



PLANNING COMMITTEE

Date: 31st October 2019

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.

Address: Garages adjacent 78, Monmouth Road, Bentley, Walsall

Reference no. E18/0344

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against the:
 - a) Erection of 2.4m steel palisade fencing and gates at front of garage block adjacent to the highway, without the benefit of planning permission.
- 1.2 The site is a garage block containing 3 domestic garages with driveways in front, positioned adjacent to 78 Monmouth road and opposite no 39 Monmouth road, in a residential area. A few metres to the South-West of the site, is the entrance to a large playing field. The street is characterised by semi-detached dwellings set back from the road with large front gardens and low boundary walls some properties also have hedges which range in height. The character

2.0 RECOMMENDATIONS

- 2.1 **That authority is granted to the Head of Planning, Engineering and Transportation 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, Engineering and Transportation to institute prosecution proceedings and/or direct action** in the event of non-compliance with an Enforcement Notice.
- 2.3 **To authorise the Head of Planning, Engineering and Transportation, 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.

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3.0 DETAILS OF THE ENFORCEMENT NOTICE

THE BREACH OF PLANNING CONTROL

3.1 Without the benefit of planning permission:

- a) Erection of 2.4m high steel palisade fencing and gates at front of garages, adjacent to the highway.

3.2 Steps required to remedy the breach:

1. Completely remove the palisade fencing and gates

OR

2. Reduce the height of the fencing and gates to a maximum height of 1 metre.

AND

3. Remove all waste materials created following the undertaking of actions (1 or 2) to be taken to an approved site licenced to accept such materials.

3.3 Period for compliance:

1. within 1 **month from when the notice takes effect.**

3.4 The reasons for taking enforcement action:

- a) Officers consider that the breach of planning occurring at this site commenced within the last 4 years.
- b) The siting of the fence and gates on the back of pavement, alongside the height at 2.4 m and the choice of materials and colour creates an overly dominant and incongruous boundary treatment within the street scene. Furthermore, the gates open out onto the adjacent footpath causing an unacceptable obstruction pedestrians and affecting safety of users. This fails to respect the character, appearance and context of this residential area. Accordingly, the fencing is contrary to policies CSP4 and ENV3 of the Black Country Core Strategy, saved policies GP2 and ENV32 of the Walsall UDP, and guidance in Designing Walsall SPD and NPPF.

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 in making an appeal, if it is considered that the Council has acted unreasonably. Planning applications may also be submitted that require an application fee.

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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/guidance/national-planning-policy-framework

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:

- Section 4 – Decision Making
- Section 8 – Promoting healthy and safe communities
- Section 9 – Promoting sustainable transport
- Section 12 – Achieving well-designed places

On **decision-making** the NPPF sets out the view that local planning authorities should approach decisions in a positive and creative way. They should use the full range of planning tools available and work proactively with applications to secure developments that will improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

National Planning Policy Guidance

On **material planning consideration** the NPPG confirms- planning is concerned with land use in the public interest, so that the protection of purely private interests... could not be material considerations

Development Plan

www.go.walsall.gov.uk/planning_policy

Black Country Core Strategy

- CSP4: Place Making
- ENV3: Design Quality

Saved Policies of Walsall Unitary Development Plan

- ENV32: Design and Development Proposals
- GP2: Environmental Protection

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Supplementary Planning Documents

Designing Walsall

Policies are available to view online:
http://cms.walsall.gov.uk/planning_policy

6.0 LEGAL IMPLICATIONS

- 6.1 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.
- 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. 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.
- 6.3 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.
- 6.4 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.
- 6.5 Non-compliance with an Enforcement Notice constitutes an offence. In the event of non-compliance, the Council may instigate legal proceedings.
- 6.6 Pursuant to section 178 of the Town and Country Planning Act 1990 (as amended):
- “Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may –

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- (a) Enter the land and take the steps; and
- (b) Recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.”

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

- 8.1 Enforcement action will improve the visual amenities of the local environment.

9.0 WARD(S) AFFECTED

- 9.1 Bentley & Darlaston North

10.0 CONSULTEES

- 10.1 None

11.0 CONTACT OFFICERS

- 11.1 Emma Green Senior Enforcement Officer

12.0 BACKGROUND PAPERS

- 12.1 Enforcement file E18/0344 not published.
- 12.2 Enforcement file E18/0372 not published.

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13.0 BACKGROUND AND REPORT DETAIL

- 13.1 A plan showing the location of the site is attached to this report.
- 13.2 The site is a small block of three garages that are situated to the south of 78 Monmouth Road, within in a residential neighbourhood. A few metres to the South-West of the site, is the entrance to a large playing field.
- 13.3 On 21st September 2018, the Council received a complaint that the owner of three garages opposite 39 Monmouth Road had built a fence that they believed required planning permission.
- 13.4 On 26th September 2018, a Case Officer visited the garages on Monmouth Road; to take measurements and digital photographs of the fence and the land surrounding it, including a street view of the fence alongside the other houses.
- 13.5 The officer during the visit noted, the fence opens out onto the road, which completely stops access of the pavement whenever it is in use. The height is 2.4m and creates a feature boundary treatment which creates a discord with the area by disrupting the area's character which is generally quite open with low brick walls and hedges of varying heights. The fence is a visual obstruction of the highway that affects drivers exiting the drive of the adjacent property 78 Monmouth Road.
- 13.6 Investigations have noted that in April 2016 the garages did not have any fencing or gates enclosing the site, it has an open frontage like the adjacent properties. The erection of fencing and gates at the site occurred between May and September 2018, so within the last four years and therefore with the timeframe that enforcement action can be considered.
- 13.7 The case officer then assessed the retention of the fencing and gates against the development plan to consider if retrospective planning permission could be supported. The use of galvanised palisade fencing is common place boundary treatment for industrial setting, but would not be a usual boundary treatment for a domestic setting. It was considered that the position, height and material used to form the boundary treatment was inappropriate within this residential setting. Saved policy ENV32 of the Walsall UDP, is clear that poorly designed development which fails to properly take into account the context will not be permitted. Monmouth Road, falls within the Bentley character area as described on Designing Walsall SPD. Which considers that the existing character of the area is a sense of spaciousness, with wide streets, houses set back, long gardens and 'greenness'. Therefore the enclosure of this garage site with 2.4m high palisade fencing is completely at odds with the prevailing character and unacceptably erodes the spacious character and does not add to the 'greenness'. This failure to respect the context of the area is contrary policies CSP4 and ENV3 of the BCCS, saved policies GP2 and ENV32 of the Walsall UDP and guidance in the NPPF and Designing Walsall SPD. It should also be noted that to allow the gates and fencing to remain has installed would set an undesirable precedent for inappropriate boundary treatment in a residential area.
- 13.8 On 5th April 2019, the Case officer sent a letter to the owner to inform that the fence was not acceptable. Firstly the height exceeded Permitted Development, and that planning permission was requires, however it was unlikely to be

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supported due to the height, appearance and the adverse impact it has on the character of the area. According to policy, the letter set out steps the owner of the site could undertake to remedy the breach, these were to remove the fencing in its entirety or to reduce the height to 1m to conform to permitted development allowances. The letter gave the owner until the 10th May 2019 to seek to remedy the breach without the need for formal action.

- 13.9 To see whether the steps to remedy the breach had been followed through by the, a Case officer made a second site visit on 4th June 2019 to discover that the breach was still on going.
- 13.10 On the 18th October 2019, officers wrote to owners to seek compliance with our request to address the breach of planning control by reducing the height to a maximum of 1m in height or removing the fencing entirely.
- 13.11 Due to the owner's refusal to adhere to informal request to resolve the breach of planning control, officers are therefore seeking to gain authorisation to serve an enforcement notice to remedy the breach.
- 13.12 Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. When assessing whether to instigate enforcement action the committee is advised that the following needs to be considered:
- i. the proposed action must be in the public interest
 - ii. the breach must be sufficiently harmful to justify taking action
 - iii. the proposed action must be reasonable and commensurate with the breach in planning control to which it relates
 - iv. the action undertaken should be cost effective
 - v. whether or not the development is in accordance with planning policies
- 13.13 Officers consider that the owners have been aware since September 2018 of the breach of planning control and has not sought to address matters. There is public interest in the breach and as set out above the retention of the boundary treatment would breach policies within the development plan. Therefore, enforcement action is considered to be expedient as it is sufficiently harmful. The action is reasonable and commensurate with the breach, cost effective and in accordance with planning policies.



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