/2014

The area of the site subject to the works to increase the embankment is on the north western corner of the site. This part of the GKN site is bounded by a 2.0m high palisade fence.

The ground rises between 4.0m and 5.0m above the adjoining pavement which is an increase of approximately 1.0m to 1.5m above the historical ground level. More notably though, the embankment has been brought forward with the first 2.0m of height being supported by retaining structures and then sloped back compared to the historic form of a evenly sloping bank rising from the base of the boundary fence.

The works now being undertaken on the site do not benefit from planning approval and in the opinion of the Local Planning Authority represent engineering works for which consent should be sought.

The creation of the earth bank has been undertaken by increasing the height of the existing ground level and retaining the structure through four primary methods. These are

- (1) a gabion wall raked back into the site,
- (2) a timber wall made principally of railway sleepers,
- (3) a blockwork retaining wall and
- (4) soil embankment

No evidence has been submitted to the Local Planning Authority of the method of construction of the embankment and the retaining structures nor have any details been provided of the materials used in the construction, drainage arrangements, assessment of impact on the trees within the site or potential harm to the environment.

It is considered that the embankment in its current form is also of an unsightly appearance within the street scene comprising as it does of waste materials, soil and exposed hardcore. The works appear to also have had a detrimental impact on the trees on site which will be to the detriment of the amenity of the area, a fact exacerbated by the lack of any new planting to screen the embankment.

The owner of the site through their agent, has indicated that they intend to submit a retrospective planning application. They have been advised that any such scheme must fully justify retention and set out details of works to address tree damage and risk to the public highway to regularise the situation. Despite promises being made to the Local Planning Authority that an application would be submitted by the 6th October, at the time of writing the report, no application has been submitted.

From a visual inspection of the site, it is apparent that some parts of the embankment are of poor construction and evidence of cracking within the blockwork wall has been noted. The owner of the site believes this to be due to physical damage from plant on the site but there is no evidence to show that the damage will not increase.

Some soil has already spilled from the site onto the boundary fence and the pressure of this material is now compromising the integrity of the common boundary between neighbouring properties.

In respect of this damage, the Council has received complaints with regard to the impact that the soil is having on the shared fence.

It is considered expedient that enforcement action is now taken because of the harm the unauthorised development is causing to the amenity of neighbouring properties and possible risk to users of adjacent property and the public highway and an enforcement notice is issued to rectify the breach of planning control. Officers also request that should any enforcement notice not be complied with prosecution proceedings are undertaken.