



# **Walsall Council**

## **PLANNING COMMITTEE**

**Date: 15 October 2020**

### **REPORT OF HEAD OF PLANNING AND BUILDING CONTROL.**

**Address: 17 Fallowfield Road**  
**Reference no. E19/0320**

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

1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against:

- a) Without planning permission, the erection of a fence positioned directly adjacent to the highway which is having a detrimental effect on vehicle and pedestrian safety.
- b) Without planning permission, the erection of a fence at a height in excess of 1 metre adjacent to the highway.
- c) Without planning permission, the laying of a hard surface on the existing garden land and open space land (shown shaded on the attached plan) between the principal elevation of the dwelling house and the highway.
- d) Without planning permission, the carrying out of engineering/ground works which has resulted in a large proportion of the site being raised in excess of 30cm above ground level.

1.2 On consulting the Council's Local Highway Authority, it has been confirmed that the front driveway does not have permission for access from the highway and as such there is no dropped kerb. It is an offence to drive over the public footway without permission under Section 184 of the Highways Act 1980 and the matter has been referred to the Community Protection Team in consideration of enforcement action in this regard.

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## **2.0 RECOMMENDATIONS**

- 2.1 **That authority is granted to the Head of Planning and Building Control 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 and Building Control to institute prosecution proceedings** in the event of non-compliance with an Enforcement Notice.
- 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 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**

- a) Without planning permission, the unauthorised change of use from open space to residential garden land and driveway.
- b) Without planning permission, the erection of fencing adjacent to a highway at a height in excess of 1 metre.
- c) Without planning permission the laying of a hard surface on the existing garden land and open space land between the principal elevation of the dwelling house and the highway.
- d) Without planning permission, the carrying out of engineering/ground works in excess of 30cm above ground level throughout a significant percentage of the site.

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

- a) Move the boundary fence back 2 metres from the shared boundary with the public footpath edge and the garden
- b) Reinstall the grass verge / open space to pre development condition of gravel
- c) Add soakaways and drainage to the hard surfaced driveway(s) to prevent water run-off from the driveway onto the public highway or into a public highway drain arising from steps 3.2 a) to c)
- d) Remove all waste materials arising from steps 3.2 a) to c) to an approved site licenced to accept such materials.

### **3.3 Period for compliance:**

**2 months from when the notice takes effect** - to undertake the works as set out in paragraph 3.2 parts a to d

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

- a) The height and position of the fencing encloses the open aspect on the highway junction of Fallowfield Road and Hay Hill and this is detrimental to the character and appearance of the area. The development is obtrusive within the street scene and detrimental to the visual amenities of the area contrary to saved UDP policies GP2, ENV32 and SPD Designing Walsall.
- b) The height and position of the fencing has a detrimental impact on pedestrian and vehicle safety as it does not allow sufficient visibility to the driveway for the neighbouring property 15 Hay Hill and is contrary to saved UDP policies GP2 and ENV32.
- c) Following written correspondence with the land owner a retrospective planning application was submitted and was refused on the above grounds.
- d) Water appears to be pooling at the foot of the driveway which indicates that the replacement driveway is neither permeable nor porous, does not have any soft landscaping or a soakaway, and is preventing water to drain through or into the ground below.
- e) The lack of soft landscaping to the front of the property is out of character with the street scene and detrimental to the amenity of the area UDP ENV32/GP2 and BCCS ENV3

**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*".

All the core planning principles have been reviewed and those relevant in this case are:

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- Always require high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- Find ways to enhance and improve places in which people live their lives
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas
- Encourage the effective use of land by reusing land that has previously been developed

Key provisions of the NPPF relevant in this case:

- NPPF 12 – Achieving well-designed places
- NPPF 4 – Decision making

156. Strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources. They should consider cumulative impacts in, or affecting, local areas susceptible to flooding, and take account of advice from the Environment Agency and other relevant flood risk management authorities, such as lead local flood authorities and internal drainage boards.

163. When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment<sup>50</sup>. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

58. 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. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

## **5.2 Local Policy**

Black Country Core Strategy

- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

Saved Unitary Development Plan policies

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- GP2 Environmental Protection
- ENV32: Design and Development Proposals

## Designing Walsall SPD

Policies are available to view online:

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

- DW3: Character
- Appendix D

## 6.0 LEGAL IMPLICATIONS

- 6.1 Pursuant to section 171A (a) of the Town and Country Planning Act 1990 (as amended) the carrying out of 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 The local planning authority considers the breach of planning control that has occurred at this site commenced within the last 4 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.
- 7.3 Environmental Impact. The enforcement action will improve the visual amenities of the environment and protect the amenities of the adjoining neighbours.

**8.0 WARD(S) AFFECTED**

- 8.1 Pheasey Park Farm ward

**9.0 CONSULTEES**

- 9.1 None

**10.0 CONTACT OFFICERS**

- 10.1 Ryan Harris Enforcement Officer

**11.0 BACKGROUND PAPERS**

- 11.1 Enforcement file E19/0320 not published.

**PLANNING COMMITTEE**

**DATE: October 2020**

**12.0 BACKGROUND AND REPORT DETAIL**

12.1 A plan showing the location of the site considered in breach of planning control is attached to this report.

1.2 On consulting the Council's Local Highway Authority, it has been confirmed that the front driveway does not have permission for access from the highway and as such there is no dropped kerb. It is an offence to drive over the public footway without permission under Section 184 of the Highways Act 1980 and the matter has been referred to the Community Protection Team in consideration of enforcement action in this regard.

12.2 Number 17 Fallowfield Road is on a corner of Fallowfield Road and Hay Hill and is a semi-detached house. Front access is afforded via Fallowfield Road, The property also has a garage which is accessible via Hay Hill which joins the highway.

12.3 In August 2019, the Council received a complaint that the owner of a residential property at 17 Fallowfield Road had installed boundary treatment on land between the side of the property and the highway reducing the distance from the highway.

12.4 On 17<sup>th</sup> September 2019, the Local Planning Authority visited 17 Fallowfield Road taking measurements and creating digital images of the site, including the land surrounding.

12.5 On reviewing images it is apparent that the owner has increased the rear garden area by repositioning the boundary fence closer to the public highway.

12.6 A retrospective planning application was submitted and this was determined in January 2020 by the Local Planning Authority as a refusal, for the following reasons;

*The height and position of the fencing encloses the open aspect of this highway junction detrimental to the character and appearance of the area and is obtrusive*

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*within the street scene detrimental to the visual amenities of the area contrary to saved UDP policies GP2, ENV32 and SPD Designing Walsall.*

*The height and position of the fencing has a detrimental impact on pedestrian vehicle safety as it does not allow sufficient visibility to the driveway for the neighbouring property 14 Hay Hill and is contrary to saved UDP policies GP2 and ENV32*

12.7 As such the owner was subsequently advised by the Local Planning Authority to amend the fencing and garden works according to guidance.

12.8 On 3<sup>rd</sup> April 2020 a follow up letter was sent to the owner advising that the matter was yet to be resolved and no efforts had been made to resolve the breach of planning control.

12.9 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.

12.10 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.

12.11 It is considered that the harm from the unauthorised development has an impact on the safety to both vehicles and pedestrians.

12.12 The height and position of the fencing encloses the open aspect on this highway junction and this is detrimental to the character and appearance of the area, is obtrusive within the street scene and detrimental to the visual amenities of the area contrary to saved UDP policies GP2, ENV32 and SPD Designing Walsall.

12.13 The height and position of the fencing has a detrimental impact on pedestrian and vehicle safety as it does not allow sufficient visibility to the driveway for the neighbouring property 15 Hay Hill and is contrary to saved UDP policies GP2 and ENV32.



12.14 Therefore, action is expedient as it is sufficiently harmful. The action is reasonable and commensurate with the breach, cost effective and in accordance with planning policies.

