



**Planning Committee**  
**31<sup>st</sup> March 2011**

**REPORT OF HEAD OF PLANNING AND BUILDING CONTROL**

**Land next to 1 Radley Road, Rushall, Walsall, WS4 1LN**

**1.0 PURPOSE OF REPORT**

- 1.1 To request authority to take planning enforcement action in respect of the siting of a mobile home.

**2.0 RECOMMENDATIONS**

- 2.1 That authority is granted for the issuing of 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 that the decision as to the institution of 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 control; be delegated to the Assistant Director - Legal and Constitutional Services in consultation with the Head of Planning and Building Control.
- 2.3 That, in the interests of ensuring an accurate and up to date notice is served, authority be delegated to the Assistant Director - Legal and Constitutional Services in consultation with 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 and the reasons for taking enforcement action, the requirements of the Notice, or the boundaries of the site:

Details of the Enforcement Notice

**The Breach of Planning Control:-**

Change of use for stationing of a mobile home

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

- Permanently cease to use the site for the stationing of a mobile home
- Permanently remove from the site the mobile home and associated fixtures and fittings.

**Period for compliance:-**

Three months

**Reasons for taking Enforcement Action:-**

Planning permission (10/0092/FL) has been refused for the retention of the mobile home and a subsequent appeal dismissed. The mobile home does not represent a high standard of design in this visually sensitive location near the Green Belt and adjacent to the canal. The mobile home is therefore contrary to the saved Unitary Development Policies, 3.6, GP2 and ENV32. Policies ENV3 and ENV4 of the Black Country Core Strategy and Planning Policy Statement 1: Delivering Sustainable Development.

**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:

**Black Country Core Strategy**

The Joint Core Strategy was adopted by the Council on 3<sup>rd</sup> February 2011 and now forms part of the statutory development plan. It replaces certain "saved" policies in the UDP. It sets out how the Black Country should look in 2026 and establishes clear directions for change in order to achieve this transformation.

ENV3 requires high quality design.

ENV4 requires development to protect and enhance the visual amenity of the canal network.

**Saved Policies of Walsall's Unitary Development Plan (2005)**

Policy 3.6 development should help to improve the environment of the Borough.

GP2: The Council 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

ENV32: Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted.

**National Policy**

PPS1: Design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and the quality of an area and the way it functions, should not be accepted.

**5.0 LEGAL IMPLICATIONS**

- 5.1 The enforcement action will have an effect on a home; accordingly consideration must be given to the Human Rights Act 1998 ("HRA") and the decision of the Local Authority to take such action must be justified and proportionate. It is accepted that both Article 8 and First Protocol Article 1 of the HRA are engaged.
- 5.2 First Protocol Article 1, a public authority cannot interfere with the use of a person's property, unless there is a law that allows it to do this and there is a good reason for it. Article 8 (1) provides "that everyone has the right to respect

for his family and private life, his home and correspondence". Further, Article 8(2) provides "there should be no interference by public authority with the exercise of this right, except such as it is in accordance with law and is necessary in a democratic society in the interest of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others".

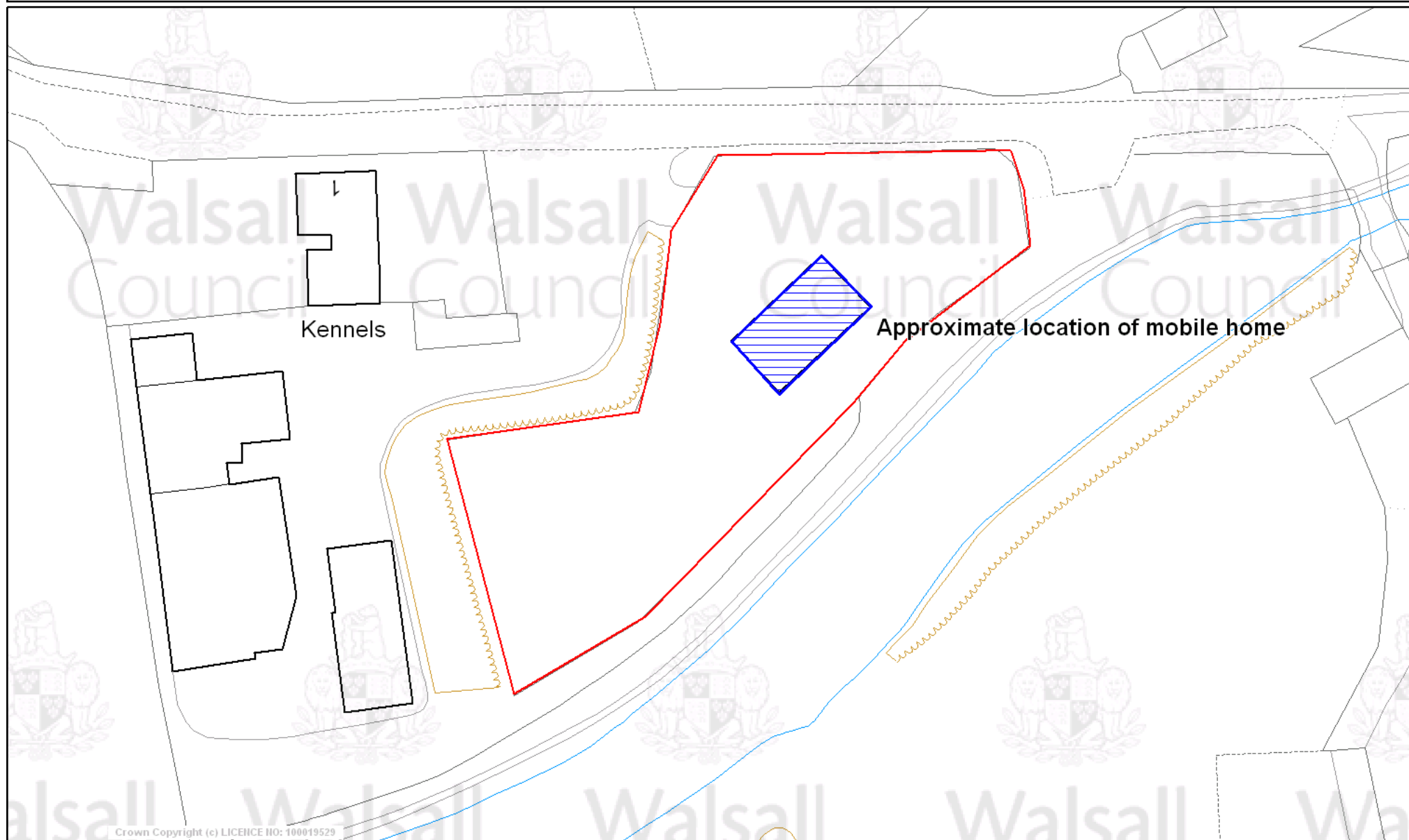
- 5.3 Article 8 and Article 1 are qualified rights; accordingly the Local Authority must be justified in interfering with these rights. The doctrine of proportionality is relevant and means that the interference with the above right must be proportionate to the aims achieved. Therefore, it must interfere as little as possible with the right in question, must be related to the objectives to be achieved and must not be arbitrary or unfair.
- 5.4 Accordingly, the Local Authority should give consideration when taking enforcement action to ensure that such action does not breach these rights or represent a disproportionate response to the issue under consideration by the Local Authority.
- 5.5 To achieve the above aim, the Planning Committee must weigh in the balance all the issues set out above; including the effect that enforcement action will have on the occupiers, in terms of their ability to occupy their home, and in doing so, to include the impact of the development on the visual amenity of the area.
- 6.0 **EQUAL OPPORTUNITY IMPLICATIONS**  
None arising directly from the report.
- 7.0 **ENVIRONMENTAL IMPACT**  
The report seeks enforcement action to remedy adverse environmental impacts.
- 8.0 **WARD(S) AFFECTED**  
Rushall -Shelfield
- 9.0 **CONSULTEES**  
None.
- 10.0 **CONTACT OFFICER**  
Paul Hinton 01922 652486
- 11.0 **BACKGROUND PAPERS**  
Enforcement file not published.

**David Elsworthy**  
**Head of Planning and Building Control**

## **12.0 BACKGROUND AND REPORT DETAIL**

- 12.1 1 Radley Road is a dwelling which adjoins Rosedene Animal Rescue Centre. The modest collection of buildings are located within a rural setting. Between the dwelling and the Rushall Canal is a mobile home which was granted temporary planning permission for five years in 2004 to provide 24 hour supervision of the rescue centre. This is an identified area of underground limestone workings. A planning application (10/0092/FL) to retain the mobile home was refused in March 2010 and a subsequent appeal was dismissed. The appeal inspector considered that this clearly visible development in a relatively sensitive location near the Green Belt and next to the canal does not represent a high standard of design. There are no overriding reasons why a mobile home, as opposed to a conventional dwelling, is appropriate. The mobile home has a very basic look, is a mass-produced, prefabricated building that does not meet the aims and objectives of the Black Country Strategy, the saved policies of the Unitary Development or Planning Policy Statement 1.
- 12.2 The mobile home remains on site and officers advised the applicant in October 2010 to remove it. At the request of the applicant enforcement action has been held in abeyance as the applicant expressed a desire to submit a planning application for a more visually sympathetic building. No planning application or further discussions have been undertaken.
- 12.3 It is accepted that Article 8 and First Protocol Article 1 of the HRA are engaged as enforcement action will have an impact on a home. In taking enforcement action against the unauthorised mobile home by requiring its removal, the Council has to have due regard to the requirements of law; the Town and Country Planning Act (1990)(as amended) and the Human Rights Act 1998. If this is done, it allows enforcement action to be taken against unauthorised development.
- 12.4 The development is unauthorised as no planning permission exists. The mobile home continues to have an impact upon the visual amenity of the locality and therefore in due regards to the Human Rights Act and Town and Country Planning Act it is considered expedient that enforcement action is now taken through the issue of an enforcement notice. Officers request that authorisation is given to take this course of action.

**Land next to 1 Radley Road, Rushall, Walsall, WS4 1LN**



**Walsall Council**

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