



Walsall Council

PLANNING COMMITTEE

Date: 1st November 2018

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.

Address: LAND ADJACENT TO 26 BRADLEY LANE, DARLASTON, WALSALL

Reference no. E13/0063

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of on-going investigations at 26 Bradley Lane

2.0 RECOMMENDATIONS

- 2.1 That Committee note the contents of the report

3.0 UPDATE ON ENFORCEMENT CASE

- 3.1 At the planning committee on the 4th October 2018, it was requested that a formal update on the progress of case E13/0063 Land Adjacent to 26 Bradley Lane, Darlaston, Walsall.
- 3.2 Planning committee resolved to take Enforcement Action to seek to remedy the planning breaches relating to the earth works and creation of an access onto Bradley Lane, new stables and hay/storage barn and storage of two caravans.
- 3.3 The Enforcement Notice was served on 3rd February 2015 and was due to come into effect on 4th March 2015. The owners appealed the Notice.
- 3.4 The notice was quashed by the Planning Inspectorate on the 27th October 2015 on the basis that whilst the notice identified an unauthorised change of use and operational development, the remedies to address the breach were only confined to addressing the operational development. Whilst the inspector can amend notices they need to consider if such action would cause injustice to any party in the proceeding. If the notice was upheld as drafted, the unauthorised uses would be deemed to have planning permission and therefore cause injustice to the Council. The other option to amend the notice to identify remedies which addressed the issue of the change of use would significantly expand the scope of the notice and cause injustice to the appellant.
- 3.5 In response to the notice being quashed the site owners then submitted a Certificate of Lawfulness Existing Use application on the 26th July 2016, for the use of the land for the keeping of 11 horses on the land for the last 40 years and access onto Bradley Lane. During the consideration of the evidence, there was insufficient evidence to support the access and the level of evidence could only

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support that the site could accommodate the keeping of 7 horses on the land. The Certificate was therefore issued granting the existing lawful use of the site for the keeping of 7 horses on the 7th June 2018.

- 3.6 Following the determination of the Certificate of lawfulness application, the case has been referred back to planning enforcement to consider what action needs to be taken address the outstanding breaches in planning control.
- 3.7 As the Council purported to enforce the breach of planning control through service of the Enforcement notice on the 3rd February 2015. In accordance with Section 171B (4) of the Town and Country Planning Act, the usually 4 year for operation development being immune from action has not expired. Furthermore, the unauthorised change of use of the land carries a 10 year period for enforcement which again has not yet expired.

4.0 ENFORCEMENT ACTION

- 4.1 Given that immunity from enforcement action will come into effect on the 3rd February 2019, officer will revisit the site to establish if there have been any recent changes to the circumstances at the site and if there are any additional breaches in planning control.
- 4.2 If there are no new breaches of planning control then Officers can issue a new Enforcement Notice with a revised breach and steps to remedy to take account of the Planning Inspectors comments. This can be issued under the delegated powers planning committee conferred on the 26th June 2014 when this matter was originally considered by this committee.
- 4.3 However, if the updated site visit gives rise to additional breaches of control not previously considered the matter will be again referred to planning committee in the usual manner to seek authorisation for Enforcement Action.

5.0 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.

6.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

6.1 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

6.2 Local Policy

Black Country Core Strategy

- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2 Environmental Protection
- ENV5 Stabling and Riding of Horses and Ponies
- ENV10 Pollution
- 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

7.0 LEGAL IMPLICATIONS

- 7.1 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.
- 7.2 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.
- 7.3 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

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(b) that it is expedient to issue the notice, having regard to the development plan and to any other material considerations.

- 7.4 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.

8.0 EQUAL OPPORTUNITY IMPLICATIONS

- 8.1 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.
- 8.2 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.

9.0 ENVIRONMENTAL IMPACT

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

10.0 WARD(S) AFFECTED

Darlaston South

11.0 CONSULTEES

None

12.0 CONTACT OFFICERS

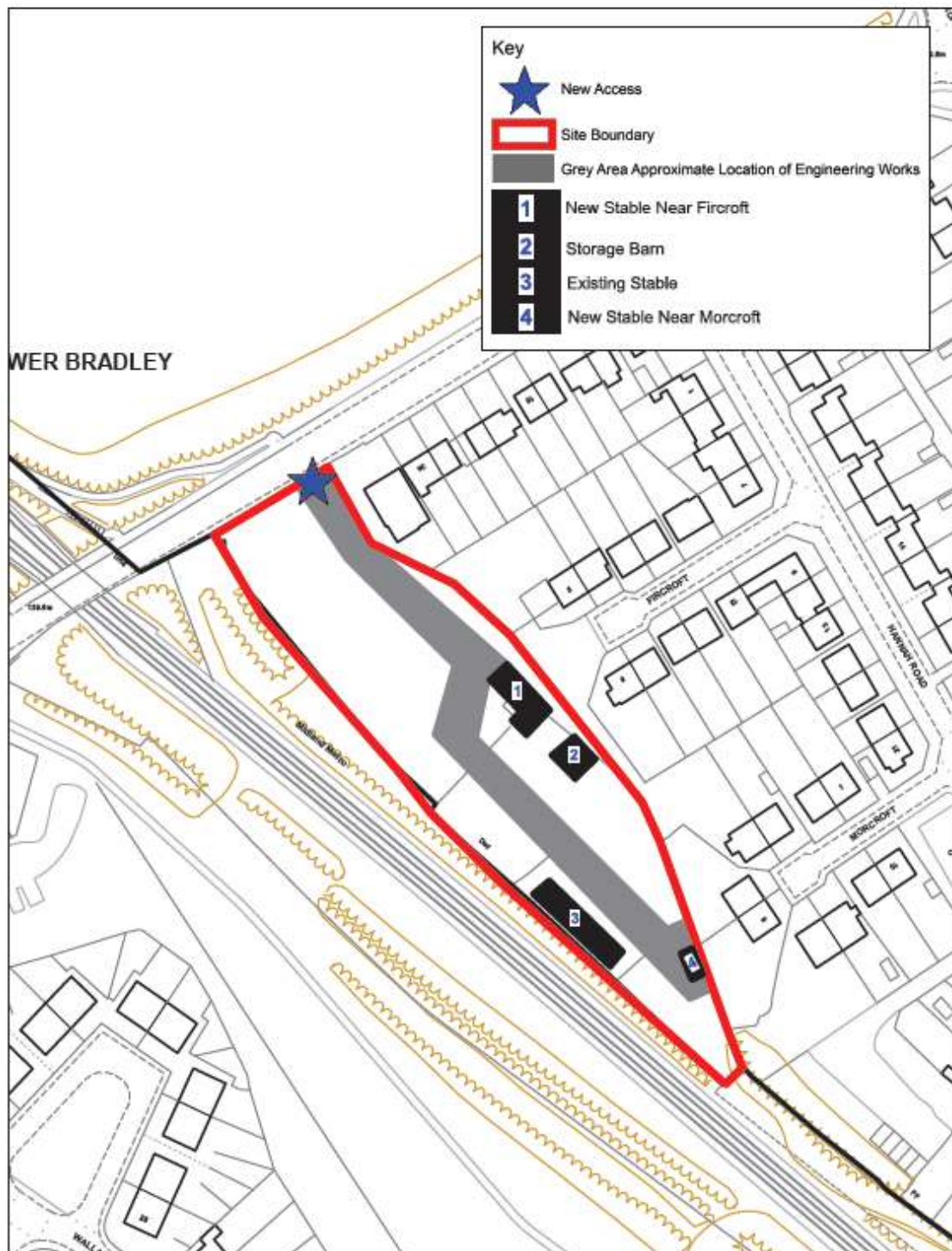
Emma Green Senior Enforcement Officer

13.0 BACKGROUND PAPERS

Enforcement file E13/0063 not published.

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Land Adjacent 26 Bradley Lane



Map Scale: 1:1250
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