



# Walsall Council

## **PLANNING COMMITTEE**

**Date: 29 NOVEMBER 2018**

### **REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.**

**Address: HARVEY'S AUTOS, 126, STAFFORD STREET, WALSALL, WS2 8DX**  
**Reference no. E18/0095**

#### **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 change of use of the car parking area associated with the Bed and Breakfast use of the site (Use Class C1) to sale of motor vehicles (sui generis)
  - b) The siting of a portable sales/ office building as with the sales of motor vehicles

The unauthorised development is without the benefit of planning permission. The lawful use of the site is for Bed and Breakfast accommodation (33 units) and car parking granted on application 05/0036/FL/W5.

- 1.2 A Certificate of existing lawful use for car sales (sui generis) with portable sales/office building 18/1055 was refused on the 8<sup>th</sup> October 2018.

#### **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: within the last 10 years

- a) Change of use of the existing car parking area associated with the bed and breakfast accommodation to motor vehicle sales.
- b) Siting of a portable sales /office building.
- c) Signage associated with the motor vehicles sales is being displayed on the site and the bed and breakfast accommodation.

#### 3.2 Steps required to remedy the breach:

- a) Cease use of the site for the sale of motor vehicles
- b) Remove all motor vehicles displayed for sale from the site.
- c) Remove the portable car sales office
- d) Permanently remove all waste materials resulting from the undertaking of actions (a) – (c) above to an approved site licensed to accept such waste materials.
- e) Lay out the car park with 34 spaces as per planning permission 05/0036/FLW5.

#### 3.3 Period for compliance:

To undertake the works as set out in paragraph 3.2 parts (a) to (e) within **3 months from when the notice takes effect.**

#### 3.4 The reasons for taking enforcement action:

- a) The unauthorised use for motor sales, is unsuitably located in a predominately residential area and adversely impacts on neighbour's amenities in terms of noise and disturbance. Furthermore, the unauthorised change of use has displaced the car parking provision associated with the change of use of the site to Bed and Breakfast accommodation as granted by application 05/0036/FLW5 on the 2 March 2005.
- b) The car park area was condition 3 of this planning permission: Which stated no development shall be carried out until details of the car parking and manoeuvring areas have been approved in writing by the Local Planning Authority. The approved scheme shall be implemented before this with the areas shall thereafter to be retained and used for no other purposes. This is to ensure the satisfactory provision of off-street parking, in the interests of safety and to ensure the satisfactory appearance and functioning of the development.
- c) Accordingly, the unauthorised development is contrary to planning policies, CPS4, ENV2, ENV3 and TRAN5 of the Black Country Core Strategy, 'saved' policies GP2 and ENV32, T7 and T13 of the Walsall UDP, Supplementary Planning Guidance Designing Walsall and National Planning Policy Framework.

### 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 was considered that the Council had acted unreasonably. Planning applications may also be submitted that require an application fee.

## 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](http://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 9 Promoting sustainable transport
- NPPF 12 – Achieving well-designed places

### 5.2 Local Policy

Black Country Core Strategy

- CPS4 Place Making
- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality
- TRAN5 Influencing the Demand for Travel and Travel Choices

Saved Unitary Development Plan policies

- GP2 Environmental Protection
- ENV32: Design and Development Proposals
- T7 Car Parking
- T13 Parking Provision for Cars, Cycles and Taxis

Designing Walsall SPD

- DW3: Character
- Appendix D

Policies are available to view online:

[http://cms.walsall.gov.uk/planning\\_policy](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.

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- 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 Officers consider that the breach of planning control occurring at this site commenced within the last 10 years,
- 6.4 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.
- 6.5 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.
- 6.6 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.**

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

**9.0 WARD(S) AFFECTED**

9.1 Birchills Leamore

**10.0 CONSULTEES**

10.1 None

**11.0 CONTACT OFFICERS**

11.1 Sheila Denison Enforcement Officer

**12.0 BACKGROUND PAPERS**

12.1 Enforcement file E18/0095 published.

**PLANNING COMMITTEE**

**DATE: 1 NOVEMBER 2018**

**13.0 BACKGROUND AND REPORT DETAIL**

- 13.1 A plan showing the location of the site is attached to this report.
- 13.2 Following receipt of a complaint use of the site for car sales was investigated and all the signage that was up around the site and on the building on 27 March 2018. The officer spoke to the male who came and opened up the car sales, he was then seen speaking to a customer prior to speaking to the officer. He stated he only worked there.
- 13.3 The officer checked for planning permissions for both a change of use of the car park to car sales and for the signage on the site. Planning permission was found for the use of the site as Bed and Breakfast accommodation with ancillary parking of 34 spaces. This allowed for 1 car space per bed space and 1 staff car parking space. The only other use for the outdoor space was for the siting of a refuse container.
- 13.4 The Owner was written to the on 19 April 2018 and advised that the following unauthorised activity had occurred:
- i) There is a material change of use from Bed and Breakfast car parking to vehicle sales use class Sui Generis
  - ii) A mobile building has been installed for office use
  - iii) Large advertisement signs have been placed round the site on walls and buildings
- 13.5 On 5<sup>th</sup> June 2018 planning application 18/0702 was submitted for, a change of use of part of the car parking area to car sales with a portable sale / office building. This application was withdrawn as requested by the applicant on the 27<sup>th</sup> September 2018.
- 13.6 On the 15<sup>th</sup> August 2018 a valid Certificate of existing lawful use for car sales (sui generis) with portable sales/office building was submitted 18/1055. Permission was refused on the 8<sup>th</sup> October 2018.

It was determined as a matter of fact and degree that the certificate for lawful existing use can be refused for the following reasons:

- The applicant has failed to provide sufficient evidence to demonstrate that the land to the rear of 126 Stafford Street has been used for car sales since 2006 as stated in the application.
- The applicant has provided a statutory declaration but the document is not supported by evidence for example, company accounts, invoices etc.
- The applicant has sought to demonstrate from the lease that two commercial companies have operated from the site Harvey's Autos and Brocton Group

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Limited. However, a search of Companies House reveals that both companies were incorporated in 2017.

- The applicant has provided copies of leases; however these are not admissible as evidence as they are invalid for the reasons set out above.
- Aerial photographs taken from Google and the council's ishare system from 2006 onwards, shows the site as a car park.

- 13.7 Following the refusal of the Certificate of Existing Lawful Use an enforcement officer again visited the site on the 31 October 2018 and noted the car sales is still in operation, the portable cabin was still in situ and all the signage is still displayed within the curtilage of the site.
- 13.8 The owners were written to on the 12 November 2018, to advise them that as there was not a valid planning permission and the use had not ceased officers are seeking authorisation for enforcement action at the next available committee.
- 13.9 The large advertisement signs can be enforced against utilising a discontinuance notice, under delegated powers and if action is authorised for the enforcement of the use, these powers will be utilised in tandem, to secure removal of the unauthorised advertisement.
- 13.10 Enforcement action should be commensurate with the breach of planning control to which it relates. It will normally be inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity. This is often referred to as the **expediency** test.
- 13.11 When assessing whether to instigate enforcement action the committee are 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
- 13.12 It is considered that, motor vehicles sales is an inappropriate commercial use in this residential setting adversely impacting on the amenities of occupiers of the adjacent residential units. By virtue of excessive noise and disturbance and adverse visual amenity impacts. Furthermore the harm from the unauthorised change of use for the sales of motor vehicles by virtue of the displacement of approximately 29 of the car parking for the bed and breakfast accommodation has a detrimental impact on highway safety. This is due to the increase of on street parking (contrary to planning permission 05/0036/FL/W5). Accordingly, conflicting with BCCS Policies CPS4, ENV2, ENV3 and TRAN5, UDP through saved policies GP2, ENV32, T7 and T13, the NPPF and guidance set out in Designing Walsall SPD. Therefore, enforcement action is expedient as it is

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sufficiently harmful. The action is reasonable and commensurate with the breach, cost effective and in accordance with planning policies.



