



PLANNING COMMITTEE

5th November 2015

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

E14/ 0343 - 40 Wood Lane, Pelsall, Walsall, WS3 5DY

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the unauthorised erection of an 'instant' garage at the front of the property.

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 erection of an 'instant' garage

Steps required to remedy the breach:

- Dismantle the 'instant' garage
- Remove all resultant parts from the land.

Period for compliance:

1 month

Reason for taking Enforcement Action:

Due to its scale, prominent position and fabric form the development has an unacceptable effect on the character and appearance of the local area. Accordingly, it is contrary to Policies GP2 and ENV32 of the Walsall Unitary Development Plan. The development is also at odds with the National Planning Policy Framework, which states that planning should seek to secure high quality design and that development should add to the overall qualities of the area.

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:

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:

CSP4 – Seeks to ensure that developments enhances place making
ENV2 sets out that development will preserve and, where appropriate, enhance local character and those aspects of the historic environment
ENV3 sets out the criteria for design quality.

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 expects development to make a positive contribution to the environment and considers

ENV32 states that poorly designed proposals which fail to take account of the context or surroundings will not be permitted.

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)

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

Pelsall

9.0 CONSULTEES

None

10.0 CONTACT OFFICER

James Fox

Development Management: 01922 652613

11.0 BACKGROUND PAPERS

14/1407/FL – Planning Application for the retention of the 'instant garage' – Refused 5th February 2015.

APP/V4630/D/15/3024319 – Planning Application Appeal – Appeal dismissed 23rd July 2015

Enforcement file not published

David Elsworthy
Head of Planning and Building Control

Planning Committee
5th November 2015

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 The property is a semi detached house in a row of similar styled residential properties. A plan showing the location of the house and the position of the instant garage is attached to this report.
- 12.2 The unauthorised instant garage at 40 Wood Lane was first reported to Planning Enforcement Officers during July 2014. Officers inspected the property to confirm the position of the structure in front of an existing prefabricated detached garage which lies to the side of the house. The “instant” garage is made of triple layer heavy duty waterproof fabric and polythene and is 6.09 metres long, 3.65 metres wide with a pitched roof 2.5 metres high at the apex.
- 12.3 The structure was erected approximately 12 - 18 months prior to being brought to the attention of the Council. Complaints have also been received suggesting the “instant” garage is being used in connection with a vehicle paint spraying business operated by the occupier of the property.
- 12.4 In response to concerns regarding the use of the instant garage a Planning Contravention Notice (PCN) was served during December 2014. A PCN requires the recipient of the notice to provide information where the Council suspect a breach of planning control may have taken place; this allows officers to consider the merits of further enforcement action where evidence is not compelling or easily obtained. In response to the notice the owner stated the use of the instant garage was only for the storage of his own vehicle and the structure had not been used in connection with the vehicle spraying business over a period of 2 months prior to the service of the notice. On the basis of this information and due to the lack of other evidence to the contrary officers decided not to pursue enforcement action regarding the use of the garage at this time.
- 12.5 Notwithstanding the perceived lawful use of the structure, the instant garage still required planning permission because of its location forward of the principal elevation of the property. Officers advised the owner that an application to retain the fabric garage was unlikely to be supported due to the size and prominent position in the street. Despite this advice the occupier still decided to submit a planning application for the retention of the instant garage.
- 12.6 During a routine case officer inspection of the garage as part of the planning application process, the officer found the owner’s vehicle parked on the pavement in front of the house and the garage used to store another vehicle with heating equipment clearly in operation in connection with the vehicle spraying business. These findings, although pertinent to the enforcement investigation, did not form part of the officer’s assessment of the planning application as the development description was purely for the retention of the instant garage used for the storage of the applicant’s motor vehicle.

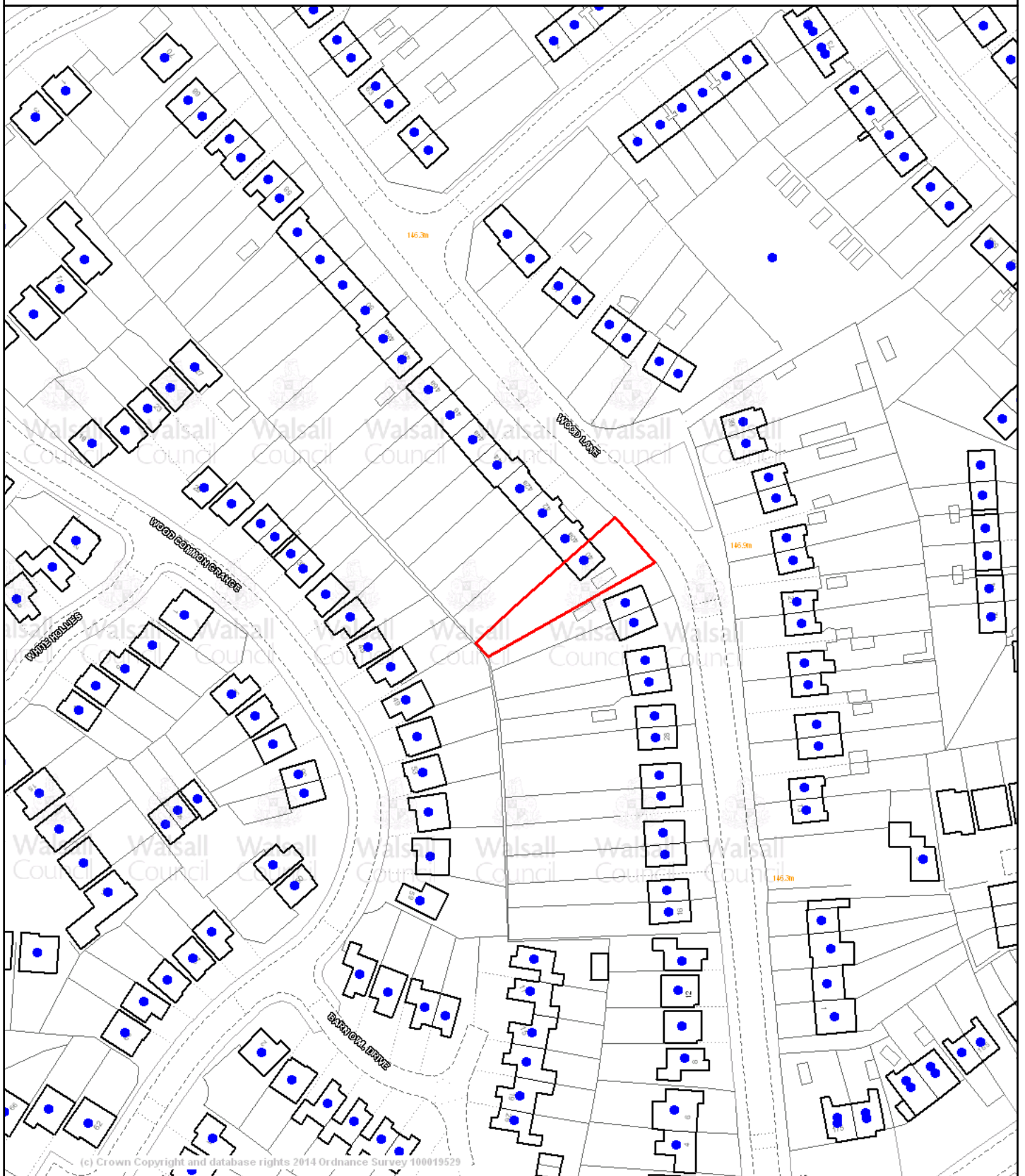
- 12.7 The planning application was refused on 5th February 2015 for the following reasons:

The garage is considered out of keeping with the character of the area as there are no other buildings or structures in front of the houses and the prominent position projecting forward of the front of number 38 Wood Lane is considered has an adverse impact on street scene. Furthermore the fabric composition is considered draws attention to the structure as this is not something that is usually used for permanent buildings or features regularly at the front of houses.

The proposal is contrary to the aims and objectives of the National Planning Policy Framework including paragraphs 56, 57, 58, and 64, Walsall's Saved Unitary Development Plan policies, in particular GP2, ENV32 and the Supplementary Planning Document "Designing Walsall".

- 12.8 In response to the refusal of the planning application the applicant submitted an appeal to the Planning Inspectorate. In conclusion the Inspector considered the development to have an unacceptable effect on the character and appearance of the local area which is at odds with the National Planning Policy Framework, which states that planning should seek to secure high quality design and that development should add to the overall qualities of an area. The appeal was dismissed on 23rd July 2015.
- 12.9 Following the appeal decision officers posted a letter to the owner on 11th August 2015 requesting the removal of the "instant" garage within 14 days. Officers did not receive a response to this letter and a recent inspection confirms the unauthorised "instant" garage remains on the property. In addition the owner is now displaying an advertisement for "Scuff 2 Buff" attached to the front elevation of his property.
- 12.10 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 associated with the development. It is considered the removal of the "instant" garage will also resolve any concerns regarding the use of the property in connection with the vehicle spraying business. Authorisation is also sought to institute prosecution proceedings should any Requisition for Information or Enforcement Notice not be complied with, and to institute injunctive proceedings if required in the event of a continuing breach of planning control.

40 Wood Lane



Walsall Council

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