



## **PLANNING COMMITTEE**

**5<sup>th</sup> March 2015**

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

**55 Shire Ridge, Walsall Wood, Walsall, WS9 9RA**

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

To request authority to take planning enforcement action in respect of the use of a residential garage for a hairdressers business.

#### **2.0 RECOMMENDATION**

- 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 (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 breach(es) the reason(s) for taking enforcement action, the requirement(s) of the Notice, 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:-**

Without the required planning permission the use of a residential garage for a hairdressers business.

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

Cease to use the property for the hair salon and reinstate the garage for use for domestic purposes including the parking of a vehicle.

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

One month.

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

- 1) The retention of a hair salon in a residential area would be contrary to Policy CEN1 of the Black Country Core Strategy, Saved Policies S1 and S2 of the Unitary Development Plan which directs such uses to established town centres to protect the vitality and viability of established centres. The proposal is considered not to be a of a small scale development that could be acceptable in an out of centre location and could result in the decline of nearby established centres, Brownhills District Centre or Streets Corner Local Centre. Furthermore, the proposal if supported has the potential to set a precedent for future out of centre development. As such the proposal is contrary to the National Planning Policy Framework, Policies CEN1, CEN6 and CEN7 of the Black Country Core Strategy, Saved policies S1, S2, S6 and S7 of the Walsall Unitary Development Plan 2005.
- 2) The application site is located in a residential area where customers rely on visiting the premises solely by car generating a lot more vehicular traffic than a family unit living in a house. The hair salon use in a domestic property surrounding by residential properties with the increase in numbers of customers coming and going from the premises in a car with car doors banging and general noise and disturbance of car radios, people gathering outside the premises and talking and the use of the salon up until 10.30pm at night currently unduly harms the amenities of the adjoining and surrounding residential occupiers, and the continued use of the hair salon would continue to unduly harm the amenities of the adjoining and surrounding residential occupiers to a level which is considered unacceptable in a wholly residential area. As such the proposal is contrary to the National Planning Policy Framework, Policies ENV3, CEN6 and CEN7 of the Black Country Core Strategy, Saved policies GP2, ENV10, ENV32 and S6 of the UDP.
- 3) The change of use of the garage into a hair salon fails to provide sufficient parking to meet the needs of both the existing dwelling and the retail element introduced into the garage resulting in indiscriminate on street and pavement parking in a residential area and opposite a junction, Arbor Gate, to the detriment of both the free flow of traffic and pedestrians on the public highway and to highway safety. As such the proposal is contrary to policies GP2, T7 and T13 of the Unitary Development Plan.

### **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:

- Seek to secure high quality design and good standards of amenity for all existing and future occupants
- Take account of the different roles and character of different areas

**Key provisions** of the NPPF relevant in this case:

4: Promoting Sustainable Transport

32 All development should have safe and suitable access to the site for all people. Development should only be refused on transport grounds where the residual cumulative impacts of development are severe.

7: Requiring Good Design

58. Developments should function well and add to the overall quality of the area.

60. It is proper to seek to promote or reinforce local distinctiveness.

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.

11: Conserving and enhancing the natural environment

109. The planning system should prevent new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of.... noise pollution.

120. To prevent unacceptable risks from pollution decisions should ensure that new development is appropriate to its location. The effects (including cumulative effects) of pollution on health or general amenity and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account.

123. Planning decisions should aim to:

- Avoid noise from giving rise to significant adverse impacts
- Mitigate and reduce to a minimum other adverse impacts on health and quality of life.
- Recognise that development will often create some noise
- Identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value.

On **planning conditions** the NPPF says:

Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

On **decision-taking** the NPPF sets out the view that local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development and look for solutions rather than problems and

work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

### **The Development Plan**

Planning law requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions but recognises that what it terms 'Local Plan' policies should not be considered out-of-date simply because they were adopted prior to the publication of the framework.

### **The Black Country Core Strategy (BCCS)**

[http://www.walsall.gov.uk/index/environment/planning/local\\_development\\_framework/ldf\\_core\\_strategy.htm](http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm)

This was adopted 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*. However, it is more than 12 months since the NPPF was published in March 2012. Now (as with the saved policies of Walsall's UDP) the NPPF advises that "*... due weight should be given to relevant policies ... 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).*" To consider the conformity of the BCCS with the NPPF the four Black Country councils have completed a 'Compatibility Self-Assessment Checklist' (published by the Planning Advisory Service) and have discussed the results with a Planning Inspector. Whilst there is no formal mechanism to certify that the BCCS is consistent with the NPPF the discussions led officers to the conclusion that the exercise identified no issues that would conflict with the NPPF or require a review of the BCCS in terms of conformity.

This checklist has been published on the BCCS and Council websites. Cabinet on 24<sup>th</sup> July 2013 resolved to endorse the assessment undertaken by officers from the four local authorities and agreed that the Black Country Core Strategy is consistent with the National Planning Policy Framework, so that the Core Strategy policies should be given full weight in planning decisions.

The relevant policies are:

ENV2: Development proposals will be required to preserve and, where appropriate, enhance local character.

ENV3: Development proposals across the Black Country will deliver a successful urban renaissance through high quality design that stimulates economic, social and environmental benefits. Implementation of the principles of "By Design" to ensure the provision of a high quality networks of streets, buildings and spaces.

TRAN2: Planning permission will not be granted for development likely to have significant transport implications.

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](http://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.

II. Creation of pollution of any kind

VI. Traffic impact

3.6: Development should help to improve the environment of the Borough.

3.7 Seek to protect people from unacceptable noise, pollution and other environmental problems.

ENV10 states that development which may give rise to pollution such as noise and smell will only be permitted where it would not have an adverse effect on adjoining uses/potential uses.

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

T7 – Car Parking

All development should satisfy the car parking standards set out in Policy T13. This will involve providing an adequate level of parking to meet operational needs while not exceeding any maximum parking standards that are specified.

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.

It is considered in this case that the relevant provisions of Walsall's saved UDP policies are consistent with the NPPF

## **Supplementary Planning Documents (SPD)**

On the basis that relevant UDP policies are consistent with NPPF, the related SPD(s) will also be consistent provided they are applied in a manner consistent with NPPF policy. The relevant SPD's are:

### **Designing Walsall (SPD) (Feb 2008)**

Aims to achieve high quality development that reflects the borough's local distinctiveness and character, through eight key design principles and ten policies. The following are the relevant policies;

DW3: Character - all new development must be designed to respect and enhance local identity

DW9: High Quality Public Realm - new development must seek to ensure it creates places with attractive environmental quality

## **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 or failing to comply with a condition or limitation subject to which planning permission has been granted 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. 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 dwellinghouse, in which case a four year period applies.

It appears to officers that the breach of planning control occurring at this site commenced within the last ten years.

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.

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.

## **6.0 EQUAL OPPORTUNITY IMPLICATIONS**

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 appearance of the land overrules the owner's right to the peaceful enjoyment of his property.

**7.0 ENVIRONMENTAL IMPACT**

The report seeks enforcement action to remedy adverse environmental impacts.

**8.0 WARD(S) AFFECTED**

Aldridge North and Walsall Wood

**9.0 CONSULTEES**

None.

**10.0 CONTACT OFFICER**

James Fox - Tel: 01922 652613

Development Management

**11.0 BACKGROUND PAPERS**

Planning application 14/1410/FL subject to normal consultation

Enforcement file not published

**David Elsworthy**

**Head of Planning and Building Control**

**Planning Committee**  
**5<sup>th</sup> March 2015**

**12.0 BACKGROUND AND REPORT DETAIL**

55 Shire Ridge is a detached house located in a residential estate of similar size properties with open plan front gardens.

An anonymous complaint was received during 2012 concerning the use of the property in connection with a hairdressing business. Officers inspected the address and found the garage had been subdivided with half of the garage used for a hair salon. During this inspection the owner confirmed she was receiving daily appointments to the property but at this time the activities were not considered to result in a material change of use, therefore the situation would be monitored but no further action taken.

Anonymous complaints continued to be received by the Council regarding the activities at the property. Due to the anonymous nature of the complaints gathering evidence to monitor the intensity and impact of the use was difficult and the case remained closed.

In May 2014 the Council received a complaint from a neighbouring property suggesting the ongoing activities were having an adverse effect on the amenity of their property primarily due to the indiscriminate parking of customers and nuisance associated with customers arriving to and leaving the property throughout the day. Evidence was provided to suggest regular visitors to the property on a daily basis.

In order to clarify the current level of activity at the property in connection with the hairdressing business a Planning Contravention Notice (PCN) was served on the owner in July 2014. The owner's response to the PCN confirmed on average 5 – 6 visitors to the property on a daily basis through Monday to Friday. Officers considered this level of activity had resulted in a material part change of use of a residential property to a hairdressing salon and therefore a planning application should be submitted. As is normal the owner was advised the outcome of the application cannot be guaranteed.

A retrospective planning application (reference number 14/1410/FL) for the change of use of residential garage to a hairdresser was submitted by the owner on 19<sup>th</sup> September 2014.

On the 9<sup>th</sup> January 2015 the Planning Committee resolved to refuse the application for the reasons set out below:

1. The retention of a hair salon in a residential area would be contrary to Policy CEN1 of the Black Country Core Strategy, Saved Policies S1 and S2 of the Unitary Development Plan which directs such uses to established town centres to protect the vitality and viability of established centres. The proposal is considered not to be a of a small scale development that could be acceptable in an out of centre location



and could result in the decline of nearby established centres, Brownhills District Centre or Streets Corner Local Centre. Furthermore, the proposal if supported has the potential to set a precedent for future out of centre development. As such the proposal is contrary to the National Planning Policy Framework, Policies CEN1, CEN6 and CEN7 of the Black Country Core Strategy, Saved policies S1, S2, S6 and S7 of the Walsall Unitary Development Plan 2005.

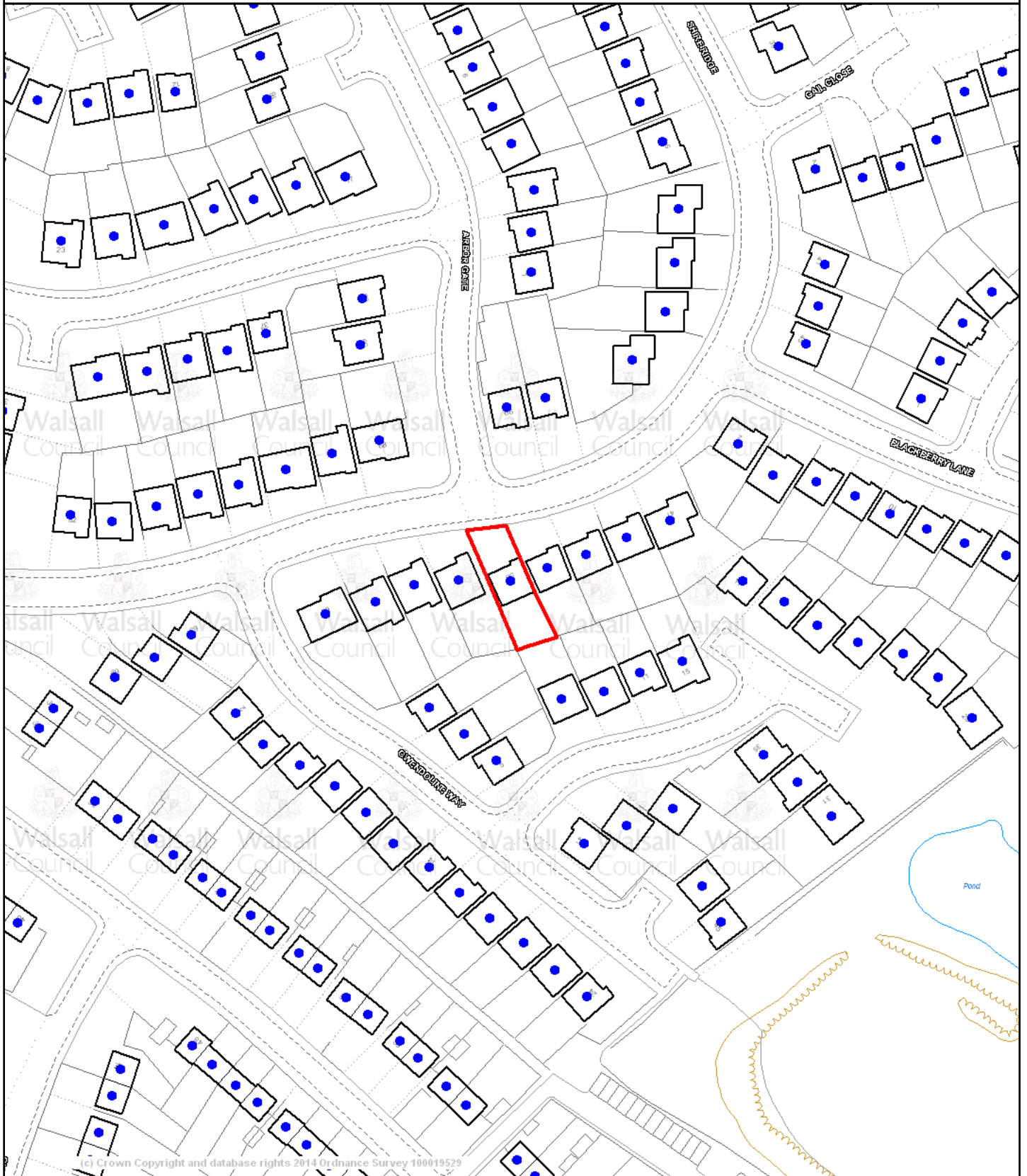
2. The application site is located in a residential area where customers rely on visiting the premises solely by car generating a lot more vehicular traffic than a family unit living in a house. The hair salon use in a domestic property surrounding by residential properties with the increase in numbers of customers coming and going from the premises in a car with car doors banging and general noise and disturbance of car radios, people gathering outside the premises and talking and the use of the salon up until 10.30pm at night currently unduly harms the amenities of the adjoining and surrounding residential occupiers, and the continued use of the hair salon would continue to unduly harm the amenities of the adjoining and surrounding residential occupiers to a level which is considered unacceptable in a wholly residential area. As such the proposal is contrary to the National Planning Policy Framework, Policies ENV3, CEN6 and CEN7 of the Black Country Core Strategy, Saved policies GP2, ENV10, ENV32 and S6 of the UDP.
3. The change of use of the garage into a hair salon fails to provide sufficient parking to meet the needs of both the existing dwelling and the retail element introduced into the garage resulting in indiscriminate on street and pavement parking in a residential area and opposite a junction, Arbor Gate, to the detriment of both the free flow of traffic and pedestrians on the public highway and to highway safety. As such the proposal is contrary to policies GP2, T7 and T13 of the Unitary Development Plan.

Following the refusal of the planning application the applicant is entitled to appeal the Council decision within six months of the determination of their application. However considering this is a retrospective application and the continued use of the property will result in an adverse impact on neighbouring properties officers are reluctant to allow the unauthorised use to continue unabated during this time. In the circumstances a letter was sent to the owner on 20<sup>th</sup> January confirming their options to either submit an appeal to the Planning Inspectorate within 28 days or cease the unauthorised use and convert the garage back into a garage for domestic purposes including the parking of a vehicle.

A letter was subsequently received from the owner confirming their intention to appeal the Council's decision. Unfortunately no timeframe has been provided and at the time of writing this report no appeal has been submitted to the Planning Inspectorate.

Further evidence gathered by officers confirms the unauthorised use of the property continues despite the Council's refusal of the planning application and in the absence of an appeal it is considered expedient that enforcement action is now taken because of the continued harm the unauthorised use is causing to the amenity of neighbouring properties. It is requested that enforcement notice is issued to rectify the breach of planning control and officers also request that should any enforcement notice not be complied with prosecution proceedings are undertaken.

## 55 Shire Ridge



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**Walsall Council**

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