



## PLANNING COMMITTEE

09 July 2015

### REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

#### E14/0233 – Land Between River Tame & Railway, Darlaston Road, Walsall

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

To request authority to take planning enforcement action in respect of the material change of use of land for the storage of commercial building materials.

##### 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 commercial building materials.

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

- Cease the use of the land for storage
- Remove all materials and associated packaging and waste from the land

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

One month

##### **Reason for taking Enforcement Action:**

The unauthorised use of the land for the storage of commercial building materials is significantly detrimental to the visual amenities of the site and the local area. It is also not in accordance with the aspirations of the Borough to encourage high

quality employment uses on the site. Furthermore the previous planning permission for the site contained a number of conditions relating to issues which have not been addressed, therefore the use is operating in an uncontrolled manner with uncertainties remaining as to: land contamination; impact on ecology; access and servicing; storage and treatment of waste and recycling; boundary treatments; and external lighting. The latest flood modelling also suggests the site could be liable to flooding and the Coal Authority now regard this land to be in the High Risk Development Area. These matters could lead to further adverse impacts if the use continues uncontrolled.

### 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**

Pleck

#### **9.0 CONSULTEES**

None

#### **10.0 CONTACT OFFICER**

Katie Parsons

Development Management: 01922 652603

#### **11.0 BACKGROUND PAPERS**

Enforcement file not published

**David Elsworthy**

**Head of Planning and Building Control**

**Planning Committee**  
**09 July 2015**

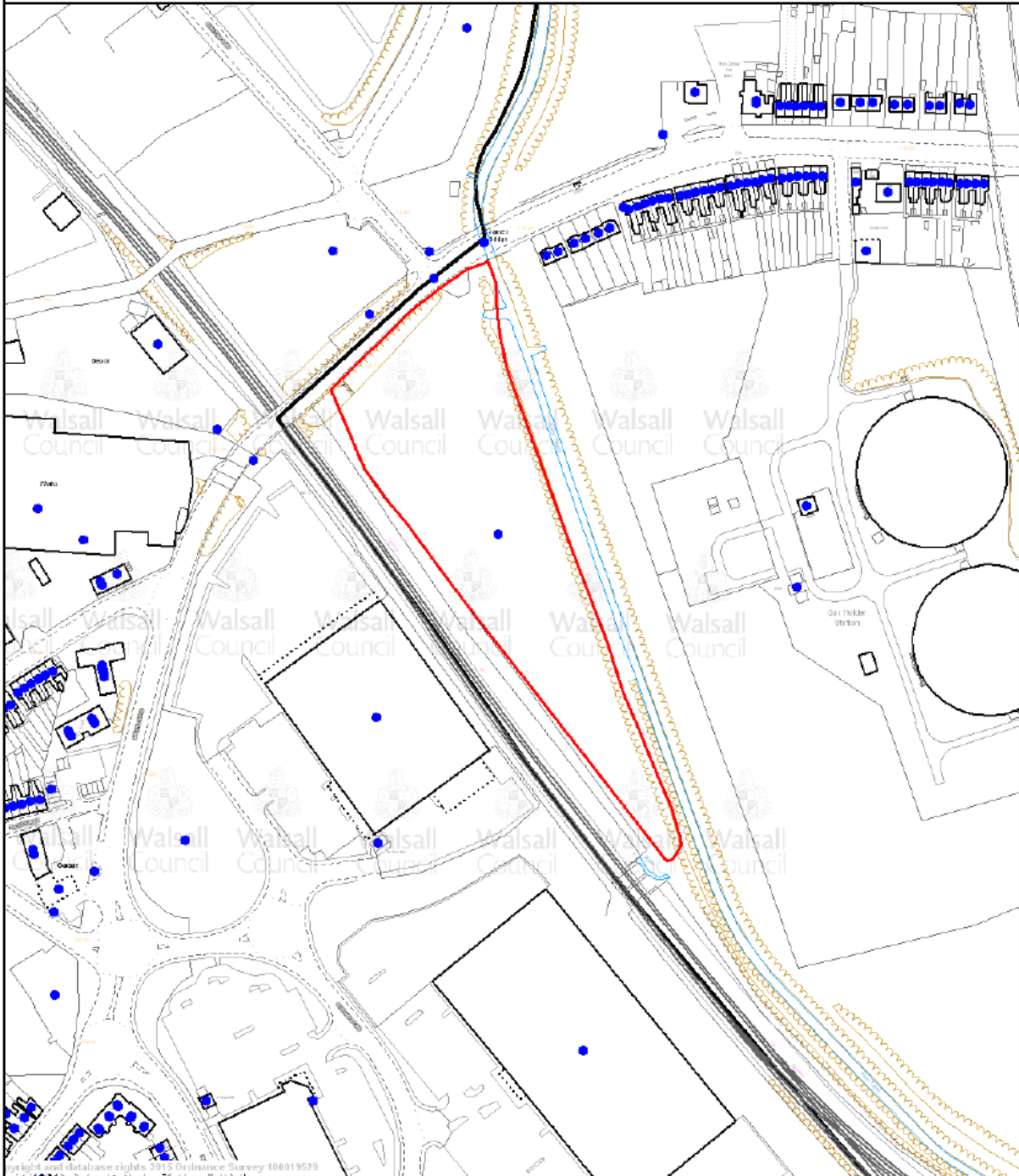
**12.0 BACKGROUND AND REPORT DETAIL**

- 12.1 The site is located within the Enterprise Zone in a Core Employment Area. It is a vacant grassed piece of land adjacent to the gas storage containers on Darlaston Road and is accessed via a gated entrance opposite the junction with Cemetery Road. The River Tame runs along the eastern site boundary.
- 12.2 In April 2014 a query was received by Planning Services regarding the storage of materials on the site by Darlaston Builders Merchants, which has premises on Platt Street and Pinfold Street, Darlaston.
- 12.3 A site visit in April 2014 confirmed that building materials and pallets were being stored on the land. These items are highly visible from outside the site, giving the site an untidy and unkempt appearance. This is considered to be significantly detrimental to the visual amenities of the site and the local area. It is also not in accordance with the aspirations of the Borough to encourage high quality employment uses on the site.
- 12.4 Planning permission 11/0005/FL had previously been granted to Darlaston Builders Merchants in April 2011 for builders merchants, including construction of relevant buildings and storage yards. The planning permission included pre-commencement and pre-occupation conditions relating to: remediation of land contamination; proposed refuse and waste recycling facilities; proposed boundary treatments; updated ecological surveys and a management plan; external lighting; surfacing of accesses, parking and manoeuvring areas. Conditions also controlled where the site could be accessed and where on the site open storage and industrial processes could take place and where loading and unloading of good should occur, to safeguard the amenities of the local area and highway safety. The pre-commencement conditions have not been discharged and the time limit for implementation of the planning permission expired on 26 April 2014 therefore the permission has not and cannot be lawfully implemented. In any case the storage of materials on the land would not have been in accordance with that planning permission even if it had been lawfully implemented.
- 12.5 The site is located within the boundaries of the Local Development Order but open storage is not permitted by the Order. Retention of the use on the site would require planning permission and a new application would need to be submitted.
- 12.6 The operator of Darlaston Builders Merchants was written to in April 2014 advising that the use of the land was unauthorised and that the use of the land for the storage of commercial building materials should cease within 28 days of the date of the letter and advising that the Council would consider serving an Enforcement Notice to remedy the breach.
- 12.7 The operator telephoned Planning Services in May 2014 advising that the project had previously stalled but as they now wished to use the land, a planning

application would be submitted imminently which would address the matters reserved by conditions on the previous planning permission.

- 12.8 In parallel to these negotiations, the Darlaston Strategic Development Area Access Project has been approved to support the wider economic regeneration of the area. Some of the works will be carried out immediately adjacent to this site, which unfortunately means that the scheme previously granted planning permission would no longer receive planning support in the same form, as it would not connect satisfactorily to the strategic highway network.
- 12.9 Since the previous planning permission was granted there have also been some material changes in the site constraints, which would also require reassessment, such as the classification of the site in relation to Flood Risk and Coal Development Risk. These could impact on the form of any development that would be acceptable on this site.
- 12.10 Whilst on-going discussions with Darlaston Builders Merchants have continued about alternative development proposals, they have been advised that a fresh planning application for this site would not be supported without significant amendment and that all the current stored materials, which is unauthorised and harms the visual amenity of the local area, should be removed from the site in the short term unless and until planning permission has been secured.
- 12.11 Unfortunately no alternative proposals for the site have come forward and the site has not been cleared. A second letter was written to the owner in late April 2015 advising that a further 21 day compliance period would be offered before a report was prepared recommending that an Enforcement Notice be served. No response has been received and the materials and pallets remain on the site.
- 12.12 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.

**E14/0233 - LAND BETWEEN RIVER TAME & RAILWAY, DARLASTON ROAD, WALSALL**



**Walsall Council**

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Scale 1/2500 Date 23/6/2015

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