



# Walsall Council

## **PLANNING COMMITTEE**

**Date: 26 APRIL 2018**

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

**Address: 18 MOAT ROAD, WALSALL, WS2 9PJ**  
**Reference no. E17/0392**

#### **1.0 URPOSE OF REPORT**

- 1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against:
- a) Change of use of ground floor from B8 storage facility associated with Highgate Felt Roofing Ltd to a hot food takeaway use class A5 without planning permission
  - b) Erection of a wooden structure to the rear without planning permission

#### **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
- a) the ground floor of the property has been converted into a hot food takeaway (use class A5 for the sale of hot food for consumption off the premises), from B8 storage associated with Highgate Felt Roofing Ltd without planning permission.
  - b) Erection of a single storey wooden extension to the rear.

3.2 Steps required to remedy the breach:

- a) Cease the Hot food takeaway A5 use
- b) Demolish the rear wooden extension and dispose of the materials at an approved waste disposal site leaving a clean and tidy appearance
- c) Disconnect and remove all cooking equipment (internally and externally)
- d) Remove the food counter and make good all walls and plasterwork and repaint walls to match existing
- e) Remove any other associated cooking and serving equipment in the premises.
- f) Remove and dispose of all the signage from the premises

3.3 Period for compliance:

**1 month from when the notice takes effect** –to cease the use of the hot food takeaway and

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

3.4 The reasons for taking enforcement action:

- a) The Hot Food Takeaway has been operating without planning permission since 2013.
- b) They have erected a wooden building at the rear which is also used for cooking. Using hobs supplied by gas bottles. There is no extraction. The design of the extension doesn't reflect the character and appearance of the building or surrounding area and creates an incongruous feature
- c) There is insufficient parking outside the premises for a takeaway use and could lead to unauthorised parking and could adversely impact on highway safety.
- d) The siting and hours of operation of the hot food takeaway cause noise and disturbance to local residents and the hospital adversely impacting on amenities
- e) The method of fume and odour eradication adversely impacts on amenities of occupiers of nearby residential properties

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:

S. PRETTY - Head of Planning, Engineering and Transportation.

## 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:

- 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 2 - Ensuring the vitality of town centres
- NPPF 4 - Promoting sustainable transport
- NPPF 7 - Requiring good design
- NPPF 8 - Promoting healthy communities

### **NPPF Consultation**

In March 2018 the Ministry of Housing, Communities and Local Government issued consultation proposals for revisions to the National Planning Policy Framework. The consultation ends on 10 May 2018. The text has been revised to implement policy changes previously consulted upon and further changes to planning policy announced in the Budget 2017. Whilst proposals should be considered in light of this draft consultation at this stage it can be afforded little weight as a material consideration in the determination of the application.

## .2 Local Policy

Black Country Core Strategy

- CSP4 Place making
- CEN2: Hierarchy of Centres
- CEN7: Controlling Out-of-Centre Development
- TRAN2: Managing Transport Impacts of New Development
- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2 Environmental Protection
- ENV32: Design and Development Proposals
- ENV35: Appearance of Commercial Buildings
- S7: Out-of-Centre and Edge-of-Centre Developments
- S10: Hot Food Take-Aways, Restaurants and Other A3 (Food and Drink) Outlets

S. PRETTY - Head of Planning, Engineering and Transportation.

- T7 - Car Parking

Designing Walsall SPD

Policies are available to view online:

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

## 6.0 LEGAL IMPLICATIONS

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.

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.

Officers consider that the breach of planning control occurring at this site commenced within the last 10 years in connection with the unauthorised change of use, to A5 Hot food takeaway furthermore, the rear single storey rear extension has been erected within 4 years

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.

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.

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

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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.

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 WARD(S) AFFECTED**

Pleck

**9.0 CONSULTEES**

Highways  
Community Protection

**10.0 CONTACT OFFICERS**

Sheila Denison Enforcement Officer

**11.0 BACKGROUND PAPERS**

Enforcement file E17/0392 not published.

**PLANNING COMMITTEE**

**DATE:26 April 2018**

**12.0 BACKGROUND AND REPORT DETAIL**

- 12.1 A plan showing the location of the site is attached to this report.
- 12.2 We received a complaint about this hot food takeaway and the rear extension on the 9/10/17. This was investigated and a site visit was made.
- 12.3 The hot food takeaway owner was advised by letter of the 13/11/17 that the ground floor extension required planning permission, but due to the appearance and materials used couldn't be supported and should be removed.
- 12.4 Further investigation into matters revealed no planning permission for the A5 use (hot food takeaway). Previous planning history for other properties within the same block have had planning permission refused for Use class A5 hot food takeaway. The reason was to ensure the satisfactory appearance of the development, to safeguard the amenity of the occupants of adjoining premises, to safeguard the amenity of the area, to ensure the satisfactory functioning of the development, to define the permission and to control the provision of retail outlets.
- 12.5 On the 5/3/18 the hot food takeaway owner and the landowners were advised in a letter to cease the use of the takeaway and remove the ground floor rear extension otherwise enforcement action would be pursued.
- 12.6 The landowner has responded by telephone to the case officer and has written to their tenant requesting they make contact with us.
- 12.7 The hot food takeaway tenant has made contact and stated he has no intention of ceasing the use or make an application to apply for planning permission
- 12.8 Site visits to the site monitoring for compliance with the requests. To date there have been no works started at the property to reinstate it back to a storage facility or remove the ground floor extension.
- 12.9 Due to the lack of engagement and willingness to address the planning breaches, the landowner and tenant were advised in the letter dated 5 March 2018, that the breach of planning control would be reported to the next available planning committee to request authorisation to pursue enforcement action.
- 12.10 Walsall Councils Community Protection department served a noise abatement notice on the premises on 12 July 2017 due to noise complaints received from local residents and staff on wards at the Manor Hospital.
- 12.11 Our highways department have advised us there is insufficient parking outside the premises for a takeaway and an application would not be supported by Highways as the premises are on a busy road leading to the hospital's Accident and Emergency department and opposite a car park entrance.

S. PRETTY - Head of Planning, Engineering and Transportation.

- 12.12 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.
- 12.13 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
- 12.14 It is considered that the harm from the change of use to the amenity of the occupiers of the neighbouring properties in terms of noise, nuisance and disturbance, highway safety implications and the appearance of the rear extension, being uncharacteristic of the building and surrounding area, creating an incongruous feature that 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.



