



## PLANNING COMMITTEE

10<sup>th</sup> April 2014

### REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

#### Shelfield Service Station, Lichfield Road, Walsall WS4 1PQ

#### 1.0 PURPOSE OF REPORT

To advise members of a breach of planning control comprising the display of two internally illuminated vertical 'CAR WASH' lettering signs and to recommend prosecution proceedings.

#### 2.0 RECOMMENDATIONS

- 2.1 To authorise the Head of Planning and Building Control to instigate legal proceedings to prosecute the owner(s) and/or occupier(s) and other relevant persons, under Section 224 of the Town and Country Planning Act 1990, in respect of the display of two advertisements without the consent required under the Town and Country Planning (Control of Advertisements) Regulations 2007, for the reasons set out in the report.
- 2.2 To authorise that the decision as to the institution of legal proceedings, in the event of the non-return of Requisitions for Information, or a Planning Contravention Notice, be delegated to the Head of Planning and Building Control.

#### 3.0 FINANCIAL IMPLICATIONS

As part of any prosecution proceedings an application would be made to the Magistrates Court seeking to recover investigating and Legal Officer's costs. An application for an award of the defendant's costs against the Council could be made if it were considered prosecution proceedings were unreasonable.

#### 4.0 POLICY IMPLICATIONS

The report recommends instigation of prosecution proceedings 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
- Take account of the different roles and character of different areas

**Key provisions** of the NPPF relevant in this case:

7: Requiring Good Design

56. The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

67. Poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Control over outdoor advertisements should be efficient, effective and simple in concept and operation. Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority's detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

68. 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.

12: Conserving and Enhancing the Historic Environment

131. LPA's should take account of the desirability of new development making a positive contribution to local character and distinctiveness.

Enforcement

207. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

### **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) (2011)**

[http://www.walsall.gov.uk/index/environment/planning/local\\_development\\_framework/ldf\\_core\\_strategy.htm](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 24<sup>th</sup> 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: Historic Character and Local Distinctiveness

States that development proposals will be required to preserve and, where appropriate, enhance local character and those aspects of the historic environment together with their settings which are recognised as being of special historic, archaeological, architectural, landscape or townscape quality.

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

### **Walsall Unitary Development Plan**

[www.walsall.gov.uk/index/environment/planning/unitary\\_development\\_plan.htm](http://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: 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.

3.6: Development should help to improve the environment of the Borough.

ENV32: When assessing the quality of design of any development proposal the Council will use among other criteria:

- i The appearance of the proposed development;
- ii The materials proposed for buildings;
- iii The effect on the local character of the area.

ENV35: Seeks to ensure the appearance of commercial buildings should be appropriate to their setting and sympathetic to the building on which they are situated.

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

### **Supplementary Planning Document “Designing Walsall” (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

‘It is considered in this case that the relevant provisions of Designing Walsall policies are consistent with the NPPF.’

**5.0 LEGAL IMPLICATIONS**

None arising from the report.

**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 upon public amenity overrules the owner’s right to the peaceful enjoyment of his property.

**7.0 ENVIRONMENTAL IMPACT**

The report seeks enforcement action to remedy the impact upon visual amenity

**8.0 WARD(S) AFFECTED**

Rushall and Shelfield

**9.0 CONSULTEES**

None.

**10.0 CONTACT OFFICER**

Barbara Toy  
North Team – 01922 652615

**11.0 BACKGROUND PAPERS**

Enforcement file not published

**David Elsworthy**  
**Head of Planning and Building Control**

**Planning Committee**  
**10<sup>th</sup> April 2014**

## **12.0 BACKGROUND AND REPORT DETAIL**

- 12.1 The site comprises a petrol filling station set within a roughly triangular shaped plot situated on the western side of Lichfield Road (A461 part of the Strategic Highway Network). A single storey shop building sits to the rear of the forecourt canopy with a mechanical car wash to the south of the building, two jet wash bays sit to the north east of the frontage and an air line, vacuum and floodlight sit adjacent to the southern boundary of the site. The site is surrounded by residential properties. Following a complaint and investigations by an enforcement officer a retrospective application for display of advertisements was submitted, for the retention of two plastic banner advertisements, advertisement on the jet wash screen and illuminated advert within the car wash bay. The application (13/1033/AD) was determined on the 26<sup>th</sup> September 2013 when the advertisements on the jet wash screens was approved but the two banner signs and the illuminated advert within the car wash bay was refused. Since the decision the two banner signs have been removed from the site.

The two vertical, internally illuminated 'CAR WASH' signs, one on each arm of the mechanical car wash, facing the frontage and illuminated by blue flashing LED lights (each sign 1906mm x 200mm) remain in situ despite the refusal of advertisement consent.

- 12.2 Officers wrote on the 7<sup>th</sup> January 2014 advising the owner that unless the signs were removed within 28 days the situation would be reported to the Planning committee to seek authorisation to instigate prosecution proceedings to ensure the removal of the signs. This advice was reiterated to the owners agent on 11<sup>th</sup> February 2014.
- 12.3 Officers visited the site on 8<sup>th</sup> January 2014 and 26<sup>th</sup> February 2014 and confirmed that the signs were still in situ and the lettering still illuminated with intermittent flashing LED blue lights.
- 12.4 The signs, despite their location inside the mechanical car wash are very obtrusive. The 'CAR WASH' lettering within the signs continue to flash with blue LED lights on a 24 hour basis, even when the car wash is not in use. The lights are very bright with continuous movement and can be seen from the road and cause a nuisance to the residential properties directly opposite the site. The visual impact of the signs is considered inappropriate for this location. For these reasons the signs are contrary to the National Planning Policy Framework in particular paragraphs 67 and 68, policy ENV2 of the Black Country Core Strategy, saved policies 3.6, GP2, ENV32 and ENV35 of Walsall's Unitary Development Plan and policies DW3 and DW9 of Designing Walsall – Supplementary Planning Document.
- 12.5 Unlike other breaches of planning control, displaying an advertisement without the necessary consent is a criminal offence. No enforcement notice needs to be served, enforcement is taken by prosecution. To remedy the harm the display of the advertisements is having, officers believe it is in the public interest to request

authorisation to pursue legal proceedings for the removal of the two internally illuminated 'CAR WASH' signs.

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