



Walsall Council

PLANNING COMMITTEE

Date: 29 NOVEMBER 2018

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.

Address: 7 EASTBOURNE STREET, WALSALL, WS4 2BN
Reference no. E17/0428

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 erection of a first floor rear extension including the insertion of a side facing bedroom window.
 - b) The unauthorised single storey rear extension and
 - c) The unauthorised dormer windows

The development is without the benefit of planning permission and varies in scale and design from planning consent 17/0644 (approved plan1012) granted 8th September 2017.

- 1.2 The retrospective planning application 17/1649 for these works has subsequently been refused on the 2nd February 2018 and appeal dismissed on 29th August 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 4 years

- a) The first floor rear wing extension has been erected not in accordance with the approved plans on planning consent 17/0644 and the roof has been amended from a gable to an asymmetrical roof design and a first floor window has been incorporated in the side elevation facing 5 Eastbourne Street.
- b) The single storey rear extension has been reroofed not in accordance within the approved plans on consent 17/0644 and amended from a hipped roof to a gabled design.
- c) The first floor rear extension has been erected to include a side facing dormer window within the roof which faces 5 Eastbourne Street without the benefit of planning permission.

3.2 Steps required to remedy the breach:

- a) Remove the side facing dormer window within the roof plane of the first floor rear extension and amended the design of the first floor rear extension to accord with the design as set out on in the approved Drawing Number 1012 of planning consent 17/0644
 - b) Remove the window in the side elevation facing 5 Eastbourne Street and insert into the void created bricks to match the existing property to accord with the approved drawing no. 1012 of planning consent 17/0644.
 - c) Reinstate the chimney on the roof of the main dwelling house to accord with approved drawing number 1012 of planning consent 17/0644
 - d) Amended the design of the single storey rear extension to accord with the approved drawing 1012 of planning consent 17/0644.
- AND**
- e) Permanently remove from the site all waste materials resulting from the undertaking of actions (a) – (d) above to an approved site licensed to accept such waste materials.

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) Planning permission was granted for application 17/0644 on the 8 September 2017 with the approved plans labelled (1012). The works that have been built do not reflect these plans and the development as built is uncharacteristic of the building and surrounding area. Furthermore, the development results in an unacceptable and detrimental level of overlooking of the neighbouring property 5 Eastbourne Street, adversely impacting the privacy and amenity for occupiers. Accordingly, the unauthorised development is contrary to planning policies, CPS4, ENV2 and ENV3 of the Black Country Core Strategy, 'saved' policies GP2 and ENV32 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

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 12 – Achieving well-designed places
- Paragraph 127

5.2 Local Policy

Black Country Core Strategy

- CPS4 Place Making
- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2 Environmental Protection
- ENV32: Design and Development Proposals

Designing Walsall SPD

Policies are available to view online:

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 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 Officers consider that the breach of planning control occurring 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.

8.0 WARD(S) AFFECTED

- 8.1 Palfrey

9.0 CONSULTEES

- 9.1 None

10.0 CONTACT OFFICERS

- 10.1 Sheila Denison Enforcement Officer

11.0 BACKGROUND PAPERS

- 11.1 Enforcement file E17/0428 published.

PLANNING COMMITTEE
DATE: 29 NOVEMBER 2018

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 A plan showing the location of the site is attached to this report.
- 12.2 The Local Planning Authority received a complaint on 13 November 2017 that the dwelling house was not being built in accordance with the planning consent 17/0644 (approved plan drawing number 1012) granted 8th September 2017. This planning permission was for a first floor rear extension, loft conversion and alterations to the roof, alterations to front elevation and a detached garage. In particular the roof type as built is different to the approved plans.
- 12.3 This was investigated and a site visit was made. It was noted that the development was not being built in accordance with the approved plan 1012. At this stage the rear first floor extension was being built with an asymmetrical roof design as opposed to the approved gabled roof design.
- 12.4 The Owner was written to the on 1st December 2017 and advised that development was not in accordance with approved plans and advised that action needed to be taken to rectify the breach.
- 12.5 On 8th December 2017 planning application 17/1649 was submitted for retrospective consent for the alterations to the rear of the property and sought planning permission for a two storey front extension, first floor rear extension, front, rear and side dormer windows, loft conversion, front canopy, detached garage and demolish chimney.
- 12.6 The site is a detached property has an integral gated vehicular access to the rear garden. There is an existing single storey L shape extension which has been built alongside the original two storey rear wing to the property. No. 5 Eastbourne Street is the adjacent neighbour and there is a 1m gap to the shared boundary with no 7. The unauthorised first floor side window and side facing dormer are in close proximity, 3 metres to the boundary with No. 5 Eastbourne Street,
- 12.7 This application was refused on the 2nd February 2018 on grounds that the front extension was of an inappropriate design and the issues of overlooking and privacy associated with the rear side facing dormer window and first floor side facing window.
- 12.8 Officers from planning and enforcement met the owner on site 6 February 2018 following the planning refusal of 17/1649; to discuss options to rectify the planning breaches and it was observed that the extent of the building works had further expanded from the earlier breach and the dormer windows which formed part of the later refused permission 17/1649 where under construction and the development was continuing to be implemented not in accordance to the approved plans and the owner informed us he would be appealing this decision.

- 12.9 The owner subsequently appealed the planning decision 17/1649 for the proposed two storey front extension, first floor rear extension, front, rear and side dormer windows, loft conversion front canopy, detached garage and demolished chimney. This appeal was dismissed on 29th August 2018. The Inspector in his decision concluded that *'the first floor side facing windows and the dormer window in the rear extension have a materially detrimental effect on the living conditions of occupiers of 5 Eastbourne Street, with respects to overlooking and privacy. In consequence they would conflict with UDP policy GP2, the NPPF and guidance set out in 'Designing Walsall' SPD, which taken together expect new development to achieve a high standard go amenity for existing and future users and specifically resit development that would have an unacceptable adverse effect on the living conditions of occupiers of nearby property resulting from, amongst other things, overlooking and loss of privacy.'*
- 12.10 On the basis of this appeal decision on the retrospective element of this development and the owner's reluctance to amend the scheme to accord with the design approved on drawing number 1012 of planning consent 17/0644, this matter is being escalated for consideration of formal action to seek compliance with the approved drawings and alleviate the planning harm generated by the development as currently built.
- 12.11 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.
- 12.12 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
- 12.13 It is considered that, in this instance, the harm from the unauthorised development; in particular the first floor side window and side facing dormer window in the rear wing extension would have a materially detrimental effect on the living conditions of the occupiers of 5 Eastbourne Street with respect to overlooking and privacy. Accordingly, conflicting with UDP saved policy GP2, the NPPF and guidance set out in Designing Walsall SPD. Therefore, enforcement 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.

