



DEVELOPMENT CONTROL COMMITTEE

9th December 2008

Report of Head of Planning and Building Control

81 Forrester Street, Walsall

Refs: E05/0674, E07/0165, E08/0136.

1.0 PURPOSE OF REPORT

- 1.1 To request authority to extend the scope of two notices which relate to two flats at the property.

2.0 RECOMMENDATIONS

- 2.1 That members note the progress to date in issuing Enforcement Notices as described in section 12 below.
- 2.2 That Committee delegates authority to the Assistant Director - Legal and Constitutional Services, in consultation with the Head of Planning and Building Control, for the issuing of Enforcement Notices as set out in 2.4 below.
- 2.3 To authorise that the decision as to the institution of legal proceedings, in the event of non-compliance with the Notice or the non-return of Requisitions for Information, be delegated to the Assistant Director - Legal and Constitutional Services.
- 2.4 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 breach(es) the reason(s) for taking enforcement action, the requirement(s) of the Notice, or the boundaries of the site :

Details of the Enforcement Notices

The Breaches of Planning Control:-

The erection of a flat above the hot food takeaway shop, which is materially different to the new flat permitted under reference 04/0931/FL, by reason of, in particular, the provision on the west side of the flat of additional floor-space and an external door

The erection of an extension comprising a 'conservatory' and store to the existing flat above the supermarket shop.

Erection of fencing around the level roof area above the supermarket shop and use of this area as an amenity space for the two flats

Steps required to remedy the breaches:-

(i) In relation to the erection of a flat above the takeaway.:-

Dismantle and remove the flat completely, and restore the roof of the ground floor of the premises in accordance with planning permission BC 54444P for creation of a hot food takeaway shop.

Remove all resultant building components, rubble, debris and waste from the land.

OR

Dismantle and remove the additional part of the flat which was not part of planning permission 04/0931/FL, and provide in its place a new exterior wall and window to match the west elevation as approved as part of that planning permission.

Remove the external door and door frame provided in the west elevation of the flat and brick-up the door opening using external brick and mortar materials to match the adjoining walls.

Remove the exterior light from the west wall of the flat, and remove the fencing, trellis-work, tyres, plant pots and containers, and any other domestic paraphernalia, from the level roof area.

Cease to use the level roof area of the supermarket as a domestic amenity space for the flat

Remove all resultant building components, rubble, debris and waste from the land.

(ii) In relation to the erection of extension to existing flat above supermarket

Dismantle the extension to the first floor flat completely. Make-good any damages to the walls of the flat, and re-instate the level roof to the supermarket shop, using external materials which match those adjacent.

Remove the fencing, trellis-work, tyres, plant pots and containers, and any other domestic paraphernalia, from the level roof area.

Cease to use the level roof area of the supermarket as a domestic amenity space for the flat

Remove all resulting building components, rubble, debris and waste from the land.

Period for compliance:-
3 months.

Reasons for taking Enforcement Action:-

(i) In relation to the erection of a flat above the takeaway.:-

The additional floorspace provided for the flat without authorisation under planning permission 04/0931/FL, occupies the approved position for a cooking fume extraction flue which was permitted together with the formation of the hot food takeaway shop below, under planning permission BC54444P. When the flat was erected an unauthorised replacement flue was erected in a location nearer the adjoining housing. Planning permission has been subsequently refused for the replacement flue, and enforcement action taken to remove it. However an extraction flue is essential to safeguard the surrounding area from the effects of cooking fumes and odour. The additional floorspace should therefore be removed in order to allow the reinstatement of a fume extraction flue in the originally approved position.

The door installed in the west side of the new flat provides access to a level roof area, and thereby encourages the use of this roof area as a domestic amenity space for the flat, and as a link between this flat and the flat above the supermarket. The use of the roof for these purposes has resulted in a loss of privacy for adjoining residential occupiers and an increase in their exposure to the noise of daily living generated by the occupants of the flat.

The use of the roof as domestic amenity space to flat is also visually intrusive, incongruous, and detrimental to the visual amenity of the area and adjacent occupiers, in particular by reason of the fencing and the domestic paraphernalia deployed in connection with its use.

The flat as built is therefore contrary to policies GP2, 3.6, ENV32 and H10 of the Walsall Unitary Development Plan adopted 2005, and policy QE3 in the Regional Spatial Strategy .

(ii) In relation to the erection of an extension to the existing flat above the supermarket

The extension to the first floor flat, by reason of its design, size and situation at first floor level, is overbearing and harmful to the visual amenities of the area and in particular the amenities enjoyed by the adjoining properties.

The door installed in the east side of the extension provides access to a level roof area, and thereby encourages the use of this roof area as a domestic amenity space for the flat, and as a link between this flat and the flat above the supermarket. The use of the roof for these purposes has resulted in a loss of privacy for adjoining residential occupiers and an increase in their exposure to the noise of daily living generated by the occupants of the flat.

The use of the roof for this purpose is also visually intrusive, incongruous, and detrimental to the visual amenity of the area and adjacent occupiers, in particular by reason of the fencing and the domestic paraphernalia deployed on the roof in connection with its use.

The extension is therefore contrary to policies GP2, 3.6, ENV32 and H10(a) of the Walsall Unitary Development Plan adopted 2005, and policy QE3 in the Regional Spatial Strategy.

3.0 FINANCIAL IMPLICATIONS
None arising from the report.

4.0 POLICY IMPLICATIONS
The report recommends enforcement action in order to seek compliance with planning policies.

5.0 LEGAL IMPLICATIONS
None arising from the report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS
None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT
The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED
Pleck

9.0 CONSULTEES
Related planning applications were subject to normal publicity.

10.0 CONTACT OFFICER
Philip Wears
Planning Enforcement Team: 01922 652527 / 01922 652411

11.0 BACKGROUND PAPERS
Planning Applications BC 54444P, 04/0931/FL, 06/0930/FL, 06/0931/FL,
06/1852/FL
Enforcement file not published.

D Elsworthy
Head of Planning and Building Control

Development Control Committee
9th December 2008

12 BACKGROUND AND REPORT DETAIL

Introduction

- 12.1 The building is located at the corner of Forrester Street and Moat Road. There is a very small service yard. The building contains four different units of accommodation:-

- supermarket on the corner
- a flat above
- a separately run hot food takeaway shop fronting to Moat Road,
- a flat above the takeaway, but which is independent of it.

A plan showing the location of the site is attached to this report.

- 12.2 The Committee has authorised the issuing of enforcement notices against three developments on this site. One notice has been issued, but the scope of others needs to be extended, in particular where a connection between two of the enforcement actions has come to light. The reason for bringing to Committee is Legal Services advice that in the latter instance the extended scope would exceed the normal authority which is delegated to officers to vary the terms of enforcement notices. The background planning history, the progress in issuing notices, and the need for the extended scope are explained in more detail in the remainder of this section.

Recent planning history

- 12.3 An extension to add a 'conservatory' and store to the flat above the shop, and the installation of a replacement fume extraction flue for the takeaway, were the subject of a previous enforcement report in 2006. Committee authorised enforcement notices to require the removal of these two developments, but action was deferred for two months to allow time for the resolution of the issues by negotiation if possible. Subsequently planning applications for these two developments, 06/0930/FL/W3 for a slightly amended flue and 06/0931/FL/W3 for the extension to flat, but both were refused under delegated powers, and enforcement action has remained necessary.
- 12.4 Later a further, retrospective, application (ref 06/1852/FL/W3) was submitted to retain the flat above the takeaway because the flat had been erected with differences from its planning permission (ref 04/0931/FL). This application was refused, and in 2007 Committee authorised an enforcement notice in respect of this flat also.

Issuing of notices

- 12.5 Following the necessary ownership and leaseholder checks the enforcement Notice against the replacement fume extraction flue was issued in May 2008. An appeal was lodged on the ground that the complete removal of the flue is not necessary, for example because it can be painted. The Inspectors visit has recently taken place and a decision may be received in December 2008.

- 12.4 The notices in respect of the erection of an extension to the flat above the supermarket, and the erection of the flat above the takeaway have been drafted but not issued. It is considered that they should be issued together because both have requirements relating to the same roof area which is used as amenity space for the flats. However they have not been issued because in the case of the notice regarding the flat above the takeaway, a connection with the issue of the fume extraction flue has come to light. This situation is explained in the following paragraphs.

The need for extended scope

- 12.5 When officers determined planning application 06/1852/FL to retain the flat above the takeaway as built, refusing permission and going on to obtain authority to enforce, the problem caused by the flat was seen in terms of an additional exterior door being provided where none was shown on the plans. This door was considered to encourage access onto the flat roof area of the ground floor supermarket, for this roof area to be used for as a domestic outdoor amenity space for the flat, thereby causing loss of privacy and amenity for the occupiers of adjoining terraced houses whose rear gardens which it overlooks.
- 12.6 However the very close scrutiny of the planning history involved in officers investigating a possible solution to the fume extraction flue issue, corresponding with the owners, and drafting notices, has revealed an additional impact of the flat. The unauthorised additional floorspace incorporated in the flat has been provided in the position where a cooking fume extraction flue was permitted as part of the planning permission for the formation of the takeaway in 1999. (ref BC54444P). In fact officers consider that a flue was implemented in this location but was removed when the flat was built, with an unacceptable replacement flue being provided, which has led to that enforcement action.
- 12.7 This sequence of events suggests that the owners consider that a flue and the unauthorised additional floor space cannot co-exist in the same location. Building Control officers have advised that as a general proposition a cooking fume extraction flue might be passed through a separate flat above if suitable constructional details were incorporated. However when this has been put to the owners in writing, they have not responded, and there has been no opportunity to confirm whether or not the specific circumstances in the building would permit this, or make it acceptable to the owners. Neither have the owners demonstrated any other location for a flue.
- 12.8 Officers therefore consider that in these circumstances it should be concluded as a working assumption that a flue could not be reinstated in the originally approved location unless the unauthorised additional floor space is removed. It is considered therefore that the scope of the notice against the erection of the flat above the takeaway needs to be extended to require not only the removal of the additional external door, but also require the removal of this additional floorspace. The additional requirement and associated additional 'reason' are incorporated in 2.4 above.
- 12.9 Officers have been holding back the issuing of the two notices regarding the flats pending the decision on the current enforcement appeal regarding the replacement flue, because if this flue is allowed to remain it follows that the case

for the removal of the additional floorspace is weaker. However the time scale for the appeal has been relatively long, and it is essential that the legally permissible time period for taking enforcement action against the flats is not allowed to expire. Officers have therefore brought this report to Committee as issuing of the notices in respect of the flats is now required. If the appeal decision is available before the notices are issued this should influence the final scope, and hence delegated authority is requested.

- 12.10 As explained in paragraph 12.5 above officers have seen the additional exterior door in the flat above the takeaway as encouraging use of the flat roof area as an amenity space, with consequent harm for adjoining housing. Taking action to have this door removed would control the use of the roof area indirectly, though there may be more direct routes emerging, as the drafting of the notices is finalised. The changes to the terms of the recommendations allow this to occur.