



Walsall Council

PLANNING COMMITTEE

Date: 10 December 2020

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL.

Address: 169 Lowe Avenue
Reference no. E20/0064

1.0 PURPOSE OF REPORT

1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against:

- a) Without planning permission, the erection of a two storey extension to the side of the existing property.

2.0 RECOMMENDATIONS

2.1 **That authority is granted to 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 in 3.2.

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.

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.

3.0 DETAILS OF THE ENFORCEMENT NOTICE

3.1 The Breach of Planning Control

- a) Without planning permission, the erection of a two storey extension to the side elevation of the property within the last 4 years.

3.2 Steps required to remedy the breach:

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- a) Demolish the side extension and remove all waste materials arising from the site to an approved site licenced to accept such materials.

3.3 Period for compliance:

3 months from when the notice takes effect - to undertake the works as set out in paragraph 3.2a.

3.4 The reasons for taking enforcement action:

- a) The two storey side extension is considered to be an overbearing addition to the existing dwelling which is unacceptable for the character of the area.
- b) The addition of the two storey side extension represents an increase of the footprint of the original dwelling of approximately 87.47% which is considered to be a disproportionate addition to the building.
- c) The location of the property is in a prominent corner location and therefore the two storey side extension appears obtrusive which harms the visual amenities of the street scene.
- d) The development is not in accordance with policies ENV32 and GP2 of Walsall Council's Unitary Development Plan.

4.0 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. Planning applications may also be submitted that require an application fee.

5.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

5.1 National Planning Policy Framework (NPPF) www.gov.uk

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:

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- Always require high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- Find ways to enhance and improve places in which people live their lives
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas
- Encourage the effective use of land by reusing land that has previously been developed

Key provisions of the NPPF relevant in this case:

- NPPF 12 – Achieving well-designed places
- NPPF 4 – Decision making

58. Effective enforcement is important to maintain 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. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

5.2 Local Policy

Black Country Core Strategy

- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2 Environmental Protection
- ENV32: Design and Development Proposals

Designing Walsall SPD

Policies are available to view online:

http://cms.walsall.gov.uk/planning_policy

- DW3: Character
- Appendix D

6.0 LEGAL IMPLICATIONS

6.1 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.

- 6.2 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 dwelling house, in which case a four-year period applies.
- 6.3 The local planning authority considers the breach of planning control that has occurred at this site commenced within the last 4 years.
- 6.4 Section 172 of the Town and Country Planning Act 1990 (as amended) 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.
- 6.5 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.
- 6.6 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.

7.0 EQUAL OPPORTUNITY IMPLICATIONS

- 7.1 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 development and its use overrules the owner's right to the peaceful enjoyment of his property.
- 7.2 The Equality Act 2010. The Council has had regard to its duties under the Equality Act 2010 and considers that the issue of the notice will not affect the exercise of those duties under S149 to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b). Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c). foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.0 ENVIRONMENTAL IMPACT

The enforcement action will improve the visual amenities of the environment and protect the amenities of the adjoining neighbours.

9.0 WARD(S) AFFECTED

9.1 Darlaston south

10.0 CONSULTEES

10.1 None

11.0 CONTACT OFFICERS

11.1 Ryan Harris Enforcement Officer

12.0 BACKGROUND PAPERS

12.1 Enforcement file E20/0064 not published.

PLANNING COMMITTEE

DATE: October 2020

13.0 BACKGROUND AND REPORT DETAIL

13.1 A plan showing the location of the site considered in breach of planning control is attached to this report.

13.2 Number 169 Lowe Ave is on the corner of Lowe Avenue and Kennedy Crescent and is a semi-detached house. Front access is afforded via Lowe Avenue. The property also has a garage which is accessible via Kennedy Crescent which joins the highway.

13.3 In May 2020, the Council received a complaint that the owner of a residential property at 169 Lowe Avenue had advertised the property as a House of Multiple Occupation (HMO) and that the property had been extended.

13.4 On 12th May 2020, the Local Planning Authority visited 169 Lowe Avenue taking digital images of the site, including the land surrounding.

13.5 On reviewing images it became apparent that the owner has built without planning approval a two storey side extension and renovated the property.

13.6 On 12th May 2020 the officer followed up the visit with an email to the builders of the side storey extension. Letters were and also sent to the owner and builders to which no response was received.

13.7 A retrospective planning application for a two storey side extension was submitted to the Local Planning Authority and determined on 22nd September 2020 as a refusal, for the following reasons;

1. *The proposed side extension is considered to be an overbearing addition to the existing dwelling which is unacceptable for the character of the area. The extension does not include a step down in roof ridge height from the pitch of the main roof, nor does it incorporate a step back from the principle elevation, subsequently it does not appear subservient to the main dwelling. Furthermore,*

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the additions represent an increase in footprint of approximately 87.47% above that of the original house, which is considered a disproportionate addition to the building, which compromises the visual symmetry of the pair of semi-detached houses. Consequently, at such a prominent corner location, the extension is an obtrusive addition to the local area which detrimentally harms the visual amenities of the street scene. The large blank side elevation wall, approximately 1.8m from the public footpath, further exacerbates the scale and visual obtrusiveness of the extension to the detriment of the street scene. The proposal is therefore not in accordance with policy ENV32 and GP2 of Walsall's Unitary Development Plan.

13.8 As such the owner was subsequently advised that the development would not be supported in the decision notice. Whilst the LPA recognises the concerns of the community regarding the house being converted to an HMO, it is considered to be permitted development as a change from C3 (Dwellinghouses) to C4 (Houses in multiple occupation). The Governments national planning legislation gives approval to convert a residential house to an HMO subject to no more than 6 people sharing facilities, without the LPA/Council being involved to consider harm or impacts on neighbours. Any more than 6 people living at the property, would require planning approval as the use of the building changes from residential to a sui generis use (a use of its own). At that point the LPA can consider impacts on neighbours and the community. The LPA has no evidence that more than 6 people are living at the property has occurred or will occur in the future, so the enforcement action will focus on the unauthorised extension.

13.9 Enforcement action should be commensurate with the breach of planning control to which it relates. It will normally be inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity. This is often referred to as the **expediency** test.

13.10 When assessing whether to instigate enforcement action the planning committee are advised that the following needs to be considered:

- i. the proposed action must be in the public interest
- ii. the breach must be sufficiently harmful to justify taking action
- iii. the proposed action must be reasonable and commensurate with the breach in planning control to which it relates
- iv. the action undertaken should be cost effective
- v. whether or not the development is in accordance with planning policies.

13.11 The large blank side elevation wall of the two storey side extension, approximately 1.8m from the public footpath is obtrusive within the street scene and detrimental to the visual amenities of the area contrary to saved UDP policies GP2, ENV32 and SPD Designing Walsall.

13.12 Therefore, enforcement action to reduce the side extension to permitted development is considered expedient as it is sufficiently harmful. The action is reasonable and commensurate with the breach, cost effective and in accordance with planning policies.

