



Walsall Council

PLANNING COMMITTEE

Date: 1 NOVEMBER 2018

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.

Address: 18 WALSTEAD ROAD WALSALL, WS5 4LX
Reference no. E18/0169

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 single storey front extension, two storey side extension, loft conversion with rear dormer window and changing the hipped roof to a gable that has been built otherwise than in accordance with the approved plans of planning permission 17/1689 (approved plans - proposed layout (100/669-02); and
 - b) The structure built in the rear garden measuring 3.48m deep and 5.8m wide and approximately 3.1m high at the highest point
- 1.2 The retrospective planning application 18/0785 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: within the last 4 years, the:

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- a) Erection of a two storey side extension with roof design change from hip to gable not in accordance with the approved drawings on planning consent 17/1689.
- b) Raising of the ridge height of the roof and loft conversion with rear dormer window incorrectly positioned not in accordance with planning consent 17/1689.
- c) Erection of a single storey front extension larger than the approved drawings on planning consent 17/1689
- d) Erection of a single storey rear garden building in excess of 2.5m in height without the benefit of planning consent.

3.2 Steps required to remedy the breach:

- a) For the first floor element of the two-storey side extension, incorporate the 0.5m set back from front elevation as per approved drawing 100/669-02 of planning consent 17/1689 and materials to match the original house.
- b) Amend the design of the roof over the two-storey side extension from a gabled design to a hipped design as set out on approved drawing 100/0669-02 of planning consent 17/1689 and materials to match the original house.
- c) Reduce the ridge height of the roof to 7.85m as per the existing ridge height as set out on approved drawing 100/0669-02 of planning consent 17/1689 and materials to match the original house.
- d) Reduce the size and reposition the rear dormer to accord with the approved drawing 100/669-02 of planning consent 17/1689 (i.e. 2 metres in height and 2.2 metres wide and 3.25 metres deep and 20cm set in from the boundary with 20 Walstead Road) and materials to match the original house.
- e) Reduce the size of the front extension in terms of depth and height to accord with the approved drawing 100/699-02 of planning consent 17/1689 and materials to match the original house.
- f) Reduce the height of outbuilding to a maximum of 2.5m in height to meet permitted development
- g) Following demolition to permanently remove from the site all waste materials arising from the works set out in steps a) – f) above to an approved site licensed to accept such waste materials.

3.3 Period for compliance:

To undertake the works as set out in paragraph 3.2 parts a to g within **3 months from when the notice takes effect -**

3.4 The reasons for taking enforcement action:

- a) Planning permission was granted under reference 17/1689 on the 14 February 2018 with the approved plans labelled (100/669 – 02). The works that have been built do not reflect these plans and the development as built is uncharacteristic of the building and surrounding area, creating an incongruous feature, which has a detrimental impact on the local amenity, and has an inappropriate terracing effect and is contrary to planning policies, CPS4 of the Black Country Core

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Strategy, 'saved' policies GP2 and ENV32 of the Walsall UDP, Supplementary Planning Guidance Designing Walsall and National Planning Policy Framework..

- b) The structure built in the rear garden measuring 3.48m deep and 5.8m wide and approximately 3.1m high at the highest point does not have planning permission and exceeds the permitted development parameters.

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

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

5.1 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*".

Key provisions of the NPPF relevant in this case:

- NPPF 12 – Achieving well-designed places
- Paragraph 127

5.2 Local Policy

Black Country Core Strategy

- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2 Environmental Protection
- ENV32: Design and Development Proposals
- T7: Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

Designing Walsall SPD

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Policies are available to view online:

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

- DW3: Character
- Appendix D

6.0 LEGAL IMPLICATIONS

- 6.1 Pursuant to section 171A (a) of the Town and Country Planning Act 1990 (as amended) the carrying out of 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.
- 6.3 Officers consider that the breach of planning control occurring at this site commenced within the last 4 years,
- 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 ENVIRONMENTAL IMPACT

The enforcement action will improve the visual amenities of the environment.

9.0 WARD(S) AFFECTED

- 9.1 Palfrey

10.0 CONSULTEES

- 10.1 None

11.0 CONTACT OFFICERS

- 11.1 Sheila Denison Enforcement Officer

12.0 BACKGROUND PAPERS

- 12.1 Enforcement file E18/0169 not published.

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13.0 BACKGROUND AND REPORT DETAIL

- 13.1 A plan showing the location of the site is attached to this report.
- 13.2 The Local Planning Authority received a complaint on 21st May 2018 that the dwelling house was not being built in accordance with the approved plans of planning permission 17/1689. In particular the roof type as built is different to the approved plans. Other neighbouring properties have had this design of roofline refused. This complaint was investigated and a site visit was made.
- 13.3 Officers from both planning enforcement and building control met the owner on site on 31st May 2018; and could see the extent of the building works not built to the approved plans.
- 13.4 The Council's enforcement officer wrote to the owner on the 1st June 2018 advising that the works were unauthorised, as the development was not in accordance with the approved plans. The letter noted that a planning application could be submitted to seek retrospective planning consent as a means to regularise the works, however it was unlikely that such an application could be supported.
- 13.5 A retrospective planning application has been submitted (18/0785) seeking to resolve the breach in planning control. This consent was refused on 6th September 2018 on the following grounds:
1. The extension would result in significant harm from a terracing effect to the character and appearance of the area and the amenity of residents in the locality and the application should be recommended for refusal, contrary to saved policy ENV32 and ENV3 of the Black Country Core Strategy, which seek high quality design, saved policy GP2, which provides general standards for new development, and the Council's Designing Walsall SPD.
- 13.6 The main issue is the contrast between the approved hipped roof design of the two storey side extension and the as built gable roof design. The as built gabled roof design immediately adjacent to the neighbours flank wall creates a terracing effect, which has a detrimental impact on the street scene. The proposal creates an uncharacteristically cramped form of development, which is unduly prominent. Overall, the design has a materially harmful effect on the spacious character and appearance of the area due to its proximity to no. 16.
- 13.7 There have been other dwellings in this street that have applied for planning permission to change the roof to a gable from the hipped and permission has been refused. On the grounds that the alteration from a hipped roof to a gabled roof would unbalance the pair of semi-detached house and create a jarring effect against the neighbouring properties roof and as such represents poor design contrary to NPPF paragraph 127 and saved policies GP2 and ENV32 of the

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Walsall UDP. This is directly comparable to this case and would equally represent a poor design solution to extending the property, contrary to policy.

- 13.8 The front extension has been built otherwise than in accordance with approved plans and is without the benefit of planning permission as it is larger in depth than that approved on the 2017 consent, and therefore doesn't benefit from planning consent.
- 13.9 The garden structure is approximately 3.1 metres high and would need planning permission as it exceeds the 2.5m height restriction, within 2 metres of a boundary as set out within the permitted development rights.
- 13.10 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.
- 13.11 When assessing whether to instigate enforcement action the committee are advised that the following need 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
- 13.12 It is considered that the harm from the unauthorised development including the rear garden building results in significant harm to the character of the area and from a terracing effect to the character and appearance of the area and the amenity of residents in the locality. Contrary to NPPF paragraph 127, Black Country Core Strategy policy ENV3, which seek high quality design, UDP saved policy GP2 and ENV32, which provides general standards for new development, and the Council's Designing Walsall SPD. Therefore, action is expedient as it is sufficiently harmful. The action is reasonable and commensurate with the breach, cost effective and in accordance with planning policies.

