



PLANNING COMMITTEE

05 November 2015

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

E15/0275 – Former Jack Allen Holdings Ltd, Middlemore Lane, Aldridge

1.0 **PURPOSE OF REPORT**

To update Committee on progress at the above site in respect of clearing waste materials deposited without the benefit of planning approval.

2.0 **RECOMMENDATIONS**

2.1 **To authorise 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 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.

Details of the Enforcement Notice

The Breach of Planning Control:

Without the required planning permission, the material change of use of the land for the storage of construction debris, timber and green waste recycling and the associated sale of recovered materials from the site.

Steps required to remedy the breach:

- Cease the use of the land for the importation and storage of construction debris, timber and green waste recycling and the associated sale of recovered materials from the site.
- Remove all construction debris, timber and green waste recycling and restore the site to its former condition.

Period for compliance:

By Midday 1st April 2016

Reason for taking Enforcement Action:

The grounds for taking enforcement action were set out in the report to committee for the August meeting. In summary, the concerns of the Council centred around the unauthorised importation, storage and processing of waste materials.

Whilst the owners of the site, PSST LLP, accepted the Council's position and accepted the need for the site to be cleared, the operator, Steve Morgan, continued to accept the importation of material.

The owners of the site subsequently took legal action to regain control of the site and this has culminated in the operator now removed from the site and the importation of material has now ceased.

The enforcement action approved at the August meeting sought to secure the clearance of the site by the 4th November, a date agreed in conjunction with the Environment Agency, but due to the actions of the operator, it has not proved possible for the clearance work to be completed within the requisite timescale.

The owners have approached the Council and the Environment Agency to resolve this matter. The owners have now reached agreement with the Environment Agency on the necessary steps to clear the site. This has been formalised through the issuing of an Enforcement Position which was issued on 21 September 2015.

The measures agreed have been discussed with the Council's Pollution and Planning Officers and is seen as a realistic timescale. Consultation has also been undertaken with the local residents and a presentation event was held on 2nd October.

It is therefore requested that an amendment be made to the original recommendation that the site now be cleared by midday on 1st April 2016 instead of the previous target date of 4th November 2015.

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. Planning applications may also be submitted that require an application fee.

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:

Planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions and sets out that "*...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)*".

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*".

It is based on 12 core planning principles. Those particularly relevant in this case are:

- 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
- Contribute to conserving and enhancing the natural environment

The NPPF also states that effective enforcement action is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.

The Development Plan

The Black Country Core Strategy (BCCS)

The relevant policies are:

CSP3: Environmental Infrastructure
CSP4: Place Making
CSP5: Transport Strategy
EMP2: Actual and Potential Strategic High Quality Employment Areas
TRAN1: Priorities for the Development of the Transport Network
ENV1: Nature Conservation
ENV2: Historic Character and Local Distinctiveness
ENV3: Design Quality
ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island
WM1 Sustainable Waste and Resource Management

It is considered in this case that the relevant provisions of the BCCS can be given full weight as they are consistent with the NPPF.

Saved Policies of Walsall's Unitary Development Plan (UDP)

The relevant policies are:

GP2: Environmental Protection
ENV10: Pollution
ENV11: Light Pollution
ENV23: Nature Conservation and New Development
ENV32: Design and Development Proposals
ENV40: Conservation, Protection and Use of Water Resources
JP5: Core Employment Areas
JP6: Best Quality Sites
JP7: Use of Land and Buildings in Other Employment Areas
S13: Nurseries, Garden Centres & Builders Merchants

T4: The Highway Network
T5: Highway Improvements

It is considered in this case that the relevant provisions of the UDP can be given full weight as they are consistent with the NPPF.

Supplementary Planning Documents (SPD)

Where relevant BCCS and UDP policies are consistent with the NPPF, the related SPDs will also be consistent provided they are applied in a manner consistent with NPPF policy. The relevant SPDs are:

Designing Walsall (2008)
Conserving Walsall's Natural Environment (2008)

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 constitutes a breach of planning control. Section 171B adds that where there has been a breach of planning control such as a change of use, no enforcement action may be taken after the end of the period of ten years, beginning from the date the breach commenced. It appears that the breach of planning control occurring at this site commenced within the last ten years.

For the reasons set out in this report, it is considered expedient to take enforcement action. Accordingly, authority is sought to serve an enforcement notice, pursuant to section 172 of the Town and Country Planning Act 1990.

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.

In the event of non-compliance with a Requisition for Information or non-compliance with a Planning Contravention Notice an offence is also committed and the Council may prosecute.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

Article 8 of the Convention for the Protection of Human Rights and Article 1 of the First Protocol to the Convention 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 freedoms of others. In this case, the wider impact of the use and the appearance of the land over-rides the owner's rights.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Aldridge Central and South

9.0 CONSULTEES

None

10.0 CONTACT OFFICER

Shawn Fleet

Development Management: 01922 650453

11.0 BACKGROUND PAPERS

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
05 November 2015

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 The site is located to the south of Middlemore Lane, Aldridge and comprises of an open area of land covered in hardcore which is surrounded by a palisade fence and high hedging. To the north lies the McKechnies site and to the west is the Redhouse Lane Industrial Estate. To the south is a tree belt which is identified as a SLINC beyond which is the railway line and then the housing on Station Road. To the east is a further tree belt and beyond that the Anchor Meadow Playing Field with housing on the opposite side of the park at Westfield Drive.
- 12.2 The site already has the benefit of planning permission reference 11/0240/FL for change of use to a hire depot for secure portable containers and offices. Part of the site to the west is used by Adastra Access Ltd and this use is not being considered as part of this enforcement action.
- 12.3 Following the failure of the operator on site, Steve Morgan, to comply with the requirement to clear the site and the subsequent action by the owners PSST LLP to remove Mr Morgan, steps have been taken to secure a scheme for the clearance of the site in agreement with the Environment Agency and the Councils Pollution and Planning officers.
- 12.4 The grounds for taking enforcement action were set out in the report to committee for the August meeting. In summary, the concerns of the Council centred around the unauthorised importation, storage and processing of waste materials.
- 12.5 The enforcement action approved at the August meeting sought to secure the clearance of the site by the 4th November, a date agreed in conjunction with the Environment Agency, but due to the actions of the operator, it has not proved possible for the clearance work to be completed within the requisite timescale.
- 12.6 The owners have approached the Council and the Environment Agency to resolve this matter. The owners have now reached agreement with the Environment Agency on the necessary steps to clear the site. This has been formalised through the issuing of an Enforcement Position which was issued on 21 September 2015.
- 12.7 Consultation has also been undertaken with the local residents and a presentation event was held on 2nd October.
- 12.8 It is therefore requested that an amendment be made to the original recommendation that the site now be cleared by midday on 1st April 2016 instead of the previous target date of 4th November 2015.
- 12.9 Should the site not be cleared by the 1st April 2016, officers would look to institute injunctive proceedings if required in the event of a continuing breach of planning control.

