



PLANNING COMMITTEE

26th June 2014

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

Land adjacent to 26, Bradley Lane, Wednesbury, WV14 8EP

1.0 **PURPOSE OF REPORT**

To request authority to take planning enforcement action in respect of earth works for the creation of access onto the highway, hardsurfacing, boundary fencing, stabling blocks, and a partly completed storage barn.

2.0 **RECOMMENDATIONS**

- 2.1 That authority is granted for the Head of Planning and Building Control to issue an Enforcement Notice under the Town and Country Planning Act 1990 to require remedial actions to be undertaken as shown below.
- 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, the non-return of Requisitions for Information or a Planning Contravention Notice, and the institution of injunctive proceedings in the event of a continuing breach of control, in accordance with paragraph Part 3.2 – 6(a) (7) of the constitution.
- 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 breach(es) the reason(s) for taking enforcement action, the requirement(s) of the Notice and plan, or the boundaries of the site, in the interests of ensuring the accurate and up to date notices are served.

Details of the Enforcement Notice

The Breach of Planning Control:-

The carrying out of engineering works to alter land levels and create access onto the highway, laying down of hardsurfacing, the erection of boundary gates and fencing, the erection of two stabling blocks and the partial construction of a storage barn, all without planning permission.

Steps required to remedy the breaches:-

- Return the land where the engineering works have been carried out to its original condition, ensuring all hardsurfacing is removed, and cease use of the access created for the entering and exiting of the site on Bradley Lane for vehicular traffic.
- Remove new boundary treatment facing Bradley Lane.
- Remove both of the newly erected stabling blocks from the land. One is located adjacent to housing on Fircroft (replacing a previous stable) and the other is located near to Morcroft, as identified on the plan.

- Remove the storage barn from the land.

Period for compliance:-

Three months

Reason for taking Enforcement Action:-

1. The development implemented so far requires planning permission.
2. The boundary fencing to Bradley Lane has replaced established planting resulting in an incongruous addition to the street due to its excessive height and proximity to the footpath and has had a significant detrimental impact on the character of the area.
3. The access onto Bradley Lane does not meet the required visibility standards raising highway safety concerns.
4. The proximity of the stables and the storage barn to residential properties neighbouring the site would have a significant impact on occupiers by way of visual impact and noise, and smell in the case of the stables.
5. The development is contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58, 64 and 109, the Black Country Core Strategy policy ENV2 and Walsall's saved Unitary Development Plan, in particular policy GP2, ENV5, ENV10, ENV32, T4, T7 and T13, and the Supplementary Planning Document, Designing Walsall.

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.

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:

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*".

All the **core planning principles** have been reviewed and those relevant in this case are:

- Contribute to conserving and enhancing the natural environment and reducing pollution.
- 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

- Encourage the effective use of land by reusing land that has previously been developed

Key provisions of the NPPF relevant in this case:

56. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making better places for people.

57. It is important to plan positively for the achievement of high quality and inclusive design for all development.

58. Planning policies and decisions should aim to ensure that developments meet criteria that include:

- Function well and add to the overall quality of the area
- Establish a strong sense of place
- Respond to local character and history and reflect the identity of local surroundings and materials

64. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

109. The planning system should contribute to and enhance the natural and local environment by:

- Protecting and enhancing valued landscapes

207. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

The Black Country Core Strategy (BCCS)

http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm

This was adopted in February 2011 under the current Local Development Framework system, and the NPPF says that for 12 months from the publication of the national framework “*decision-takers may continue to give full weight to relevant policies ... even if there is a limited degree of conflict with this Framework*”. The relevant policies are:

ENV2 and ENV3 states that all development should aim to protect and promote the special qualities, design quality and local distinctiveness of the Black Country.

It is considered in this case that the relevant provisions of the BCCS can be given full weight.

Walsall’s Unitary Development Plan (UDP)

www.walsall.gov.uk/index/environment/planning/unitary_development_plan.htm

Policies that have been saved and not replaced by the BCCS remain part of the development plan. However, in such cases the NPPF says “*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)*”.

The relevant policies are:

GP2: Environmental Protection

The Council will expect all developments to make a positive contribution to the quality of the environment and will not permit development which would have an

unacceptable adverse impact on the environment. Considerations to be taken into account in the assessment of development proposals include:

I. Visual appearance.

VI. Overlooking, loss of privacy, and the effect on daylight and sunlight received by nearby property.

ENV5: Stabling and Riding of Horses and Ponies

The development of stabling and riding facilities will only normally be permitted where all of the following are satisfied:-

I. Adequate grazing land is available for each horse/pony to be kept on the site.

The appropriate grazing density will be influenced by the characteristics of individual sites, the season in which grazing is taking place and the use to be made of feed brought in, but the Council will not normally expect grazing densities to exceed 1 horse per 0.6 hectares to prevent overgrazing. Each animal must be provided with a stable of suitable size and design.

II. Use is made of existing buildings or where new buildings are proposed they accord with the principles in Policy ENV3. The total number of stables permitted will be limited to the number of horses /ponies that the land can support.

III. The proposal is accompanied by an acceptable landscaping scheme including boundary treatment appropriate to the local area.

IV. Proposals must include a designated area within the site boundary for the exercising of horses/ponies. The area must be fenced off and suitably surfaced. There must also be an area within the site boundary for the safe loading/unloading of animals into horseboxes or trailers.

V. There would be no material harm to the environment and amenities of the nearby area according to the criteria set out in Policy GP2.

Proposals must show how and where feedstuffs and bedding will be stored and how waste from the site will be properly disposed of.

ENV10: Pollution

(a) The development of an industry or facility which may cause pollution will only be permitted if it would not:-

I. Release pollutants into water, soil or air, whether on site or elsewhere, which would cause unacceptable harm to health and safety or the natural environment.

II. Cause unacceptable adverse effect in terms of smoke, fumes, gases, dust, steam, heat, light, vibration, smell, noise or other polluting emissions.

III. Have an unacceptable adverse effect on nearby land uses and/or restrict the types of new development that could be permitted in the locality, or impose special conditions on them.

ENV32: Design and Development Proposals.

(a) Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted. This policy will be applied to all development but will be particularly significant in the following locations:-

- Areas with a special character arising from the homogeneity of existing development in the neighbourhood.

(b) When assessing the quality of design of any development proposal the Council will use some or all of the following criteria:-

- The appearance of the proposed development.
- The height, proportion, scale, and mass of proposed buildings / structures.
- The materials proposed for buildings, external spaces and means of enclosure.
- The integration and co-ordination of buildings and external space.
- Community safety and security.
- The visual relationship of the proposed development with adjacent areas, the street and the character of the surrounding neighbourhood.
- The effect on the local character of the area.
- The proposed vehicular and pedestrian circulation patterns.
- The integration of existing natural and built features of value.
- The maintenance requirements of the development.

T4: Classifies the highway network and specifies that residential streets and minor roads are those where traffic volumes and speeds should be quite low. Sometimes traffic calming measures will be required.

T7 – All development should satisfy the car parking standards set out in Policy T13.

T13: Development will provide adequate on-site parking to meet its own needs, and that there will be no adverse effect on highway safety and the environment.

Supplementary Planning Document Designing Walsall (2008)

Provides guidance on how to achieve good urban design within Walsall, including a range of key issues that developers must address. For residential developments, Privacy and aspect distances between dwellings must ensure that all occupants have a satisfactory level of amenity, whilst reflecting the existing and emerging character of the area.

5.0 LEGAL IMPLICATIONS

- 5.1** Pursuant to section 171A(a) of the Town and Country Planning Act 1990 (as amended) the carrying out development without the required planning permission 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. It appears to officers that the breach of planning control occurring at this site commenced within the last four years.
- 5.2** Section 172 of the Town and Country Planning Act 1990 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.
- 5.3** 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.

- 5.4 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.
- 5.5 The Town and Country Planning (General Permitted Development) Order 1995 (GDPO) provides certain permitted development rights for agricultural land. Agricultural land is defined as land which is in use for agriculture and which is so used for the purposes of a trade or business. Officers consider the site in question has only been used for the keeping of horses over the past 30 years, and the mere keeping of horses falls outside the definition of agricultural land. However, the owner asserts that the land is used as agricultural land.
- 5.6 The GPDO sets out what development is permitted development for a site of this size (0.5 hectares), assuming it is agricultural land. Construction of new agricultural buildings is not permitted, although extension and alteration works to existing buildings is permitted provided that the building does not accommodate livestock and is not within 400 metres of any residential property that is not part of the agricultural land, nor where it is within 5 metres of the boundary of the agricultural unit. In addition, no development is permitted within 25 metres of any tarmaced, classified highway.
- 5.7 Human rights – Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights. In taking enforcement action, Article 1 of the First Protocol is engaged – Protection of Property. This is because enforcement action will interfere with the owners' private property. However, officers are of the view that enforcement action is necessary and proportionate in the circumstances, and that it is in the public interest for the breach to be removed.
- 6.0 **EQUAL OPPORTUNITY IMPLICATIONS**
Officers do not consider there are any equal opportunity implications. Action is being taken against the owner based on the unauthorised works he has carried out, and in this respect he is not treated any differently from any other person in the borough who has carried out unauthorised works against which the Council considers it is expedient to take enforcement action.
- 7.0 **ENVIRONMENTAL IMPACT**
The report seeks enforcement action to remedy adverse environmental impacts.
- 8.0 **WARD(S) AFFECTED**
Darlaston South
- 9.0 **CONSULTEES**
None
- 10.0 **CONTACT OFFICER**
Stuart Crossen
Senior Planning Officer: 01922 652608

11.0 BACKGROUND PAPERS
Enforcement file not published

David Elsworthy
Head of Planning and Building Control

Planning Committee
26th June 2014

12. BACKGROUND AND REPORT DETAIL

- 12.1 May 2011 - Enquiries were received that a new access had been created from Fircroft. A site visit was undertaken on the 11th May 2014 by Enforcement Officers who found that there was a new access from Fircroft.
- 12.2 May 2013 – New enquiries were received that works were occurring on the site. A site visit was undertaken on the 22nd May 2013 by Enforcement Officers following complaints that building works had been taking place at the site. No access to site but it was clear that the original stables near access on Fircroft appeared to be new. A new roadway had also been laid from the access off Bradley Lane (alteration to ground levels) down to the far end of the field where another stabling block had been newly installed. The site has been used for at least 30 years for the keeping of horses, had two stable buildings on the site and no hardsurfacing previously.
- 12.3 Following an initial letter to the owners sent on the 14th June 2013, a further site visit took place on the 24th June 2013 including a meeting on site between Enforcement Officers and the owners. Officers found a stabling block for the keeping of a stud horse had been erected on the land close to houses on Morcroft. The owners believed that the stabling did not need planning permission. They had also replaced an existing stabling block located near to houses on Fircroft. Also partly under construction was a Storage Barn. The owners state that their intention was to improve the appearance of the land and for the keeping of horses and livestock including pigs, chickens and sheep in keeping with what they believed to be the established lawful use of the land.
- 12.4 The Enforcement Officer advised that planning permission would be required for:
- Extending or altering of the existing stables,
 - The erection of a Storage Barn,
 - The addition of new stables
 - Works carried out to create an entrance/road track including changes to land levels.

It was also noted at the time of the visit that the land was also being used for the keeping of pigs and chickens – though these were few in number.

- 12.5 The Enforcement Officer wrote again to the owners on the 23rd September 2013 and advised as follows:

- Planning permission is required for the creation of the new access off Bradley Lane.
- Earth works have been carried out to create a raised area of land now utilised as a private roadway for vehicular traffic. These works are substantial enough to result in a material change to the topography of the land and to be deemed engineering works requiring planning permission.
- The stables nearest to Fircroft, based upon available evidence obtained from aerial photographs, had been both refurbished and extended. They require planning permission because officers consider they are a new building, given the extent of the works carried out.
- A hay storage building would require planning consent.
- The new stabling block and pad at Morcroft required planning permission.
- Advice was also given about relocating the new buildings away from the houses should the occupier of the land choose to submit a planning application.

12.6 A call was received from the owners appointed planning agents QSP on the 22nd October 2013 who agreed to submit a planning application for the new entrance but insisted that all other works and use of the land did not require planning permission.

12.7 28th Oct 2013 - Letter received from QSP Consultancy confirming telephone conversation. The agent's view was that while planning permission was required for the construction of the new access, it was not required for the construction of the stables and storage barn because the land was being used for agricultural purposes and benefited from permitted development rights. However, notwithstanding any difference of views between officers and the owners as to whether the land is agricultural land, the permitted development rights for agricultural land do not apply in this instance. In other words, planning permission is required whether the site is agricultural land or not. This is because where agricultural land is between 0.4 but less than 5 hectares (the site in this case is 0.5 hectares), only works which are for the extension or alteration of an agricultural building are permitted, and only then where reasonably necessary for the purposes of agriculture and provided they are not within 25 metres of any tarmaced classified highway. Extension of new agricultural buildings requires planning permission as new buildings cannot be built using permitted development rights. On this site the owner has constructed two new stables and a new storage barn. One of the new stables (the one near Fircroft) was built on the site of an old stable, but officers are of the view that no part of the old stable now remains. Consequently the old stable no longer exists and any new stable built in its place cannot benefit from permitted development rights. The new stable is much bigger than the old stable and planning permission is required for it. In any event, even if the owner were to argue that the land is agricultural land and the stable was merely an extension or alteration to the old stable that already existed, the GPDO does not allow works to be carried out to any existing agricultural building which accommodates livestock where it is within 400 metres of residential properties or within 5 metres of the boundary of the unit, which would be the case on this site. Planning permission is required for such extensions or alterations.

12.8 Members should be aware, when making their decision, that because the old stable near Fircroft has been replaced by a new one, there will be fewer stables

on site in which to keep the animals if enforcement action is taken against both new stables. The only remaining stables would be those which border the Metro Line (identified as “Existing Stables” on the plan) and which are immune from enforcement action as they have been there for at least of couple of decades. Planning permission would have to be obtained for a suitable new stable, and any decision on it would have to be taken in accordance with the development plan and any other material considerations. One application for planning permission has already been refused, as set out below. Notwithstanding the effect on keeping the animals on site, officers are satisfied that enforcement action is expedient in the circumstances, and that any interference with human rights is proportionate.

12.9 22nd November 2013 – A further site visit by Enforcement Officers took place following reports of further works occurring to the new entrance. Owners were found to be erecting larchlap fencing using the existing posts and setting back the gates at the entrance to the site off Bradley Lane. Enforcement Officers noted the presence of 4-5 piles of road chippings on the land. Owners insisted they were doing nothing contrary to planning regulations and were just improving the existing fencing which they believed did not require planning consent and that the officer should speak only to their agent from now on. They also stated that the access had always existed and permission was not required. However, the erection of 2 metres high fencing at the back of the footpath does not benefit from permitted development rights.

12.10 On 10th January 2014 a letter was sent by Officers to the planning agents QSP to confirm that there were no agricultural permitted development rights which applied to the works carried out (as the land was in any event not agricultural land), and that the following required planning permission:

- New access created into the site off Bradley Lane.
- Fencing recently erected along the boundary adjacent to footpath on Bradley Lane
- Earth works carried out to create a raised area of land now utilised as a private roadway for vehicular traffic.
- The ‘existing stable’ indicated on the plan nearest to Fircroft has been substantially altered and extended and are considered to be a new development.
- Erection of a new storage barn
- New stabling block near Morcroft and concrete pad.
- Chicken run.

12.11 Following discussions with the agent and further investigations it is considered that there are no permitted development rights for the construction of a roadway because it is within 25 metres of a tarmaced classified road. However, it is considered that the chicken run does not require planning permission

12.12 A planning application was received on the 13th March 2014 for “Part retrospective application for earth works to existing access, new boundary fencing, new stables, new storage barn and a change of use from grazing land to mixed agricultural use.” The application was refused on the 1st May 2014 for the following reasons:

1. The boundary fencing to Bradley Lane has replaced established planting resulting in an incongruous addition to the street due to its excessive height and proximity to the footpath, considerably reducing the quality of the area which combined with the proliferation of buildings, intensive use of the site for the keeping of animals, resulting in the loss of a formally grassed area, has had a significant detrimental impact on the character of the area contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58 and 64, the Black Country Core Strategy policy ENV2 and Walsall's saved Unitary Development Plan, in particular policy ENV32, and the Supplementary Planning Document, Designing Walsall.
2. The proposed use of the site for the breeding and keeping of horses at the application site is not acceptable for the following reasons:
 - Lack of adequate grazing land
 - Excessive number of stables
 - Lack of any designated area within the site boundary for the exercising of horses / ponies
 - No designated area within the site boundary for the safe loading / unloading of animals into horseboxes or trailers.

The accumulative impact is to the detriment of the environment by way of visual impact on the land, the proliferation of buildings and animal welfare contrary to Walsall's Unitary Development Plan (2005) in particular saved policies GP2 and ENV5.

3. The applicant has failed to demonstrate that the proposed new access onto Bradley Lane fully meets with all of the required visibility standards raising highway safety concerns and therefore is contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58 and 64, Walsall's Unitary Development Plan (2005) in particular saved policies GP2 and ENV32.
4. The cumulative impact of the commercial horse breeding, keeping of pigs and sheep, the agricultural aspect of the proposal and the associated vehicular comings and goings to the site from the new access are considered due to their proximity to the neighbouring houses have had a significant impact on occupiers amenity by way of visual impact noise and smell. The development would therefore be contrary to Walsall's Unitary Development Plan (2005) in particular saved policies GP2 and ENV10.
5. The application has failed to demonstrate that the proposed development would not have an adverse impact on the amenities of occupiers or the surrounding residential occupiers in terms of ground contamination due to the lack of any test certificates or laboratory test results to demonstrate that soil forming materials imported onto or deposited at the site are free from contamination

and fit for purpose. The development would therefore be contrary to Walsall's Unitary Development Plan (2005) in particular saved policies GP2 and ENV10.

Land Adjacent 26 Bradley Lane

