



PLANNING COMMITTEE

Date: 12 July 2018

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.

Address: 14 DURHAM ROAD WALSALL, WS2 9TF
Reference no. E18/0076

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against:
- a) The unauthorised two storey side extension, single storey rear extension, porch and front canopy and garden terrace that was been built not in accordance with the approved plans of planning permissions 14/1883/FL
 - b) A Retrospective application 18/0430 for these works has subsequently been refused

2.0 RECOMMENDATIONS

- 2.1 **That authority is granted to the Head of Planning, Engineering and Transportation to issue an Enforcement Notice** under the Town and Country Planning Act 1990 (as amended). To require remedial actions to be undertaken as shown in 3.2.
- 2.2 **To authorise the Head of Planning, Engineering and Transportation to institute prosecution proceedings** in the event of non-compliance with an Enforcement Notice.
- 2.3 **To authorise the Head of Planning, Engineering and Transportation, 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.

3.0 DETAILS OF THE ENFORCEMENT NOTICE

3.1 The Breach of Planning Control

- A. Erection of a Single Storey rear extension
- B. Erection of a two storey side extension
- C. Erection of a front porch and canopy
- D. Creation of a raised garden terrace and associated steps.

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3.2 Steps required to remedy the breach:

Rear extension:

- 1) Reduce the depth of the single storey rear extension to 1.6 metres to comply with the 45 degree policy OR
- 2) Reduce the width of the rear extension by 2.3 metres from number 16 Durham Road and to not extend beyond the side wall of the original house, AND,

Side extension:

- 3) Demolish the single storey rear extension comprising of the bathroom, lobby and part of the kitchen as it extends past the rear and side walls of the original dwelling house, AND
- 4) Reduce the side extension in height to a maximum of 4 metres and to extend no further than the existing rear wall, AND

Front Porch and Canopy

- 5) Removal of front canopy and pillars, AND

Raised Garden Terrace

- 6) Remove the raised terrace and reinstate the ground level and amend to centralise the stair case, to access garden area, OR
- 7) Set terrace in from the side boundaries by a minimum of 2.3 metres from either side boundaries and put up 1.8 metre screening along the edge of the newly formed terrace,

OR

- 8) Total demolition of the single storey rear extension, two storey side extension, front porch and canopy and raised garden terrace and reinstatement of land to original state,

IN ADDITION TO THE ABOVE STEPS, comply with this following step;

- 9) Following any demolition works removal of all waste materials to a site licensed to accept this waste materials.

3.3 Period for compliance:

3 month from when the notice takes effect – to undertake the works as set out in paragraph 3.2 parts 1 OR 2, AND 3 and 4, 5 and 6 OR 7 AND 9, **OR** 8 AND 9.

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3.4 The reasons for taking enforcement action:

- a) The two storey side extension has not been built in accordance with the approved plans included with planning application reference 14/1883/FL, and therefore does not benefit from planning permission,
- b) The single storey rear extension, has not been erected to comply with either permitted development allowances or a relevant planning permission and due to its position and height has an unacceptable and detrimental impact on the rear habitable room windows in 12 and 16 Durham Road, thereby adversely impacting on the amenities of residents of these properties in terms of loss of light, overbearing and loss of outlook.
- c) The garden terrace does not benefit from planning permission and the resulting structure creates an unacceptable level of overlooking of neighbours gardens and properties.
- d) There is no planning permission for the porch and canopy to the front of the property, it should be noted that without the canopy the porch element would comply with permitted development allowances.

4.0 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.

5.0 POLICY IMPLICATIONS

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

5.1.1 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*".

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

- Always require high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- Find ways to enhance and improve places in which people live their lives
- 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

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Key provisions of the NPPF relevant in this case:

- NPPF 7 - Requiring good design

NPPF Consultation

In March 2018 the Ministry of Housing, Communities and Local Government issued consultation proposals for revisions to the National Planning Policy Framework. The consultation ends on 10 May 2018. The text has been revised to implement policy changes previously consulted upon and further changes to planning policy announced in the Budget 2017. Whilst proposals should be considered in light of this draft consultation at this stage it can be afforded little weight as a material consideration in the determination of the application.

5.1.2 Local Policy

Black Country Core Strategy

- CSP4 Place making
- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2 Environmental Protection
- ENV32: Design and Development Proposals

Designing Walsall SPD appendix D

Policies are available to view online:

http://cms.walsall.gov.uk/planning_policy

6.0 LEGAL IMPLICATIONS

- 6.1 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.
- 6.2 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.

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- 6.3 Officers consider that the breach of planning control occurring at this site commenced within the last 4 years in connection with the unauthorised building works at the dwelling house
- 6.4 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
 - (b) that it is expedient to issue the notice, having regard to the development plan and to any other material considerations.
- 6.5 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.
- 6.6 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.

7.0 EQUAL OPPORTUNITY IMPLICATIONS

- 7.1 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.
- 7.2 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.

8.0 WARD(S) AFFECTED

- 8.1 Pleck

9.0 **CONSULTEES**

9.1 None

10.0 **CONTACT OFFICERS**

10.1 Sheila Denison Enforcement Officer

11.0 **BACKGROUND PAPERS**

11.1 Enforcement file E18/0076 not published.

PLANNING COMMITTEE

DATE:12 July 2018

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 A plan showing the location of the site is attached to this report.
- 12.2 The Local Planning Authority received a complaint about a building erected in the rear garden this was investigated and a site visit was made, officers noted at the site visit there was already substantial building works to the property. During a review of the full planning history for the property; officers then established the extent of the building works was not in accordance with the approved plans to the main dwelling house.

Planning History:

- 12.3 To assist in the consideration of this matter it is important to understand the previous planning history.
- 12.4 In May 2014, planning permission (14/0510/FL) for proposed 2 storey side and rear extension and single storey rear extension was refused for the following reasons:
- 1. The proposed two storey side and rear extension is considered would have an unduly dominant and overbearing impact on the amenities of the occupiers of no. 12 Durham Road because of the combined excessive height as a result of the difference in ground levels and the proposed length.*
 - 2. The application fails to include sufficient details of how any new higher boundary treatment next to the extended rear patio/terrace next to no. 16 would avoid an unacceptable overlooking of neighbour's gardens to the detriment of their amenity.*
- 12.5 To address these issues the applicants sought to utilise the extended permitted development allowances and submitted application 14/1877/PAHPD of a single storey rear extension: 6 metres deep, 3 metres to eaves and 4 metres maximum height. In January 2015, Planning permission was deemed to be required as the proposal failed to meet permitted development allowances.
- 12.6 In addition to the permitted development prior notification application, a further planning application (14/1883/FL) for proposed two storey side and single storey rear extension was granted permission subject to conditions on 19/02/15.
- 12.7 As a consequence of the refusal of the previous Prior Notification application a further Prior Notification application was submitted, (15/0119/PAHPD) _ for a Single storey rear extension to extend 6 metres beyond the rear wall of the original house (measured externally) with a maximum height of 4 metres and eaves at a maximum height of 3 metres (both measured externally and above natural ground level) – Prior approval not required 9/3/15.

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- a) This decision included informative notes for the applicant including one note that advised the single storey rear extension should be substantially completed before the two storey side/rear extension permitted on 19/2/2015 under reference 14/1883/FL:- The nearest side wall of the rear extension being at least 200mm from the side wall of the existing side/rear extension, as shown on the additional plan received on 4th February 2015.
- b) Under this particular prior approval legislation [permitted development under paragraph A.1(ea)] it is a requirement that the developer shall notify the local planning authority of the completion of the development as soon as reasonably practicable after completion.
- c) The rear extension being erected and substantially completed before the two-storey side /rear extension permitted on 19/2/2015, (under reference 14/1883/FL) is commenced

12.8 Following the site visits by the enforcement officers; a letter was sent to the owner advising them that they could submit a planning application to seek to rectify the planning breach but that it was unlikely to be granted, as the scheme as built adversely impacts on the amenities of occupiers of the neighbouring properties

12.9 Application 18/0430 for the retention of the two storey side extension, single storey rear extension, porch and front canopy and garden terrace was refused was then submitted and has been refused on the following grounds:

- 1. *The proposed two storey side and rear extension is considered would have an unduly dominant and overbearing impact on the amenities of the occupiers of no. 12 Durham Road because of the combined excessive height as a result of the difference in ground levels and the proposed length.*

12.10 In order for the Prior Approval extension (Reference 15/0119/PAHPD) to benefit from permitted development rights it must have been completed in accordance with the provisions of the General Permitted Development Order 2015. In this instance, the completion of the extension required all works carried out to be completed before 30 May 2016. In addition, it was the applicants' duty to inform the Local Planning Authority in writing, confirming the completion date together with the Prior Approval reference number, the site address and name of the developer as soon as reasonably practicable after completion.

12.11 The Local Planning Authority is unable to find this completion information or that this extension was completed before 30 May 2016 as required by the legislation. As the owners have failed to provide this information, and we have contrary evidence in the form of the Building Control Officers have confirmed that a Building Regulations application was received on 24/02/15 and final completion certificate was issued on 26/10/17 for a two storey side and single storey rear extension and loft conversion. It is considered that the entire single storey rear extension requires planning permission. It is therefore considered by officers that the works have been undertaken as a single building operation and as such all the works require planning permission. For the reasons set out in paragraph 12.8 the retention of the extensions as built cannot be supported due

to the adverse impacts on the amenities of occupiers of the adjacent properties, contrary to local and national planning policies.

12.12 To date no appeal has been submitted to the planning inspectorate

12.13 Enforcement action should be commensurate with the breach of planning control to which it relates. It will normally be inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity. This is often referred to as the **expediency** test

12.14 When assessing whether to instigate enforcement action the committee are advised that the following needs to be considered:

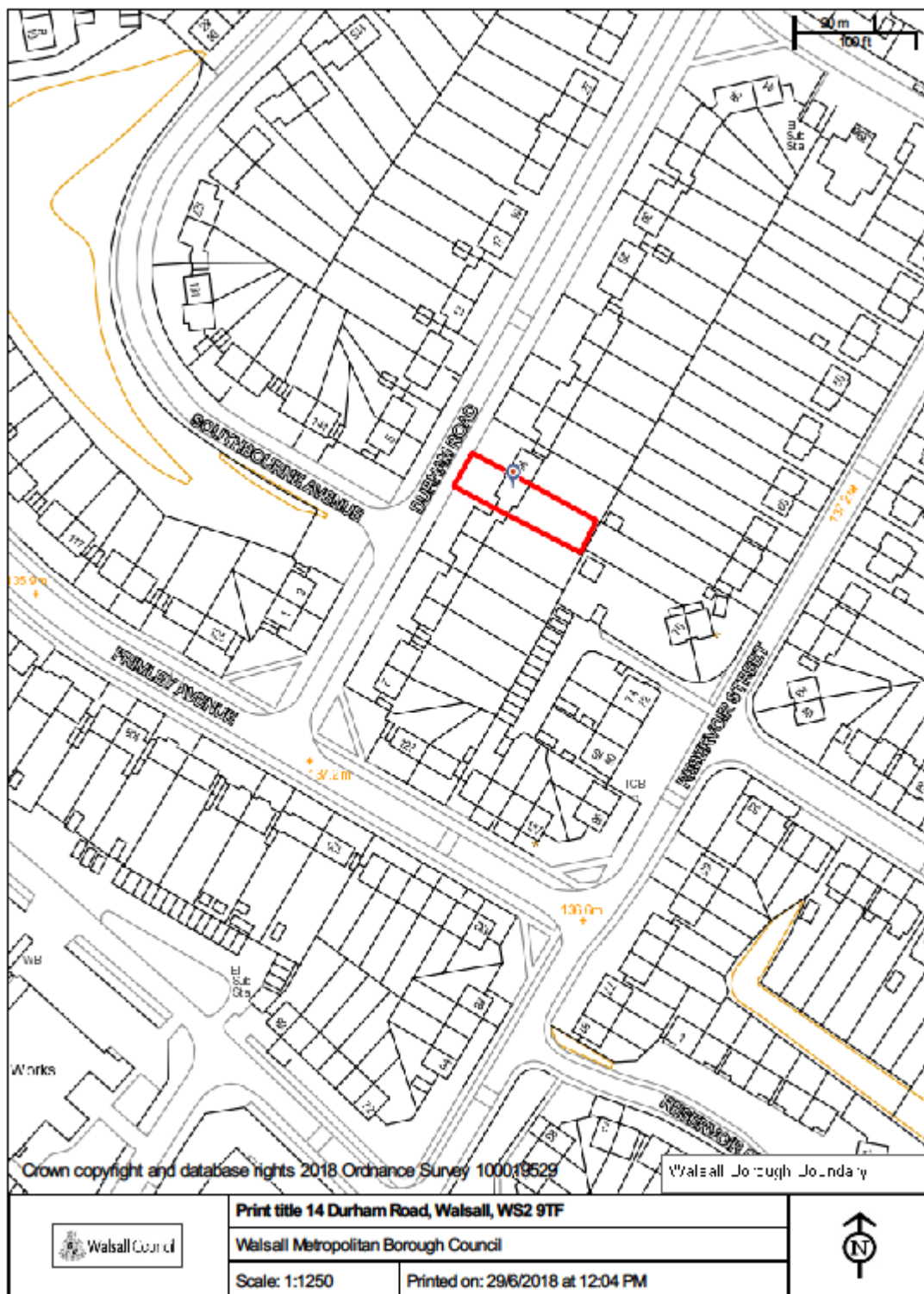
- i. the proposed action must be in the public interest
- ii. the breach must be sufficiently harmful to justify taking action
- iii. the proposed action must be reasonable and commensurate with the breach in planning control to which it relates
- iv. the action undertaken should be cost effective
- v. whether or not the development is in accordance with planning policies

12.15 It is considered that the harm generated by the development is as follows:

1. The impact of the single storey rear extension on neighbours light, amenity and outlook available to rear habitable room windows in 12 and 16 Durham Road is considered to be unacceptable and detrimental. This addition is considered to have not acquired Permitted Development rights. Contrary to the National Planning Policy Framework including paragraph no's 56, 57, 58, 63 and 64; The Black Country Core Strategy policies CSP4, ENV2 and ENV3 and Walsall's Unitary Development Plan, in particular saved policies GP2, ENV32 and the Councils 45 degree policy in Appendix D of Designing Walsall SPD.
2. The low wall and steps near to the boundary with 16 Durham Road are considered to provide an unacceptable overlooking and loss of privacy for occupiers of no. 16 to both their rear habitable room windows and patio area. Furthermore the erection of a taller wall or fence is considered would exacerbate the impact of the extension on the existing light and amenity available to the occupiers of no. 16 Durham Road. Contrary to the National Planning Policy Framework including paragraph no's 56, 57, 58, 63 and 64; The Black Country Core Strategy policies CSP4, ENV2 and ENV3 and Walsall's Unitary Development Plan, in particular saved policies GP2, ENV32 and Appendix D of Designing Walsall SPD.
3. The two metres high fence erected along the side garden boundary and the new raised terrace with 12 Durham Road is considered to exacerbate the impact of the extension on neighbours light, amenity and outlook at no. 12 and is considered unacceptable. Contrary to the National Planning Policy Framework including paragraph no's 56, 57, 58, 63 and 64; The Black Country Core Strategy policies CSP4, ENV2 and ENV3 and Walsall's Unitary

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Development Plan, in particular saved policies GP2, ENV32 and Appendix D of Designing Walsall SPD.



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