



PLANNING COMMITTEE

26th June 2014

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

E13/0153 - 84 Walhouse Road, Walsall, WS1 2BE

1.0 **PURPOSE OF REPORT**

To request authority to take planning enforcement action in respect of the enlargement of an existing rear garden outbuilding.

2.0 **RECOMMENDATIONS**

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 breaches the reasons for taking enforcement action, the requirements 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 planning permission the enlargement of the existing garden building to a height of 4 metres and the creation of a 2nd storey to create a loft space (used for storage purposes) is not in conformity with the permitted development rules.

Steps required to remedy the breaches:-

- **Reduce the height of the outbuilding to a level that conforms to permitted development rules and remove the 2nd storey element.**

Period for compliance:-

- One month to reduce the size of the structure to be within permitted development regulations.

Reason for taking Enforcement Action:-

The height of the structure and its proximity to the boundaries of adjoining residents constitutes an unduly dominant and incongruous form of development being out of character with its surroundings, particularly with the adjacent neighbours. The structure as it exists is contrary to the aims and objectives of Walsall's Unitary Development Plan policies GP2, 3.6 and ENV32; Black Country Core Strategy ENV3 and policy DW3 of Supplementary Planning Document Designing Walsall and the National Planning Policy Framework.

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:

- 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

Key provisions of the NPPF relevant in this case:

7: Requiring Good Design

11: Conserving and enhancing the natural environment

56. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making better places for people.

57. It is important to plan positively for the achievement of high quality and inclusive design for all development.

58. Planning policies and decisions should aim to ensure that developments meet criteria that include:

- Function well and add to the overall quality of the area
- Establish a strong sense of place

- Respond to local character and history and reflect the identity of local surroundings and materials
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.
207. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

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

This was adopted in February 2011 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 ... even if there is a limited degree of conflict with this Framework*". 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.

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: 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.

VI. Overlooking, loss of privacy, and the effect on daylight and sunlight received by nearby property.

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

ENV32: Design and Development Proposals.

(a) Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted.

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

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

For the reasons set out in this report, officers consider it appropriate to take enforcement steps. Accordingly, officers seek authority to serve an enforcement notice, pursuant to s172.

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 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 and building 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

Paddock

9.0 CONSULTEES

None

10.0 CONTACT OFFICER

Peter Attwell

Development Management: 01922 652648

11.0 BACKGROUND PAPERS

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
26th June 2014

12.0 BACKGROUND AND REPORT DETAIL

84 Walhouse Road is a relatively new two storey detached house in an area consisting of semi-detached and detached dwellings.

The planning department received a query on the 7th November 2005 regarding the erection of a building in the rear garden of 84 Walhouse Road. Following investigation, it was concluded that the building did not exceed the then current permitted development legislation and the case was closed on 23/04/07. Notes on the file at that time, indicated that there was a suspicion that a family member may have been using the garden building as living accommodation but the use was still deemed ancillary.

The department received a further query on the 28th May 2013 with regard to the roof of the existing garden outbuilding being raised. An officer visited the property on the 4th June 2013 to find that the roof of the building had been raised in height. In addition, a second storey level had been created for storage purposes and although only shallow, the addition of the roof space was deemed to be a second storey, and consequently exceeded permitted development guidelines. In order to accommodate this roof space the original building had been raised at the rear by approximately 70cm to a maximum height of 4m with eaves at 3m, having previously been a maximum height of 3.3m with eaves at 2.22m. In addition, at this time, a toilet had been installed although there was no evidence to suggest the building was being used for residential purposes. The owner claimed the intention was to use the building as a gym.

A letter dated 25th October 2013 was sent to the occupier advising that planning permission was required as the structure no longer fell within the current permitted development guidelines.

An officer visited the neighbouring property at 86 Walhouse Road on the 25th November to view a side facing window that had been inserted to serve the roof space and faced onto the rear garden of number 86.

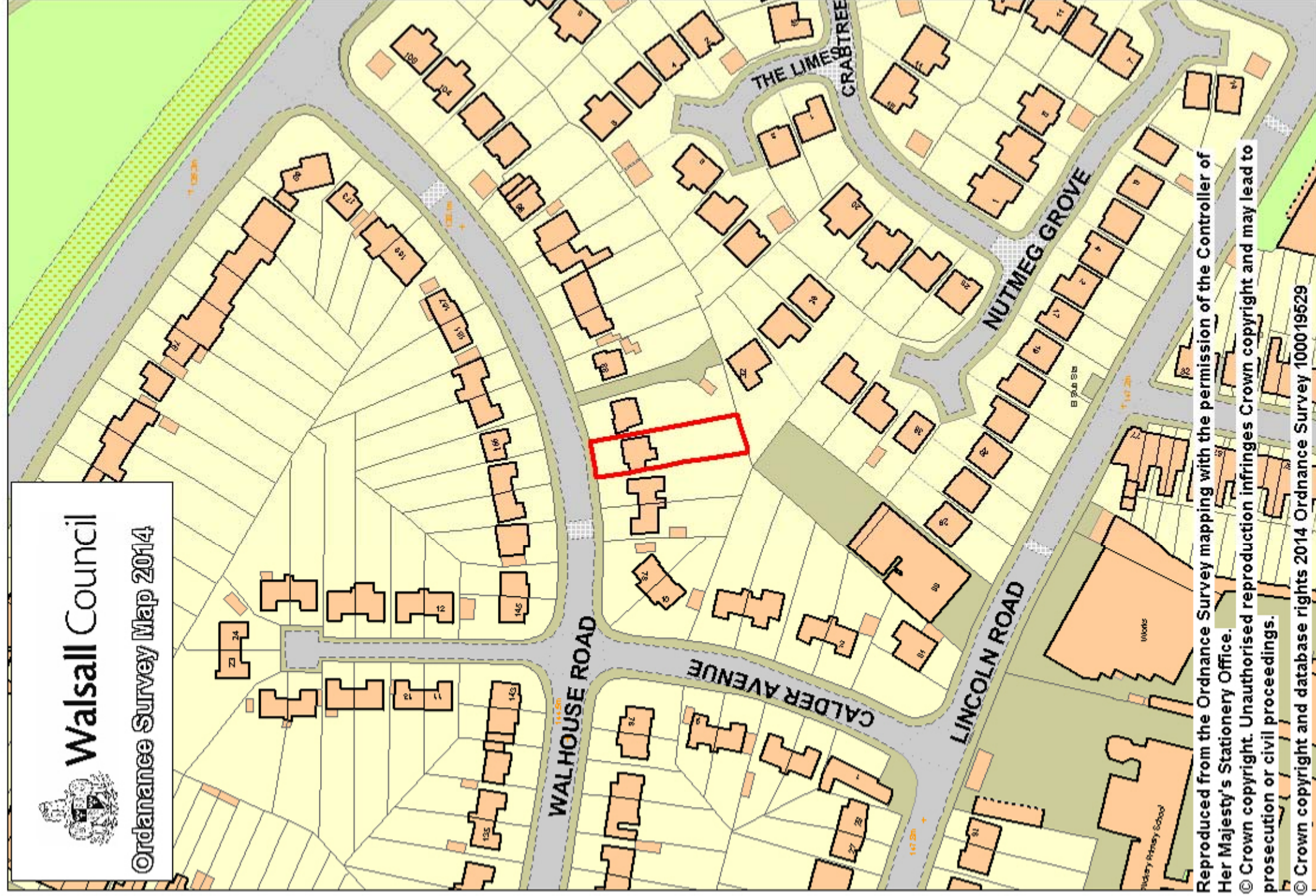
The officer contacted the occupier of 84 Walhouse Road by telephone on the 18th December to discuss the insertion of the window; the occupier advised they had since made the window obscure glazed and removed the internal works which had created the upper storey. The officer then reiterated verbally that the structure still required planning permission due to its height regardless of the changes made.

In view of the above it is considered expedient that enforcement action is now taken through the issue of an enforcement notice to rectify the breach of planning control and the harm it is causing. Officers also request that should any enforcement notice not be complied with and prosecution proceedings are undertaken, that proceedings should also be brought in regard to non-return of the RFI.



Walsall Council

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