



## PLANNING COMMITTEE

13<sup>th</sup> March 2014

### REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

#### Amaco Filling Station/ Diamond Hand Car Wash/ Ward Street Filling Station, 44 Ward Street, Walsall, WS1 2AG

#### 1.0 **PURPOSE OF REPORT**

To request authority to take planning enforcement action in respect of the use of unauthorised car parking, car wash and tyre fitting.

#### 2.0 **RECOMMENDATIONS**

- 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 to require remedial actions to be undertaken as shown below.
- 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, the non-return of Requisitions for Information or a Planning Contravention Notice, and the institution of injunctive proceedings in the event of a continuing breach of control, in accordance with paragraph Part 3.2 – 6(a) (7) of the constitution.
- 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.
- 2.4 *That authority is given for the Head of Planning and Building Control to prosecute under section 224 of the Town and Country Planning Act 1990 in respect of the unauthorised display of advertisements comprising a large 3-sided forecourt sign, and a red banner on the site.*

#### Details of the Enforcement Notice

##### **The Breach of Planning Control:-**

The mixed use of the site for car parking, car wash and tyre fitting requires planning permission.

##### **Steps required to remedy the breaches:-**

- Permanently cease the use of the site for car parking, car washing and tyre fitting
- Permanently remove from the land all vehicles, materials, structures, equipment and signage which are used in connection with the use for vehicle washing, valeting and tyre changing.

- Remove all waste from the site.
- Erect a wooden trip rail to match the existing trip on the site at all parts of the perimeter of the land where vehicles gain access, not to be removed until the land is brought back into lawful use.

**Period for compliance:-**

One month

**Reason for taking Enforcement Action:-**

1. The change of use requires planning permission. A temporary two year permission was allowed on appeal 18/4/11 on the basis that the land would be restored at the end of that period. The conditions of the permission granted on appeal were not discharged. Thus, regardless of whether the permission was implemented, the use of the site for present purposes constitutes a change of use and requires planning permission.
2. The retention of the car parking, car wash and tyre sales do not represent a comprehensive regeneration redevelopment and compromise the strategic delivery of office targets in the Core Strategy, in particular the Gigaport scheme. Since the previous Inspector Decision The Walsall Housing Group town centre office building has been completed, a planning application has been received for offices at the Noirit site with the further delivery of the Walsall College and Business Sports Hub anticipated to commence in 2014 due to time limited funding. Further Reserved Matters submissions for office development are also anticipated this year.
3. The continued retention of the development is detrimental to the amenities of adjacent residential occupiers at the rear of the site, since it fails to make any proposals to address noise emissions from the site. The Inspector Decision included conditions requiring details of soundproofing and fume extraction, no details were submitted and the conditions were not discharged.
4. The development is contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58, 64 and 109, the Black Country Core Strategy policy CSP1, CSP4, CSP5, CEN1, CEN2, CEN3, CEN4, TRAN1, TRAN2, TRAN5, ENV2, ENV3, and ENV5 and Walsall's saved Unitary Development Plan, in particular policies GP1, GP2, GP4, ENV10, ENV14, ENV29, ENV32, ENV33, ENV40, S1, S2, S3, S4 S11, T7, T13 of Walsall's adopted Unitary Development Plan and to policies DW1, DW2, DW3 DW9 and DW10 of the adopted Designing Walsall Supplementary Planning Document.

**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:

- Always seek to secure high quality design and good standards of amenity for all existing and future occupants

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

56. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making better places for people.

57. It is important to plan positively for the achievement of high quality and inclusive design for all development.

58. Planning policies and decisions should aim to ensure that developments meet criteria that include:

- Function well and add to the overall quality of the area
- Establish a strong sense of place
- Respond to local character and history and reflect the identity of local surroundings and materials

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.

109. The planning system should contribute to and enhance the natural and local environment by:

- Protecting and enhancing valued landscapes

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

### **The Black Country Core Strategy (BCCS)**

[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 in February 2011 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 ... even if there is a limited degree of conflict with this Framework*". The relevant policies are:

CSP1 – sets out the targets for sustainable regeneration of the Black Country including office provision in the town centre.

CSP4 –The environmental transformation of the Black Country is one of the fundamental principles of the renaissance agenda. The design of spaces and buildings will be influenced by their context and seek to enhance the unique attributes the area offers in terms of its local character and heritage whilst responding to current day needs, changes in society and cultural diversity.

CSP5 – sets out the need to develop and manage movement and ensure that sustainable modes of transport are promoted.

CEN1 - The Strategic Centres will provide the main focus for higher order sub-regional retail, office, leisure, cultural and service activities, balanced by a network of Town, District and Local Centres, providing for town centre uses including meeting day-to-day shopping needs (particularly convenience shopping). Proposals that undermine this strategy will be resisted. To strengthen the Black Country's centres, mixed-use developments that are well integrated with existing provision will be encouraged, including the use of upper floors.

CEN2 – sets out the Hierarchy of Centres

CEN3 – Strategic Centres provide the focus for comparison shopping, office employment, leisure and culture in the Black Country. Any proposed development exceeding 500 square metres gross floorspace - whether brought forward through a Local Development Document or planning application, that would lead to the amount of floorspace in an individual Strategic Centre exceeding the figures set out above, will only be considered favourably if the retail impact assessments contained in the most recent national guidance on retail planning are satisfied. Any proposed development in an edge-of-centre location exceeding 500 square metres gross floorspace will only be considered favourably if the retail impact assessments contained in the most recent national guidance on retail planning are satisfied. However, if it is considered that development below this threshold is likely to have a significant impact on centres, then those proposals will be required to carry out an impact assessment. Also identifies offices at Walsall Gigaport.

CEN4 – Seeks to regenerate the strategic centres - Retail capacity in Town Centres will largely be met by existing commitments, planning permissions and allocations, and any redistribution of floorspace between Centres to meet strategic priorities. Up to an additional 5,000 square metres gross of office B1(a) development will be allowed in each of the Town Centres up to 2026 to meet their local service function. Any development exceeding this figure will only be considered favourably if the impact assessments contained in the most recent national guidance are satisfied.

TRAN1 Sets the priorities for the development of the transport network and promoting sustainable transport modes.

TRAN2 requires development proposals to manage transport impacts of new development

TRAN5 Sets out the requirement for development to focus on moving away from the reliance on the private car.

ENV2: All proposals should aim to sustain and reinforce special character and conserve the historic aspects of the following locally distinctive elements of the Black Country

ENV 3 Development proposals across the Black Country will deliver a successful urban renaissance through high quality design that stimulates economic, social and environmental benefits by demonstrating that the following aspects of design their particular Black Country and local context.

ENV5 – seeks to prevent flooding and promotes sustainable drainage methods Although Diagrammatic – office-led development is shown on the Walsall Strategic Centre Diagram. These are supplemented by the following policies

SC3.1 By 2026 Walsall town centre will have been regenerated as a sub-regional focus for the local economy and the community. It will provide its catchment area with an attractive choice of comparison shopping and leisure, entertainment and cultural facilities, as well as supporting a thriving office market. Walsall will also support modern town centre living. The centre will bring all of these activities

together in a vibrant, safe, attractive and accessible environment that combines local heritage with modern design.

#### SC3.5 highlights

- In terms of office development, the 220,000 square metres of B1 (a) floorspace between 2006 and 2026 referred to in CEN3 will be directed to the Waterfront north and Gigaport schemes.

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](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:

GP1 – Sustainable locations for development seeks to provide developments in sustainable locations

GP2 – Environmental Protection – seeks to ensure that pollution impacts from development are designed out.

GP4 Parts I to IV, VI – Seeks to support local regeneration and bring forward sites for appropriate regeneration and redevelopment.

ENV10 – Seeks to prevent pollution, including noise and drainage and prevent uses that would have an adverse effect on neighbouring land uses and/or restrict the types of development that could be permitted in the locality.

ENV14 – seeks appropriate redevelopment of derelict and previously developed sites.

ENV29 – seeks to preserve and enhance the quality of the Conservation Areas in the Borough and their setting

ENV32 – seeks to ensure high quality design from developments.

ENV33 – seeks to secure high quality landscape design from developments.

ENV40, in particular part(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.

S1, S2, S3 – Defines town centre uses, the town centre hierarchy and the boundaries of town centre.

S4 – Sets the general principles for town centre development including:

(a) The Council will seek to sustain and enhance the range and quality of shopping, leisure and other town centre uses which these centres provide, consistent with the role and function of a centre within the hierarchy defined in Policy S2, in order to meet the needs and aspirations of all who use the centres.

(f) The Council will seek to further improve the environment of these centres, with particular stress on maintaining and enhancing their individual character. Improvements will be sought both through new investments and developments and through the Council's own actions.

I. Development proposals will be required to have a high standard of design (in accordance with Policies ENV32 and ENV35 in Chapter 3)

with special regard to Conservation Areas and commercial frontages and fascias.

S11: Drive-Through Facilities states:

a) Drive-through or drive-in facilities will be discouraged, unless it can be shown that this format is an absolute requirement of the use proposed, which cannot be met in any other way, rather than simply the preference of the operator. In particular, insistence on the inclusion of a drive-through facility should not be a reason to require an edge-of-centre or out-of-centre, rather than an in-centre, location.

(b) Facilities should instead be provided in centres, where they will be accessible by a choice of means of transport, and must be well integrated, both functionally and visually into the centre concerned (see Policy S3), with any parking provision serving the centre as a whole.

5.50 The concept of drive-through or drive-in facilities usually involves dedicated on-site car parking provision for customers, who may park either whilst they visit the premises or are served in their cars. The format is most commonly applied to fast food outlets but might also be used for other goods and services.

5.51 Since this marketing format is clearly aimed at encouraging car-based trade it is liable to be in direct conflict with Government policies, and the policies of this Plan, for reducing reliance on the use of the private car. For this reason, Policy S11 discourages such facilities and encourages operators to provide goods and services in other ways.

T7 – seeks to ensure high quality car parking design

T13 – seeks to ensure an appropriate level of car parking is provided.

### **Supplementary Planning Document Designing Walsall (2008)**

Provides guidance on how to achieve good urban design within Walsall, including a range of key issues that developers must address.

DW1-Sustainability – new development must show that its design maximises energy efficiency in terms of layout, orientation and sustainable use of resources;

DW2- Safe and Welcoming places- all development must contribute towards creating places that feel safe, secure and welcoming for everyone;

DW3 – Character -design to respect and enhance local identity;

DW9 – High Quality public realm - new development must seek to ensure it creates places with attractive environmental quality;

DW 10 – new development should make a positive contribution to creating a sustainable environment.

## **5.0 LEGAL IMPLICATIONS**

This report makes clear that planning officers consider that the use of the site for the purposes of a hand car wash, car parking and tyre fitting is unauthorised and that enforcement action should be taken to prevent the use from continuing. If the unauthorised use of the site continued for a period in excess of 10 years, the use would become lawful.

An enforcement notice was issued in December 2010 which was quashed on appeal and resulted in a temporary permission being granted for a period of 2 years, from 18 April 2011. That temporary permission was subject to a condition that a scheme be submitted for soundproofing and extraction but the condition was not complied with. The use has continued since 2010.

More recently the operators of the site have erected signage without the benefit of advertisement consent, namely a large 3-sided forecourt sign, and a red banner. The display of advertisements without consent is a criminal offence for which the Council is entitled to prosecute.

**6.0 EQUAL OPPORTUNITY IMPLICATIONS**

Officers do not consider there are any equal opportunity implications. Action is being taken against the owner based on the unauthorised works he has carried out, and in this respect he is not treated any differently from any other person in the borough who has carried out unauthorised works against which the Council considers it is expedient to take enforcement action.

**7.0 ENVIRONMENTAL IMPACT**

The report seeks enforcement action to remedy adverse environmental impacts.

**8.0 WARD(S) AFFECTED**

St Matthews

**9.0 CONSULTEEES**

None

**10.0 CONTACT OFFICER**

Stuart Crossen

Senior Planning Officer: 01922 652608

**11.0 BACKGROUND PAPERS**

Enforcement file not published

**David Elsworthy**

**Head of Planning and Building Control**

**Planning Committee**

**March 2014**

**12. BACKGROUND AND REPORT DETAIL**

12.1 The report concerns the use of a former vacant petrol station, on the corner of Ward Street and Walhouse Road. When it was operational it included a car wash as part of the petrol station facilities. It is close to the Arboretum road junction, and to Lower Rushall Street. As a result, it is very prominent in the open environment of this part of the town centre, which is not only frequented by local residents and people in local businesses, but is an area which people from a wider area pass through.

12.2 There is housing to the rear of the site, facing the rear of the site from a higher ground level, across a small landscaped area.

**Planning History**

12.3 A petrol station was in existence on the site for some time. It closed in 2009. Use as a car park and vehicle wash began in March 2010 and the tyre sales began in 2013.

12.4 Planning permission was refused in May 2010 for continued use as a hand car wash for a temporary 3 year period. (reference 10/0193/FL). A second application was made, which contained no significant new proposals (reference 10/0734/FL) which was refused in December 2010.

- 12.6 The reports on the refused applications 10/0193/FL and 10/0734/FL raised a number of objections from consultees to the use for washing vehicles and valeting them. It noted that the site is within the Gigaport regeneration area and the use appears to be preventing the site coming forward for a more permanent suitable development (a statement which at the time the Planning Inspector did not agree with). It noted that UDP policy S11 generally discourages 'drive-in' uses such as this unless combined with other uses.
- 12.7 An enforcement notice (reference E10/0106) was issued on 14 December 2010. The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the land from petrol station and associated uses to vehicle wash and valet, and private car park. The requirements of the notice were:-
- Cease using the land as a vehicle wash and valet and private car park.
  - Remove all vehicles, materials and equipment associated with those uses from the land.
  - Erect a wooden trip rail to match the existing trip on the site at all parts of the perimeter of the land where vehicles gain access, not to be removed until the land is brought back into lawful use.
- 12.8 An appeal (reference APP/V4630/C/11/2144681) was submitted for the above notice and upheld by The Planning Inspectorate under ground (a), subject to the following conditions:
- 1) *The use hereby permitted shall be discontinued and the land restored to its former condition on or before 2 years from the date of this decision in accordance with a scheme of work submitted to and approved in writing by the local planning authority.*
  - 2) *The hours of operation of the car wash and valeting shall be restricted to 0900 to 1700 on weekdays, 0900 to 1400 on Saturdays and with no operating at all on Sundays and Bank Holidays.*
  - 3) *Only vehicles under 2 tonnes in gross weight shall be washed and valeted on the premises.*
  - 4) *No vehicles shall be parked, washed or valeted other than on the paved part of the site and not at any time on the grassed parts of the site.*
  - 5) *The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within one month of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-*
    - i) within 2 months of the date of this decision a scheme for the soundproofing and fume extraction of any generator on the premises shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.*
    - ii) if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.*



*iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.*  
*iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.*

- 12.9 There is no evidence that any of the conditions imposed as part of the appeal decision APP/V4630/C/11/2144681 were ever discharged or subsequently complied with. Planning permission would be required to continue the previous unauthorised use which does not appear to have operated in accordance with planning permission.
- 12.10 Since the appeal decision there has now been a further change of use at this site to a mixed car parking, car wash and tyre sales use.
- 12.11 The use involves carrying out operations and deploying equipment in the open. Officers consider it is an intrusive activity. Along the rear of the site and partway along Walhouse Road near to the pavement is Herras fencing, normally used to temporarily secure building sites. The site is a substantial and prominent corner site which is particularly open, with a wide grass area. The appearance of the use and the associated structures are considered damaging to the appearance of the surrounding streets and is harmful to the character of an area which is close to the Arboretum and Lichfield Street Conservation Areas. Whilst the appearance of the site can be dealt with by means of the issue of a section 215 notice, it is considered that the unauthorised use of the site is the first and main issue to deal with.
- 12.12 Officers consider that the proximity of the site to the houses at the rear is detrimental to their amenity. Planning officers consider there is significant noise generation and this is to be discussed with the Environmental Health officers.
- 12.13 The site also has a number of advertisements displayed for both the car wash and tyre use at the site. There is also free standing signage advertising this unauthorised use. | None of the signage benefits from advertisement consent.
- 12.14 Officers recommend the authorisation of enforcement action to remedy the breaches of planning legislation within one month of the notice taking affect;
- Permanently cease the use of the site for car parking, car washing and tyre fitting
  - Permanently remove from the land all vehicles, materials, structures, equipment and signage which are used in connection with the use for vehicle washing, valeting and tyre changing.
  - Remove all waste from the site.
  - Erect a wooden trip rail to match the existing trip on the site at all parts of the perimeter of the land where vehicles gain access, not to be removed until the land is brought back into lawful use.