



PLANNING COMMITTEE

3rd December 2015

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

E14/ 0343 – 250 Stroud Avenue, Willenhall, WV12 4EG

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the unauthorised change of use of a former doctors surgery into a house in multiple occupation for 12 people.

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 change of use of a vacant Doctors Surgery into a house in Multiple Occupation for 12 people.

Steps required to remedy the breach:

Cease to use the property for a house in Multiple Occupation

Period for compliance:

2 months

Reason for taking Enforcement Action:

The change of use to a house in multiple occupation (HMO) has by reason of its location within a predominantly residential area give rise to local residents fears of crime from potential future occupiers who may present a risk in terms of their behaviour, activities and associations. Furthermore, the application has failed to demonstrate how the development would not impact on the community or mitigate the concerns which have been raised in respect of the fear of crime and therefore promote community cohesion. As such the conversion to a HMO is contrary to paragraph 69 of the NPPF which indicates that planning decisions should aim to achieve places which promote safe and accessible environments where crime and disorder and fear of crime do not undermine quality of life or community cohesion and Policy H7 of the UDP which whilst encouraging the provision of Houses in Multiple Occupation (HMO) only where there would be no harm to the amenity of the occupants of neighbouring properties or the occupiers of the accommodation.

The change of use to a HMO may result in incidents of crime and antisocial behaviour being increased and as such would have a detrimental impact on existing police resources, contrary to paragraph 58 of the NPPF which aims to promote safe and accessible environments where crime and disorder and fear of crime do not undermine quality of life or community cohesion.

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*”.

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.

Paragraph 58 of the NPPF states planning policies and decisions should aim to ensure that developments:

- Create safe and accessible environments where crime and disorder, and the fear of crime do not undermine quality of life or community cohesion.

Paragraph 69 of the NPPF states planning policies and decisions, in turn, should aim to achieve places which promote:

- safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and
- safe and accessible developments, containing clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas.

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:

HOU2: Housing Density, Type and Accessibility

HOU3: Delivering Affordable Housing

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:

Policy H7: Hostels and Houses in Multiple Occupation

Proposals for the establishment, enlargement or alteration of hostels or houses in multiple occupation will be encouraged if it can be demonstrated that:

- There would be no harm to the amenity of the occupants of neighbouring buildings or the intended occupiers of the proposed accommodation.

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)

- Policy DW1 Sustainability
- Policy DW2 Safe and Welcoming Places

Other relevant legislation

Circular 08/2010 – Changes to Planning Regulations for dwelling houses in multiple occupation

Identifies that large houses in multi occupation – those where there are more than six people sharing – are unclassified by the Use Classes order and therefore are considered to be “sui generis”.

Policies are available to view online: http://cms.walsall.gov.uk/planning_policy

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**

Short Heath

9.0 **CONSULTEES**

None

10.0 **CONTACT OFFICER**

Devinder Matharu

Development Management: 01922 652602

11.0 **BACKGROUND PAPERS**

08/1218/FL – Planning Application for the Change of Use from a Vacant Surgery to a Single House.

15/0633/FL – Planning Application for Change of use of Doctor's Surgery into a house in Multiple Occupation for 12 people.

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
3rd December 2015

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 The property is a two storey former doctor's surgery in a predominately residential area on the south west side of Stroud Avenue. A plan showing the location of the property is attached to this report.
- 12.2 The property has remained vacant for approximately 10 years. Planning permission (08/1218/FL) was approved for the conversion of the property into a single house during 2008 but the development was never implemented and the property remained vacant.
- 12.3 The use of 250 Stroud Avenue as a large house of multiple occupation for 12 people (sui generis) was first reported to Planning Enforcement Officers towards the end of 2014. Officers inspected the property to confirm the conversion of the property into 12 separate rooms for living accommodation in addition to communal living areas and shared bathroom facilities. The property comprises 8 bedrooms with a dining/living room, a communal kitchen and shower/W.C on the ground floor with a further 4 bedrooms on the first floor, together with a second kitchen and shared bathroom/W.C
- 12.4 A planning application for the Change of use to Doctor's Surgery into a house in Multiple Occupation for 12 people was submitted during April 2015 reference number 15/0633/FL. During assessment of the application an objection to the use was made by the Police on the grounds of its likely impact on crime and ASB in the area, as well as the likely impact on police resources as a result of incidents of crime likely to be generated by such a development.
- 12.5 On this basis of the Police objections officers were minded to refuse the application and the planning agent was advised of the Council's intentions. Before the refusal was issued the applicant decided to withdraw the application and expressed an intention to re-submit a revised scheme paying closer attention to the management of the property to address the concerns of the surrounding community and the police about the risk of crime. The application was withdrawn on 19th August 2015.
- 12.6 In the absence of a valid planning application a letter was sent to the agent to confirm the Council's intentions to report to the Planning Committee to request authority to pursue enforcement action unless the unauthorised use of the property ceases within 28 days or a revised planning application is submitted. At the time of writing this report a revised scheme has still not been provided and the property remains in use as in Multiple Occupation
- 12.7 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 adverse impact on the local community in respect of the fear of crime and the likely impact on police resources as a result of incidents of crime likely to be generated by such a development. It is considered the cessation of the use of the property as a House of Multiple Occupation will

resolve all of these concerns. 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.

250 Stroud Avenue

