



PLANNING COMMITTEE

06 August 2015

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

E15/0275 – Former Jack Allen Holdings Ltd, Middlemore Lane, Aldridge

1.0 **PURPOSE OF REPORT**

To request authority to take planning enforcement action in respect of the material change of use of land to a waste management site.

2.0 **RECOMMENDATIONS**

2.1 **To authorise 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 below in 2.3.

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 or the non-return of Requisitions for Information or a Planning Contravention Notice; and the decision as to the institution of Injunctive proceedings in the event of a continuing breach of planning control.

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.

Details of the Enforcement Notice

The Breach of Planning Control:

Without the required planning permission, the material change of use of the land for the storage of construction debris, timber and green waste recycling and the associated sale of recovered materials from the site.

Steps required to remedy the breach:

- Cease the use of the land for the importation and storage of construction debris, timber and green waste recycling and the associated sale of recovered materials from the site.
- Remove all construction debris, timber and green waste recycling and restore the site to its former condition.

Period for compliance:

By 4th November 2015

Reason for taking Enforcement Action:

The site comprises of open land used which benefits from planning permission (Reference 11/0240/FL: Change of use to a hire depot for secure portable containers and offices). Although part of the site to the west remains used for this purpose and is occupied by Adastra Access Ltd, the larger part of the site to the east and south has been used for the storage of construction debris including hardcore, timber and green waste recycling. This is considered to be significantly detrimental to the amenities of the surrounding area in particular the residential areas to the east around Westfield Drive to the east and Station Road to the south notably in terms of dust generation and noise. Also, because the site falls from the south down to Middlemore Lane to the north, there is also a notable risk of mud being dragged onto Middlemore Lane particularly in poor weather which will arise over the winter months especially as the site is not covered in a bound surface e.g. tarmac or concrete.

The site is identified on the unitary development plan (UDP) proposals map as an employment site with planning permission and as it is an existing employment site, policy JP7 of the UDP is applicable. This policy supports core employment uses but the policy states that conditions will be attached to planning permissions to prohibit changes of use. Policy JP8 refers to bad neighbour industries. It is considered that the type of use proposed in this sensitive location at the periphery of the employment area adjacent to designated open space and a Site of Local Importance for Nature Conservation (SLINC) could potentially have a detrimental effect on the environmental quality of the area contrary to policy JP8. In these circumstances, the site is not considered to be appropriate for the type of use being undertaken.

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. Planning applications may also be submitted that require an application fee.

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:

Planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions and sets out that *"...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)"*.

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"*.

It is based on 12 core planning principles. Those particularly relevant in this case are:

- Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas
- Contribute to conserving and enhancing the natural environment

The NPPF also states that effective enforcement action is important as a means of maintaining 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.

The Development Plan

The Black Country Core Strategy (BCCS)

The relevant policies are:

CSP3: Environmental Infrastructure
CSP4: Place Making
CSP5: Transport Strategy
EMP2: Actual and Potential Strategic High Quality Employment Areas
TRAN1: Priorities for the Development of the Transport Network
ENV1: Nature Conservation
ENV2: Historic Character and Local Distinctiveness
ENV3: Design Quality
ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island
WM1 Sustainable Waste and Resource Management

It is considered in this case that the relevant provisions of the BCCS can be given full weight as they are consistent with the NPPF.

Saved Policies of Walsall's Unitary Development Plan (UDP)

The relevant policies are:

GP2: Environmental Protection
ENV10: Pollution
ENV11: Light Pollution
ENV23: Nature Conservation and New Development
ENV32: Design and Development Proposals
ENV40: Conservation, Protection and Use of Water Resources
JP5: Core Employment Areas
JP6: Best Quality Sites
JP7: Use of Land and Buildings in Other Employment Areas
S13: Nurseries, Garden Centres & Builders Merchants
T4: The Highway Network
T5: Highway Improvements

It is considered in this case that the relevant provisions of the UDP can be given full weight as they are consistent with the NPPF.

Supplementary Planning Documents (SPD)

Where relevant BCCS and UDP policies are consistent with the NPPF, the related SPDs will also be consistent provided they are applied in a manner consistent with NPPF policy. The relevant SPDs are:

Designing Walsall (2008)

Conserving Walsall's Natural Environment (2008)

5.0 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 constitutes a breach of planning control. Section 171B adds that where there has been a breach of planning control such as a change of use, no enforcement action may be taken after the end of the period of ten years, beginning from the date the breach commenced. It appears that the breach of planning control occurring at this site commenced within the last ten years.

For the reasons set out in this report, it is considered expedient to take enforcement action. Accordingly, authority is sought to serve an enforcement notice, pursuant to section 172 of the Town and Country Planning Act 1990.

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.

In the event of non-compliance with a Requisition for Information or non-compliance with a Planning Contravention Notice an offence is also committed and the Council may prosecute.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

Article 8 of the Convention for the Protection of Human Rights and Article 1 of the First Protocol to the Convention 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 freedoms of others. In this case, the wider impact of the use and the appearance of the land over-rides the owner's rights.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Aldridge Central and South

9.0 CONSULTEEES

None

10.0 **CONTACT OFFICER**

Shawn Fleet

Development Management: 01922 650453

11.0 **BACKGROUND PAPERS**

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
06 August 2015

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 The site is located to the south of Middlemore Lane, Aldridge and comprises of an open area of land covered in hardcore which is surrounded by a palisade fence and high hedging. To the north lies the McKechnies site and to the west is the Redhouse Lane Industrial Estate. To the south is a tree belt which is identified as a SLINC beyond which is the railway line and then the housing on Station Road. To the east is a further tree belt and beyond that the Anchor Meadow Playing Field with housing on the opposite side of the park at Westfield Drive.
- 12.2 The site already has the benefit of planning permission reference 11/0240/FL for change of use to a hire depot for secure portable containers and offices. Part of the site to the west is used by Adastra Access Ltd and this use is not being considered as part of this enforcement action.
- 12.3 On the 8th April, a pre-application enquiry was received from Steve Morgan, operator of the site for the use of the site for aggregates recycling and the subsequent sale of graded materials. Whilst the enquiry was under consideration, complaints were received from local residents that activity had commenced on site. A formal response was sent to the operator on 29th May regarding their proposal together with notice for the unauthorised works to cease.
- 12.4 Officers from the Councils Planning and Pollution teams together with the Environment Agency sought engage with the operator during June and a planning application to regularise the works on site was promised by the operator at the end of the month. Information from neighbours and observations from Council officers though continued to indicate material was still being imported into the site.
- 12.5 On the 25th June, a S59 notice was served by the Environment Agency directing that operations should stop on site and the material removed. A deadline of 4th November was set for this to be achieved.
- 12.6 A copy of the licence agreement between the operator and the site owner PSST LLP was obtained at this time. In addition to the normal requirements on each party, the licence also contained some specific clauses pertinent to the activity being undertaken and the promise from the operator to submit a planning application. The key clauses are:
- 3.1.6 not to do or permit to be done on the Property anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the or any owner or occupier of neighbouring property;
 - 3.1.9 not to apply for any planning permission in respect of the Property;
- 12.7 In light of this information notably the restriction on the submission of a planning application, the Local Planning Authority moved to a position of commencing formal enforcement action rather than relying on a negotiated resolution to the

cessation of work and the clearing of the site. To secure details about the extent of work being undertaken on site, the Local Planning Authority subsequently sent a Planning Contravention Notice (PCN) to the operator on the 9th July and this was returned on the 10th July.

- 12.8 The PCN sought to secure details of the volume of material imported and exported from the site and the level of vehicle movements associated with the operation of the site. The PCN also sought details of the operators using the site. As the timescale for the PCN and the issuing of the Environment Agency S59 notice overlapped, the level of activity on site was reduced from its May and June peak.
- 12.9 Despite running a waste handling operation the operator though was only able to give estimates of the material moved into and out of the site. In response to the question in the PCN about companies using the site, the operator stated that as the deposition of hardcore onto the site was free, little was known of its origins and its owners. The information contained in the PCN is therefore treated with caution as the operation of the site is a regulated activity and the lack of clarity about vehicle movements or material imported into the site is not as robust as would be anticipated.
- 12.10 Although a planning application was promised by the operator, at the date of the preparation of this report, no valid application has been submitted. Over time, the applicant has first submitted the application forms together with a fee then followed this with location and block plans. The final document necessary to validate the application, the Design and Access Statement has not been submitted.
- 12.11 As the Local Planning Authority has not received the minimum information necessary to validate the application it has not been possible to undertake consultation with officers, statutory consultees or neighbours to date. As an application has not been submitted to the Council for consideration, the operator has been notified that the Local Planning Authority would commence enforcement proceedings through the presentation of this report to Committee for consideration of a recommendation of enforcement action.
- 12.12 In preparing the enforcement action, the owners of the site PSST LLP have contacted the Council to understand their position.
- 12.13 The Local Planning Authority have expressed to the owners that they are potentially liable for any enforcement action if the operator is unable or unwilling to complete the necessary removal of material from the site.
- 12.14 The owners of the site have provided a written statement to the Local Planning Authority setting out the measures they wish to undertake to secure compliance with any enforcement action. They are aware of the S59 notice from the Environment Agency setting the deadline for the clearance of the site on the 4th November.
- 12.15 PSST LLP have stated in their letter that they were led to believe by the operator that the various permits and associated documents necessary were in place. They immediately contacted the Environment Agency for guidance on the

matter and on being notified of the issuing of the Section 59 notice together with the breach of terms set out in the license between PSST LLP and the licensee and the impact of the operators activities on the surrounding area, PSST LLP deemed it necessary to terminate the license with immediate effect.

- 12.16 As indicated, PSST LLP have approached the Local Planning Authority to resolve this matter and secure the removal of the material. Whether it be deemed waste or not, the material that is currently stored within the demise of the former license is in fact still in the possession of the operator and that as Landlords PSST LLP must legally give the licensee the opportunity to remove his property/possessions from the site.
- 12.17 Notice has been given and PSST LLP are now seeking to have the site cleared. Due to the waste, there is no income currently being generated and the owners are keen to re-establish the potential for this site to become economically active in compliance with planning and other necessary permits.
- 12.18 They are seeking to secure the removal of the waste from site and are looking to utilise machinery which conforms to current regulations, offering the capacity to supply dust and noise suppression. Furthermore they would wish to enforce reasonable working hours of Monday to Saturday between the hours of 8am to 6pm to process and remove material as quickly as possible.
- 12.19 Some of the recovered material would be retained on site to reinstate the surface in an even consistency on site and compacted, providing a stable and level temporary surface allowing the site to be more presentable and thus attract prospective tenants. Any unusable waste material would be transported off site and disposed of in the correct manner. Waste transfer notes will again be provided offering a record of by which means the material has been safely disposed of in line with relevant regulations and procedures.
- 12.20 Officers welcome the intention of the owners to restore the site in a timely manner and it is considered there is value in the outline methodology proposed. Nevertheless, the site has generated substantial complaint and give the material which remains on the site is in the ownership of the former operator, there is a possibility wished of the owner may be obstructed and clearance of the unauthorised building waste, hardcore and timber may be delayed.
- 12.21 Taking the above events from the commencement of operations by the occupier to the current involvement of the owner, it is now hoped that the site will be cleared over the forthcoming three months. Should this not occur though the Local Planning Authority would wish to secure a longstop date by which necessary enforcement action could be instigated. This enforcement action though should at the current time been seen as a mechanism for setting a time scale for the parties to work towards and it is considered the Councils position should stand alongside that of the Environment Agency securing compliance by the 4th November.
- 12.22 In view of the above, it is considered expedient that enforcement action is now taken through the issue of an Enforcement Notice to rectify the breach of planning control and the harm it is causing. Authorisation is also sought to institute prosecution proceedings should any Requisition for Information,

Planning Contravention Notice or Enforcement Notice be complied with, and to institute injunctive proceedings if required in the event of a continuing breach of planning control.

