

PLANNING COMMITTEE

Thursday, 10th April, 2014 at 5.30 p.m.

In the Council Chamber at the Council House, Walsall

Present

Councillor Perry (Chairman)
Councillor Bird (Vice-Chairman)
Councillor Ali
Councillor R. Andrew
Councillor Arif
Councillor P. Bott
Councillor Creaney
Councillor Ditta
Councillor Douglas-Maul
Councillor S. Fitzpatrick
Councillor Harris
Councillor Jeavons
Councillor Rochelle
Councillor I. Shires
Councillor Thomas
Councillor Underhill
Councillor Wade
Councillor Westley

3630/14

Apologies

Apologies for non-attendance were submitted on behalf of Councillors Cook and Sarohi.

3631/14

Minutes

Resolved

That the minutes of the meeting held on 13th March 2014, a copy having previously been circulated to each Member of the Committee, be approved and signed by the Chairman as a correct record.

3632/14

Declarations of Interest

There were no declarations of interest.

3633/14

Deputations and Petitions

There were no deputations introduced or petitions submitted.

3634/14 **Local Government (Access to Information) Act, 1985 (as amended)**

There were no items to be considered in private session.

3635/14 **Withdrawn Item**

The Chairman informed the meeting that the following item had been withdrawn to enable an ecological survey to be carried out:-

Plans List Item No. 4 - 14/0191/WA - infilling and capping of former limestone mine shafts using on site and imported inert fill processed using a crusher and screen to make engineered infill materials with a reduced scheme to protect the area of the former lime kilns and to resort the ground within 12 months to open space - Land at Winterley Lane, Walsall.

3636/14 **Brush Garage, 86 Lichfield Road, Shelfield, Walsall, WS4 1PY**

The Chairman reminded the Committee of the Motion resolved at Planning Committee on 21st November, 2013 that Members receive a report in relation to Brush Garage for one final consideration regarding enforcement matters and that the report be accompanied by legal advice in relation to that matter.

The Chairman then welcomed the barrister, Mr. Jonathan Clay, and reported that due to the uniqueness of the situation, the item would be recorded.

The report of the Head of Planning and Building Control was submitted:-

(see annexed)

The Planning Officer advised the Committee of the history of the building to date through a presentation of photographs and plans.

Councillor R. Andrew arrived at this juncture of the meeting and, therefore, did not take part nor vote on this item.

The barrister informed Committee he had been involved with and had advised on Brush Garage since 2011 and that he would present the report to Committee in detail, provide legal advice and answer any questions Members may have at the appropriate time.

The pertinent parts of the barrister's presentation are included below.

At its meeting on 29th March 2012, having received advice from officers that there had been a breach of planning control, that the building did not benefit from planning permission and that it was contrary to the provisions of the Development Plan, Committee resolved it was not expedient to take

enforcement action subject to the applicant entering into a section 106 agreement. On 26th July 2012, Committee had resolved to stand by its decision of 29th March 2012. The section 106 agreement was completed in January 2013.

The barrister stated Committee must consider whether there had been a breach of planning control and whether it would be expedient to take enforcement action. In his professional opinion there had been a breach of planning control and the building did not have the benefit of planning permission and was contrary to the provisions of the Development Plan. Committee could resolve that enforcement action be taken to instruct that the building be demolished but they would need to be satisfied as to the expediency of now taking enforcement action and the consequences of such action.

Councillors Jeavons, Creaney and Wade arrived at this juncture of the meeting and therefore did not take part nor vote on this item.

The barrister posed the question 'had anything new occurred that may convince Committee to make a different decision', and he then replied that it had. It was now a different situation as the Local Government Ombudsman had identified that maladministration causing injustice had occurred as the planning authority had incorrectly treated the works being carried out as an extension and adaptation of an existing building on the site as opposed to a new development, meaning it had not considered the planning application against the relevant planning guidance and had failed to consider properly the case for enforcement. The Council had now complied with the recommendations of the Ombudsman to remedy the injustice, as detailed within the report. Also, the owner had entered into and complied with the obligations in a section 106 agreement pursuant to the Committee resolutions in March and July 2012.

Councillor Fitzpatrick arrived at this juncture of the meeting and therefore did not take part nor vote on this item

Since the matter was last before Committee in July 2012, the owner had therefore complied fully with the planning authority's requirements. The Committee must ask itself how reasonable it would seem to someone from the outside if an enforcement notice was now issued given that the Committee had previously resolved not to take enforcement action if its requirements were complied with. The owner would be in a position to ask the Courts whether the decision was reasonable and request a Judicial review. If it were deemed unreasonable, legal costs could be awarded against the Council. The real likelihood if taken to appeal would be that it would be allowed with costs awarded, as the Judge would deem there had been fundamental unfairness.

The barrister reported that the position was different to the previous occasions when Committee had considered enforcement action. His opinion now (and he emphasised it was only advice) would be to strongly advise Committee not to issue an enforcement notice, as it was not now expedient

to do so in light of what has happened since Committee previously considered the matter in July 2012. He explained that should Committee resolve to issue an enforcement notice, they would need to provide clear reasons for doing so as officers do not consider there have been any material changes in circumstances since the most recent decision in July 2012 not to take enforcement action that would make taking enforcement action expedient this time as follows:-

- i) planning committee had previously accepted on two occasions that the development should not be enforced against;
- ii) pursuant to the decision not to enforce, the owner of the land has entered into a section 106 agreement (which provides a material control of the site) and has carried out works to the building in order to comply with the obligations in the agreement in full knowledge of the Council;
- iii) the owner has been made aware there is no authorised use of the land or building and has been informed a planning application needs to be made should any use occur;
- iv) The Ombudsman had identified injustice, harm and maladministration and then identified the correct remedies to rectify decisions in fair way which the Council has carried out including compensating the complainants
- v) the Council's land to the rear has been reinstated as public open space;
- vi) the need to look at fairness and reasonableness.

He reiterated that Committee could only enforce against the building itself, and it must consider the remedial action carried out by the Council in accordance with the Ombudsman's requirements and that action to demolish the building now could be seen as contradictory and perverse and may result in a risk of damage to the Council's reputation, along with substantial costs being incurred.

If Members resolved not to take enforcement action against the building:-

- i) there would be no authorised use of the building and land and any lawful use would require planning permission, which would be subject to conditions to protect amenity;
- ii) the building would become lawful after 4 years (2016) but would still be controlled by the section 106 agreement, providing a further level of control;
- iii) planning permission would be required should the owner wish a building to be used as a garage, in which case Committee can determine the appropriateness and compatibility of the usage in the location between two houses and include planning conditions;
- iv) Committee must look at fairness and reasonableness – an

enforcement notice could be issued and end up with an appeal which is allowed.

The barrister concluded his presentation by requesting that Committee Members bear in mind the item could ultimately go to court proceedings but that they make their decision based on their own personal integrity and responsibility on behalf of the Council in a **quasi**-legislative capacity.

The Committee then welcomed the first speaker, Mrs Bryan, who spoke in objection to the item.

The Committee then welcomed the second speaker, Councillor Worrall, who also spoke in objection to the item.

The Committee then welcomed the third speaker, Mr Hood, who spoke in support of the item.

There then followed a period of questioning by Members to the barrister, including what the likely outcome would be should Committee resolve to issue an enforcement notice; what would happen if the building remained without use or planning permission; could the owner claim for loss of usage since 2012.

In response, the barrister stated that in his legal view, while enforcement might have been expedient two years ago and have succeeded, an enforcement notice was not now expedient and would most likely not succeed, meaning and there would be justification for an award of costs to the owner. The Ombudsman had previously found injustice had occurred and this injustice had now been dealt with. The effect of the construction of a building marked a new chapter and any lawful use had been lost therefore if the building remains in place it is currently unlawful under the four year rule of the Town and County Planning Act (around April 2016) or unless planning permission is granted. In relation to whether the owner could claim for uses turned down as a result of an empty building if enforcement action not taken, the barrister stated he could not. In terms of the uses the building could be used for, that would be a matter for the planning authority to consider pursuant to an application for planning permission.

There were no questions to speakers that the Chairman considered relevant to the item.

The Chair reminded Members they could not vote if they had not been present throughout the whole of the item.

The Committee did not feel they needed to discuss the report further as the advice had been very clear. Councillor Ali **moved** and it was duly **seconded** by Councillor Arif:-

That, in considering whether to take enforcement action, there has been no material change of circumstances to justify a different outcome to that previously resolved by the

Committee: (i) at the Committee meeting of 29th March 2012 “ that there should be no enforcement action as Members felt there had been no significant changes to the fabric of the building in relation to height, width or massing, subject to the application entering into a section 106 agreement“; and (ii) at the Committee meeting of 26th July 2012 to stand by the decision of 29th March 2012. In all circumstances, the issue of an enforcement notice to require the demolition of the building on the Brush Garage site would not be expedient.

The Motion having been put to the vote was declared **carried**, with seven Members voting in favour, none against and four abstaining.

Resolved

That, in considering whether to take enforcement action, there has been no material change of circumstances to justify a different outcome to that previously resolved by the Committee: (i) at the Committee meeting of 29th March 2012 “ that there should be no enforcement action as Members felt there had been no significant changes to the fabric of the building in relation to height, width or massing, subject to the application entering into a section 106 agreement“; and (ii) at the Committee meeting of 26th July 2012 to stand by the decision of 29th March 2012. In all circumstances, the issue of an enforcement notice to require the demolition of the building on the Brush Garage site would not be expedient.

Councillors Bird, Harris and Rochelle arrived at this juncture of the meeting.

3637/14 Ravenscourt Shopping Precinct, High Street, Brownhills, WS8 6EJ

The report of the Head of Planning and Building Control was submitted:-

(see annexed)

The Presenting Officer enlarged upon the report for the benefit of the Committee.

The Committee continued to discuss the report further which included how Members were pleased action would be taken as the site had become an eyesore for a number of years; shop units had originally remained empty to enable Tesco to expand but Tesco had pulled out.

Councillor Wade **moved** and it was duly **seconded** by Councillor Bird:-

- (1) That authority be granted to issue a Section 215 Notice under the Town and Country Planning Act, 1990 (as amended) to require remedial actions to be undertaken as set out in 2.6 of the report now submitted;

- (2) That, in the interests of ensuring an accurate and up to date Notice is served, authority be delegated to the Head of Planning and Building Control to amend, add to, or delete from the wording set out below the requirements of the Notice, or the boundaries of the site;
- (3) That authority be granted to the Head of Planning and Building Control to instigate legal proceedings to prosecute the owner in the event of non-return of Requisitions for Information and under Section 216 of the Town and Country Planning Act, 1990 for failing, within the period specified, to take steps required by the Notice issued under Section 215 to remedy the condition of the land;
- (4) That authority be granted to the Head of Planning and Building Control to instigate further prosecution proceedings against the owner in the event that following any first conviction, he/she does not, as soon as practicable, do everything in his/her power to secure compliance with the Notice;
- (5) That authority be granted to the Head of Planning and Building Control, where necessary, to instigate direct action to ensure compliance with the Notice and recover the costs incurred through debt recovery or by putting a charge on the land.

The Motion having been put to the vote was declared **carried**, with Members voting unanimously in favour.

Resolved

- (1) That authority be granted to issue a Section 215 Notice under the Town and Country Planning Act, 1990 (as amended) to require remedial actions to be undertaken as set out in 2.6 of the report now submitted;
- (2) That, in the interests of ensuring an accurate and up to date Notice is served, authority be delegated to the Head of Planning and Building Control to amend, add to, or delete from the wording set out below the requirements of the Notice, or the boundaries of the site;
- (3) That authority be granted to the Head of Planning and Building Control to instigate legal proceedings to prosecute the owner in the event of non-return of Requisitions for Information and under Section 216 of the Town and Country Planning Act, 1990 for failing, within the period specified, to take steps required by the Notice issued under Section 215 to remedy the condition of the land;

- (4) That authority be granted to the Head of Planning and Building Control to instigate further prosecution proceedings against the owner in the event that following any first conviction, he/she does not, as soon as practicable, do everything in his/her power to secure compliance with the Notice;
- (5) That authority be granted to the Head of Planning and Building Control, where necessary, to instigate direct action to ensure compliance with the Notice and recover the costs incurred through debt recovery or by putting a charge on the land.

Councillor Creaney left at this juncture of the meeting and did not return.

3638/14 **Shelfield Service Station, Lichfield Road, Walsall, WS4 1PQ**

The report of the Head of Planning and Building Control was submitted:-

(see annexed)

The Presenting Officer enlarged upon the report for the benefit of the Committee.

Members considered the report and Councillor Underhill **moved** and it was duly **seconded** by Councillor Perry:-

- (1) That authority be granted for the Head of Planning and Building Control to instigate legal proceedings to prosecute the owner(s) and/or occupier(s) and other relevant persons, under Section 224 of the Town and Country Planning Act, 1990, in respect of the display of two advertisements without the consent required under the Town and Country Planning (Control of Advertisements) Regulations, 2007, for the reasons set out in the report;
- (2) That authority be granted for the decision as to the institution of legal proceedings, in the event of the non-return of Requisitions for Information or a Planning Contravention Notice, be delegated to the Head of Planning and Building Control.

The Motion having been put to the vote was declared **carried**, with all Members voting in favour.

Resolved

- (1) That authority be granted for the Head of Planning and Building Control to instigate legal proceedings to prosecute the owner(s) and/or occupier(s) and other relevant persons, under Section 224 of the Town and Country Planning Act, 1990, in respect of the display of two advertisements without the consent required under the Town and Country Planning (Control of Advertisements) Regulations, 2007, for the reasons set out in the report;
- (2) That authority be granted for the decision as to the institution of legal proceedings, in the event of the non-return of Requisitions for Information or a Planning Contravention Notice, be delegated to the Head of Planning and Building Control.

3639/14 Hydesville Tower School, Broadway North, Walsall, WS1 2QG

The report of the Head of Planning and Building Control was submitted:-

(see annexed)

Resolved

That the report be noted.

3640/14 Section 106 Report - Financial Year 2013/14

The report of the Head of Planning and Building Control was submitted:-

(see annexed)

Resolved

That the report be noted.

3641/14 Application List for Permission to Develop

The application list for permission to develop was submitted, together with the supplementary papers and additional information for items already on the plans list:-

(see annexed)

The Committee agreed first to deal with the items on the agenda where members of the public had previously indicated that they wished to address the Committee.

The Chair, at the beginning of each item for which there were speakers, advised of the procedure whereby the speaker would have three minutes to speak and then at two minutes they would be reminded they had one minute left.

3642/14

Item No. 15 - 14/0245/FL - Replacement 6 bedroom house and retention of outbuilding at 11 Greenslade Road, Walsall, WS5 3QH

The Planning Officer advised the Committee of the background to the report and supplementary paper now submitted:-

(see annexed)

The Committee then welcomed the first speaker on this application, Mrs. Crocker, who spoke in objection to the application.

The Committee then welcomed the second speaker on this application, Councillor Martin, who also spoke in objection to the application.

The Committee then welcomed the third speaker on this application, Mr. Robson, who spoke in support of the application.

There were no questions to the speakers.

There then followed a period of questioning by Members to the officers primarily around the difference in the size of the property now as compared with the previously approved application.

In response, the Planning Officer replied that the earlier approved planning permission had been for a first floor side extension and a two storey rear extension only but this had not been implemented.

The Committee proceeded to discuss the application further, which included how the unauthorised building is completely out of character and overdeveloped; that officers advice had been ignored, that the owner must tidy up the site.

Members considered the application and Councillor Perry **moved** and it was duly **seconded** by Councillor Rochelle:-

That planning application no. 14/0245/FL be refused,
subject to no new material issues being raised on expiry of
the neighbour consultation period.

The Motion having been put to the vote was declared **carried**, with all Members voting in favour of refusal.

Resolved

That planning application no. 14/0245/FL be refused, subject to no new material issues being raised on expiry of the neighbour consultation period.

3643/14

Item No. 1 -13/1734/FL - Change of use from retail (use class A1) to retail warehouse/membership club (use class sui generis) - Units 1-2C, Bescot Crescent, Walsall, WS1 4SB

The Planning Officer advised the Committee of the background to the report and supplementary paper now submitted:-

(see annexed)

The Committee then welcomed the only speaker on this application, Mr. Best, who spoke in support of the application.

There were no questions to the speaker nor officers.

Members considered the application and Councillor Bird **moved** and it was duly **seconded** by Councillor Arif:-

That planning application no. 13/1734/FL be granted, subject to conditions as contained within the report and supplementary paper now submitted.

The Motion having been put to the vote was declared **carried**, with all Members voting in favour.

Resolved

That planning application no. 13/1734/FL be granted, subject to conditions as contained within the report and supplementary paper now submitted.

3644/14

Item No. 2 - 12/0036/OL - Outline permission for residential development on sites A, D and J (access only to be considered) as follows: - Site A - Approximately 243 dwellings (including 56 affordable units) - Site D - Approximately 134 dwellings (including 121 affordable units) - Site J - Approximately 25 dwellings (all affordable). All sites incorporating means of access (not reserved), car parking, landscaping, infrastructure and servicing at Goscote Lane Regeneration Corridor incorporating sites in Shakespeare Crescent, Keats Road, Tennyson Road, Chaucer Road, Wordsworth Road, Dryden Road, Harden Road and Well Lane

Resolved

That planning application no. 12/0036/OL be granted, subject to conditions and a planning obligation as contained within the report and supplementary paper now submitted.

3645/14 **Item No. 3 - 14/0119/FL - Hybrid application - detailed application for 4 storey office building on Littleton Street frontage with associated car parking and landscaping. Outline planning application (considering access, landscaping, layout and scale) for two office buildings (3 and 4 storeys in height) with associated car parking and landscaping fronting Hatherton Street, with vehicle access from Hatherton Street - land adjacent 17 Hatherton Street, Walsall**

Resolved

That planning application no. 14/0119/FL be granted, subject to conditions as contained within the report and supplementary paper now submitted.

3646/14 **Item No. 4 - 14/0191/WA - Infilling and capping of former limestone mine shafts using on site and imported inert fill processed using a crusher and screen to make engineered infill materials with a reduced scheme to protect the area of the former lime kilns and to resort the ground within 12 months to open space - land at Winterley Lane, Walsall**

This item had been withdrawn from the agenda earlier in the meeting.

3647/14 **Item No. 5 - 13/1500/FL - Construction of a place of worship (use class D1) (following outline planning permission under reference 10/1232/OL) - 323 Wolverhampton Road, Walsall, WS2 8RL**

Resolved

That planning application no. 13/1500/FL be delegated to the Head of Planning and Building Control to determine on receipt of the results of protected species survey as contained within the report and supplementary paper now submitted.

3648/14 **Item No. 6 - 14/0165/FL - Amendment to permission 13/1201/FL relating to the erection of 98 properties to alter boundary alignments to the rear of plots 26-34 and 54-59, reposition parking for plots 30, 31, 32 and 34, reposition plots 57-59 and adjustments to car parking for plots 57-59 - Sites at Beddows Road and Rutland Street, Walsall**

Resolved

That planning application no. 14/0165/FL be granted, subject to conditions as contained within the report and supplementary paper now submitted.

- 3649/14 **Item No. 7 - 14/0118/FL - 27 one, two and three bedroom houses and flats with associated car parking, landscaping, access and gardens following demolition of remaining buildings on site - land at corner of Clothier Street and Wednesfield Road, Willenhall**
- Resolved**
- That planning application no. 14/0118/FL be granted, subject to conditions as contained within the report and supplementary paper now submitted.
- 3650/14 **Item No. 8 - 13/1490/FL - Erection of 62 dwellings - site of former Mary Elliot School and Brewer Street Centre, Brewer Street, Walsall, WS2 8BA**
- Resolved**
- That planning application no. 13/1490/FL be delegated to the Head of Planning and Building Control to apply suitable conditions to secure appropriate mitigation if protected species are found and subject to completion of a Section 106 Agreement.
- 3651/14 **Item No. 9 - 14/0313/FL - Amendment to Planning Permission 09/1086/FL and 13/1053/TE: 1. Currently approved glazed mansard roof above educational facility to be changed to pitched roof finished with plain clay tiles. 2. Staff entrance omitted and replaced with glazed windows. 3. Reduction in area of butterfly roof and extension of green roof (above public toilets) - The Arboretum, Lichfield Street, Walsall**
- Resolved**
- That planning application no. 14/0313/FL be granted, subject to conditions as contained within the report and supplementary paper now submitted.
- 3652/14 **Item No. 10 - 14/0189/FL - Amendments to planning permission 10/0763/FL relating to the erection of 251 dwellings to substitute 14 x 3 bed houses for 14 x 2 bed houses on plots 235-248 inclusive (scheme previously amended by permissions 11/1364/FL and 13/1572/FL - former site of Walsall Depot, Norfolk Place, Walsall**
- Resolved**
- That planning application No. 14/0189/FL be granted, subject to conditions as contained within the report and supplementary paper now submitted.

- 3653/14 **Item No. 11 - 14/0154/FL - Erection of a dance studio and extension of external canopy - Manor Primary School, Briar Avenue, Walsall, B74 3HX**
- Resolved**
- That planning application no. 14/0154/FL be granted, subject to conditions as contained within the report.
- 3654/14 **Item No. 12 - 13/1698/FL - Change of use of vacant land to parking for dental surgery, dental clinique - vacant land at the corner of Ryders Hayes Lane and Norton Road, Pelsall, Walsall**
- Resolved**
- That planning application no. 13/1698/FL be granted, subject to conditions as contained within the report and supplementary paper now submitted.
- 3655/14 **Item No. 13 - 14/0080/FL - New refreshment tea room, amended: scheme to increase the size of the floor area of the tea room - 520 Chester Road, Walsall, WS9 0PU**
- Resolved**
- That planning application no. 14/0080/FL be granted, subject to conditions as contained within the report.
- 3656/14 **Item No. 14 - 13/0482/FL - Demolition of out buildings and erection of new dwelling place of previously approved barn conversion (adjacent public footpath ALD33) - Aldridge Court Farm, Little Aston Road, Walsall, WS9 0NN**
- The Planning Officer advised the Committee of the background to the report and reminded Members that the application had been deferred at its meeting on 13th February, 2014 to allow officers to examine the application further and liaise with the applicant in relation to the existing buildings:-
- (see annexed)
- The Committee proceeded to discuss the application further, including how the application for a new build was on conservation land; that the outbuildings on the land would be demolished and a new build in place of the previously approved application.

Members considered the application and Councillor Bird **moved** and it was duly **seconded** by Councillor Perry:-

That planning application no. 13/0482/FL be granted,
subject to relevant planning conditions.

The Motion having been put to the vote was declared **carried**, with twelve Members voting in favour and two against.

Councillor Rochelle requested that his name be recorded as voting against the recommendation.

Resolved

That planning application no. 13/0482/FL be granted, subject to relevant planning conditions.

Termination of meeting

The meeting ended at 7.30 p.m.

Signed:.....

Date:.....