



Walsall Council

PLANNING COMMITTEE.

Date: 29th November 2018.

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.

Address: 78-80 Noose Lane, Willenhall.

Reference no. E18/0113.

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against:
- a) The unauthorised 'Change of Use' of the site from residential use to a scrap and storage yard;
 - b) Unauthorised erection of a garden structure within 2m of curtilage in excess of 2.5m in height (ranging between 2.6 – 3.0m in height).
 - c) The unauthorised erection of border treatment/fencing in excess of 2 metres at the curtilage of the property; and
 - d) The unauthorised erection of border treatment/fencing in excess of 1 metre at the curtilage of the property adjacent to a highway.

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** 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.

3.0: DETAILS OF THE ENFORCEMENT NOTICE

3.1 The Breach of Planning Control

Without planning permission the change of use of the site and operational development for the following:

- a) Change of use from residential to mixed use residential and scrap and storage yard (Sui generis). The site is being used for storage of the following items, including but not limited to: 14 motor vehicles, miscellaneous trailers, touring caravan, bicycles, bicycle parts; spare vehicle parts/components: car bumpers, car windshields, alloy wheels & tyres; scrap metal, building materials: large construction brick/block stacks, corrugated sheeting, wood/timber, adhesive/paint tubs; tiles; UPVC frames, garage doors, fence panels; and other miscellaneous items including: metal cabinets and tables, electrical items; pallets, site hoardings,
- b) Erection of a garden structure within the curtilage of 80 Moose Lane within 2m of the curtilage of 78 Moose Lane, and in excess of 2.5m in height (ranging between 2.6 – 3.0m).
- c) Erection of new front boundary fencing adjacent to Moose Crescent and Moose Lane at heights ranging from 1.92 – 2.15m.
- d) Erection of fencing at the front boundary between 78 and 80, Moose Lane at heights ranging from 2.06 to 2.4m.
- e) Erection of fencing along the rear boundary adjacent to Moose Crescent at height of 2.42 metres.

Thereby now referred to as unauthorised Change of Use from residential to a scrap and storage yard (a) and “the unauthorised operational development” (b - e).

3.2 Steps required to remedy the breach:

- i. Cease Use of the site for scrap and storage yard purposes;
- ii. Permanently remove all of the stored items associated with scrap and storage yard including but not limited to: 14 motor vehicles, miscellaneous trailers, touring caravan, bicycles, bicycle parts; spare vehicle parts/components: car bumpers, car windshields, alloy wheels & tyres; scrap metal, building materials: large construction brick/block stacks, corrugated sheeting, wood/timber, adhesive/paint tubs; tiles; UPVC frames, garage doors, fence panels; and other miscellaneous items including: metal cabinets and tables, electrical items; pallets, site hoardings,
- iii. Reduce the height of the rear garden structure to less than 2.5 metres in height;
- iv. Permanently reinstate a boundary fence between 78 and 80 Moose Lane ensuring that number 78 Moose Lane has a garden space measuring no less than 68m² or a minimum of 12 metres in length (in accordance with Appendix D. Designing Walsall UDP).
- v. Permanently remove or alter the boundary fence, as indicated in on the plan marked **blue**, to reduce the height to be no greater than 1m.
- vi. Permanently remove or alter the boundary fence, as indicated on the plan marked **green**, to reduce the height to be no greater than 2m;

- vii. Permanently reduce the boundary fencing, as indicated on the plan marked **black and red**, to the original height of 2.15 metres; and
- viii. Leave the site in a clean and tidy condition, disposing of any waste materials generated from the above works to a suitable facility licensed to accept these items.

3.3 Period for compliance:

To undertake the works set out in paragraph 3.2, parts (i)-(viii) within **3 months** from when the notice takes effect.

3.4 Reasons for taking Enforcement Action.

- 3.41 The Change of use of the site for use as a scrap and storage yard requires planning permission. The unauthorised use of the site is out of keeping with the lawful residential dwelling house. The semi-detached house is in a residential area, including residential flats adjacent to the rear yard. The operation of the scrap and storage yard has a detrimental impact on the amenities of the occupiers of neighbouring property's in terms of the adverse visual appearance, impacting negatively upon the visual amenity and the character of the surrounding area. Furthermore, the level of noise, and disturbance generated at the site is in excess of that expected of a residential site. Accordingly, the continued use of the site as a scrap and storage yard 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 the NPPF.
- 3.42 The rear garden structure is in excess of Permitted Development allowances due to the height exceeding 2.5 metres. The structure is located along the boundary with number 78 Noose Lane. The sub-division of the original garden for number 78 has resulted in this large garden structure creating an imposing and intrusive building in close proximity to the main dwelling house of number 78. Accordingly, the development adversely impacts on the amenities of occupiers of number 78 in terms of overbearing, loss of light and loss of outlook, contrary to policies CPS4 and ENV3 of the Black Country Core Strategy saved policies GP2 and ENV32 of the Walsall UDP and guidance in the NPPF and Designing Walsall SPD.
- 3.43 The increase in height of all fencing is beyond Permitted Development allowances. The resulting boundary treatment had an imposing effect creating an incongruous boundary treatment, culminating in an adverse impact on the character and appearance of the surrounding area; contrary to policies CPS4 and ENV3 of the Black Country Core Strategy saved policies GP2 and ENV32 of the Walsall UDP and guidance in the NPPF and Designing Walsall SPD.

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

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

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:

- NPPF 11 – Making effective use of land
- NPPF 12 – Achieving well-designed places

5.2 Local Policy

Black Country Core Strategy

- CSP4: Place Making
- ENV3: Design Quality

'Saved Policies' Unitary Development Plan

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

Designing Walsall SPD

- DW3 Character
- Appendix D: Numerical Guidelines for Residential Development.

Policies are available to view online:

https://go.walsall.gov.uk/planning_policy

6.0 LEGAL IMPLICATIONS

- 6.1 Pursuant to section 171A (1a) of the Town and Country Planning Act 1990 (as amended) the carrying out of development without the required planning permission.
- 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.

- 6.3 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.
- 6.4 Officers consider that the breach of planning control occurring at this site is development commenced without the benefit of planning permission within the last year in connection with the unauthorised uses which is within the 10 years period, within which unauthorised material changes of use may be enforced against. Whilst the operational development in terms of the garden structure and fencing has occurred without the benefit of Planning Permission within the last 4 years, within which unauthorised operational development at residential premises may be enforced against.
- 6.5 Section 191 (2)
Lawfulness is defined in section 191(2) of the 1990 Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.
- 6.6 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.
- 6.7 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.
- 6.8 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.

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

Enforcement action will improve the visual amenities of the environment, protect the environment and remedy the adverse environmental impacts.

9.0 WARD(S) AFFECTED

Willenhall South

10.0 CONSULTEES

None.

11.0 CONTACT OFFICERS

Rich Stokes - Enforcement Officer.

12.0 BACKGROUND PAPERS

Enforcement file E18/0113 not published.

13.0 BACKGROUND AND REPORT DETAIL

Background

- 13.1 A plan showing the location of the site and the location of fencing considered in breach of planning control are attached to this report.
- 13.2 On 12th April 2018, the Council received a complaint that a residential property at 80 Moose Lane was unsightly and the boundary treatment was excessively high. There was also a trailer chained to a sign post outside the address on Moose Lane.
- 13.3 On 17th April 2018, the Case Officer visited 80 Moose Lane; taking measurements and creating digital images of the site, including the land surrounding the semi-detached residential property. The land was found to have been extended across the rear garden of No 78 Moose Lane.
- 13.4 It was noticed during this visit that the rear of the site contained some 13 vehicles, storage units/sheds, caravan, car parts, scrap, bricks, timber, bicycles, detritus, etc., to an extent reminiscent of a scrap yard site.
- 13.5 During a phone call (26/04/18) the occupier of number 80 Moose Lane stated that the heightened fence was necessary for security of the site. He stated he was the owner of all contents of the site.
- 13.6 On checking the history, it was apparent that Planning Permission did not exist for the change of use of the site. Furthermore Council systems illustrated that the site had previously been subject of complaints in January 2008, August 2012, and April 2015. These complaints related to the use of the site for the stripping of vehicles; alterations to the fence heights; and storage of scrap materials respectively.
- 13.7 A review of these case files and associated photographs revealed that the use of the site for the stripping of vehicles has ceased. The matters relating to the alterations to the fence height at the side of 80 Moose Lane were not progressed and so have become lawful with time (i.e. not enforced within the four year limitation of proceedings). Turning to the use of the site, photographs in 2008 clearly illustrate that the rear garden of number 80 was utilised for the parking of various vehicles. In addition, it is clear that a 1.8 metre close boarded fence defined the full length of the boundary between numbers 78 & 80. During the period up to November 2014, numerous site visits were undertaken which demonstrated a continuation of the use of the rear garden for parking. Photographs taken in 2011 illustrate the increase in garden area for number 80 through the intake of two separate parcels of land, which previously formed the rear garden of 78 Moose Lane.

- 13.8 Between November 2014 and July 2016, photographs of the site illustrate an increase in the level of activity at the site and intensification of use. The site was no longer being used solely for the parking of vehicles, but was clearly in use for the storage of a multitude of scrap items including but not limited to vehicles and dilapidated cars, car parts, and building materials.
- 13.9 As such, on 27th April 2018, the Occupier was sent written correspondence informing him that a Planning *change of use* had occurred at the site and he should cease the use of the site for scrap/storage purposes and address the breaches relating to some of the boundary fencing (now lawful with time), within 28 days of the 27th April 2018.
- 13.10 On the 20th June 2018, the Case Officer visited the site in order to monitor for compliance with the request to cease use. The Officer noted that no visible works had been undertaken in order to address the identified breaches. Further photographs of the site were taken.
- 13.11 On 9th July 2018 following an additional complaint, the Case Officer re-visited the site. He noted that three vehicles were now being stored on the front of the house and high fencing had been fitted to the front boundary. A section of this fencing in excess of 2m in height (ranging between 2.03 - 2.42m) had been erected along the front boundary with number 78 Moose Lane– the attached property.
- 13.12 He saw also that new fencing continued forward of the front building line along the curtilage with Moose Lane and Moose Crescent – both highways - in excess of 1m (ranging between 1.92 - 2.15m). Otherwise, with regard to the content and appearance of the rear of 80 Moose Lane, the site remained relatively unchanged.
- 13.13 On 10th July 2018, the owner of 80 Moose Lane telephoned the Planning department. He was advised at length how the site appeared to be in breach of planning control. He stated there had been cars on the site for 10 years and the content of the site was his hobby, pension and an investment. He was informed that the mass storage of such items is not ancillary to a residential dwelling. He agreed that the site was unsightly and stated he would seek planning advice, before updating the Council with his intentions regarding the alleged breaches.
- 13.14 On the 11th July 2018, the owner was sent a letter instructing him to remedy the additional breaches, which were evident as a result of the installation of the new front fencing.
- 13.15 In the absence of any further updates from the owner of 80 Moose Lane, the case Officer visited the site again on 6th September 2018. At this time he noted that no works had been undertaken to seek to remedy the identified breaches in Planning Control.



