



PLANNING COMMITTEE

8th January 2015

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

Land at Winterley Lane, Walsall

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action including the placing of an injunction to cease operations on site and a temporary stop notice.

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 2.6.
- 2.2 **That authority is granted for the Head of Planning and Building Control to issue an Injunction** under the Town and Country Planning Act 1990 (as amended), to require remedial actions to be undertaken as shown below in 2.6.
- 2.3 **That authority is granted for the Head of Planning and Building Control to issue an Emergency Stop Notice** under the Town and Country Planning Act 1990 (as amended), to require remedial actions to be undertaken as shown below in 2.6.
- 2.4 **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 to make the decision as to the institution of Injunctive proceedings in the event of a continuing breach of planning control.
- 2.5 **To authorise the Head of Planning and Building Control, to amend, add to, or delete from the wording** set out below at 2.4 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 accurate and up to date notices are served.

2.6 Details of the Enforcement Notice

The Breach of Planning Control:-

Without prior discharge of conditions precedent that go to the heart of planning permission 14/0191/WA, development work has commenced on site including the importation and extraction of materials and the infilling of the limestone mineshafts.

Steps required to remedy the breach:-

Cease all operations on site including the importation and extraction of materials, the secure fencing off of exposed mineshafts and the subsequent restoration of the site to a green field condition suitable for the safe grazing of horses.

Period for compliance:-

One month.

Reason for taking Enforcement Action:-

Because of the inherent uncertainties about the underground nature of the limestone workings on site, the planning decision notice contained a number of conditions to secure details agreed with the Local Planning Authority of working practices prior to the commencement of operations . In particular the following conditions are considered to go to the heart of the application:

- 3 – addressing stability of the mineshafts
- 8 – details of wheel cleaning
- 11 – details of access arrangements and provision of passing places on Winterley Lane
- 13 – testing of imported materials for infilling to be agreed
- 16 – details of restoration
- 17 – provision of five year management plan
- 18 – scheme for mitigation of adverse impacts to canal and trees
- 19 – provision of bund to canal
- 20 – details to prevent surface water entering canal

As the applicants have not secured the discharge of the above conditions, it is considered the works being undertaken on site represent a significant risk to the surrounding environment both immediately and in the long term.

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:

The Black Country Core Strategy (BCCS)

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. The results of this assessment are to be published on the BCCS and Council websites and it is planned to report to the Council’s Cabinet to confirm this view. In the absence of evidence to the contrary it is considered that the BCCS policies should be given full weight in planning decisions.

The relevant policy is:

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

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: seek to make a positive contribution to the quality of the environment, whilst protecting

people and ensuring adequate and safe access is provided.

ENV1: Identifies the Green Belt boundaries.

ENV2: Seeks to control development in the Green Belt. Any engineering or other operation or the

making of a material change of use of land is inappropriate in the Green Belt if it conflicts with the

openness and purposes of the Green Belt.

ENV3: Relates to detailed evaluation of proposals within the Green Belt.

ENV10: Development will not be permitted if the health, safety or amenity of its occupants or users

would be unacceptably affected by pollution.

ENV14: Encourages reclamation and development of derelict and previously developed land where possible in accordance with other policies. Where previous uses have affected the stability of the site the application must be accompanied by a site investigation report.

ENV18: Seeks to protect, manage and enhance existing woodlands, trees and hedgerows.

ENV23: Proposals must take account of opportunities for nature conservation.

ENV25: Proposals for development which affect archaeological sites will normally be accompanied by an evaluation of the archaeological resource.

ENV26: Seeks to protect the Borough's industrial archaeology including canal heritage.

ENV32: Proposals should take in to account the surrounding context particularly within or adjacent to the Green Belt including consideration of the effect on the local character of the area, vehicular and pedestrian patterns and visual relationship to surrounding areas.

ENV33: deals with landscape design and opportunities to create and enhance environmental quality.

ENV40: The quality of all water resources will be protected.

JP8: Bad neighbour industries will be given careful consideration and should be capable of providing satisfactory screening and landscaping and must be subject to stringent operational control to minimise disturbance.

T1: All development should conform to the accessibility standards set out in policies T10-T13.

T4: Classifies the highway network and specifies that residential streets and minor roads are those where traffic volumes and speeds should be quite low. Sometimes traffic calming measures will be required.

T5: Seeks to implement selective improvements to highway infrastructure and states highway improvement schemes should be designed to minimise any adverse impact on the environment or the amenity of residents.

T7 – All development should satisfy the car parking standards set out in Policy T13.

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.

LC5: Seeks to protect a network of Greenways throughout the Borough.

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

5.0 LEGAL IMPLICATIONS

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. 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 four 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 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 overrules the owner's rights.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 **WARD(S) AFFECTED**

Rushall-Shelfield

9.0 **CONSULTEES**

None.

10.0 **CONTACT OFFICER**

Shawn Fleet - Tel: 01922 650453
Development Management

11.0 **BACKGROUND PAPERS**

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
8th January 2015

12.0 BACKGROUND AND REPORT DETAIL

The site previously comprised of a stable block and was used for grazing. It is located to the south of Daw End Branch Canal just beyond Winterley Bridge on the east side of Winterley Lane. The proposal was to fill and cap the mineshafts and lime works. The proposal included ancillary aggregate/waste recycling to produce materials suitable for the reclamation of the site and treatment of the shafts and voids. It was proposed that any existing buildings or foundations uncovered will be removed and remediated. The mine shafts would be capped with a concrete mineshaft cap.

A 3m high bund was proposed around the perimeter of the site with a 15m stand off from the canal. The land would be restored to original land levels to return the site for open space.

The works were intended to be undertaken over a 12 month period in ten phases moving south across the site from the canal.

Work has commenced on site without the discharging of conditions which go to the heart of the consent i.e. conditions precedent.

If the Local Planning Authority does not seek to secure compliance with the relevant conditions and allow the work to proceed, the applicants may in time seek to secure a lawful development certificate to show that the development is immune from enforcement actions and therefore does not need to comply with the conditions agreed by the Planning Committee including the restoration of the site or the operational arrangements including the cleaning of the road.

Officers have visited the site and can confirm that the site is not being operated in accordance with the agreed conditions. Accordingly, harm to the environment is arising through a number of ways.

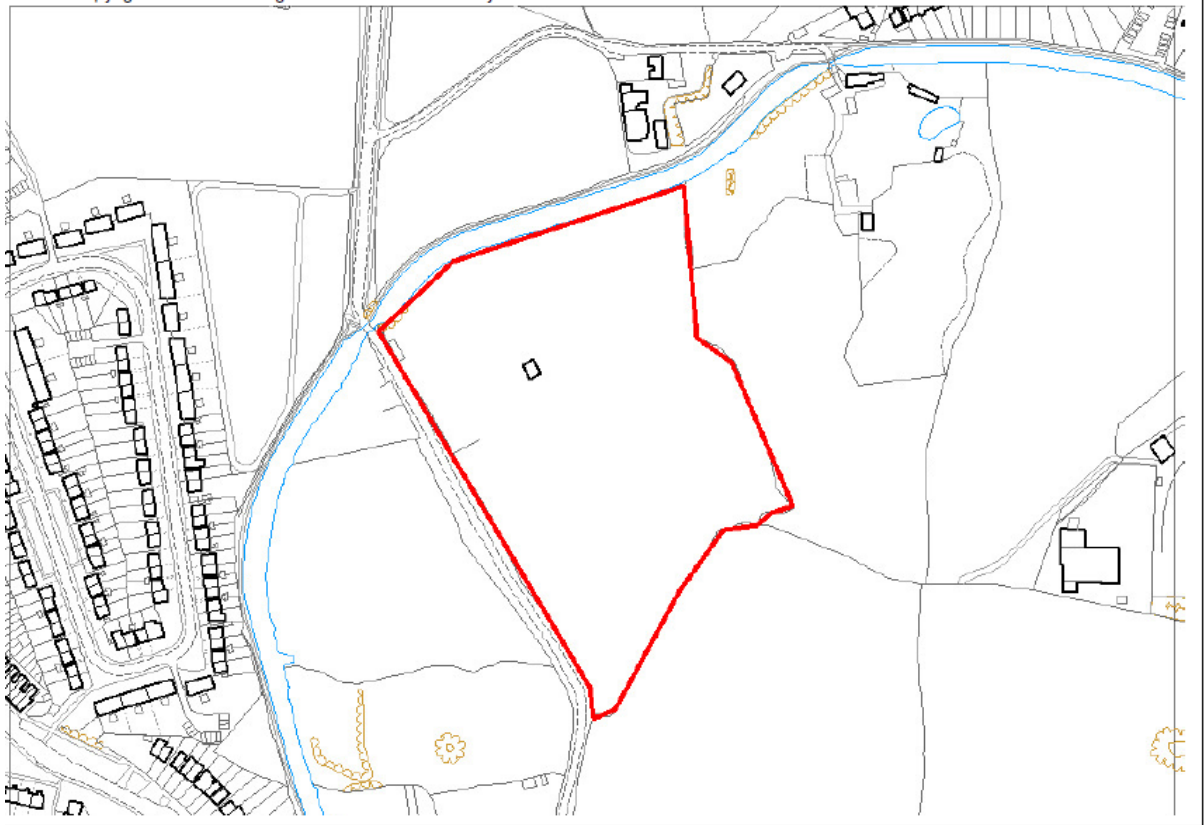
The immediate problem is the lack of onsite vehicle cleaning facilities which has lead to the depositing of mud onto the highway. The applicants continue to use the original site access close to the bridge and have failed to provide the necessary passing places along Winterley Lane.

As no arrangements have been put in place to verify the materials being brought onto site, the Local Planning Authority is unable to confirm that materials being imported onto site will not result in any long term pollution arising wither on site, within the canal or on neighbouring land.

Given the immediate risks arising to the environment from the continued operation on this site, authority is therefore being sought to secure a temporary stopping order in the first instance to prevent any additional harm

arising particularly through the deposition of mud on the road and the lack of passing places which places a risk to other road users including pedestrians.

An Enforcement Notice is also being sought to secure the restoration of the site back to its former condition as grazing land. It is acknowledged that the site has a series of mineshafts and the enforcement notice is seeking the secure fencing off of these shafts to prevent accidental falls or further collapse.



Site Location Plan: Land at Winterley Lane, Walsall