

**Item No.**



*Walsall Metropolitan Borough Council*

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**DEVELOPMENT CONTROL COMMITTEE**  
**28th June 2005**

**REPORT OF HEAD OF PLANNING AND TRANSPORTATION**

**Ikea Ltd, Park Lane, Wednesbury      Reference no . E05/0104**

**1.0    PURPOSE OF REPORT**

- 1.1    To inform Members of three developments which are unauthorised, and which involve retail expansion, against a background of strong pressure for retail expansion at the store, traffic problems in the area, and to request authority to take enforcement action against these unauthorised aspects.

**2.0    RECOMMENDATIONS**

- 2.1    That members delegate authority to the Head of Legal Services, in consultation with the Head of Planning and Transportation, to issue Enforcement Notices in respect of
- the erection of a steel framed building to the north of the main retail store.
  - the use of a fenced compound adjacent to it for car parking and other activities ancillary to the retail activity on the adjoining Ikea site.
  - the erection of a modular building to the south of the main retail store, and which occupies part of the car park,
- 2.2    Authorise that the decision as to the institution of legal proceedings in the event of non-compliance with the Notices, or the non-return of Requisitions for Information, be delegated to Head of Legal Services.
- 2.3    That authority be delegated to the Head of Planning and Transportation and the Head of Legal Services to amend and 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.

**Details of the Enforcement Notices**

The breaches of planning control:

Erection of a steel-framed building.  
Use and formation of fenced compound for ancillary retail purposes.  
Erection of a modular building

Steps required to remedy the breaches:

Dismantle and remove the steel framed building.

Permanently cease the use of the land outside the Ikea site for retail purposes, and dismantle and remove the palisade fencing on its east , north and west boundaries.

Dismantle and remove the modular building, restore the car park as necessary

Periods for compliance:

Steel-framed building - 3 months from when the notice takes effect

Use of fenced compound and modular building – 1 month from when notice takes effect.

The reasons for taking enforcement action:

### **The steel-framed building**

1. The building has been erected on land that should be used for employment purposes under the provisions of the adopted Unitary Development Plan, but is in use for retail purposes and for activities ancillary to the retail use of the Ikea site , thereby eroding the supply of employment land. The Council is not aware of any over-riding reason why it could not be accommodated elsewhere, and no evidence has been provided to justify the retail use in accordance with national and local policy to protect and promote the viability of existing town centres. Accordingly the building is considered to be in conflict with UDP policy JP7, with UDP policy S7 and with Government policy in PPS6.
2. The building is contrary to the provisions of policy S7 in the adopted Unitary Development Plan in that the location does not offer easy access by public transport, cycling and walking, and does not reduce the need to travel, especially by car. Because the store:-  
has a wide catchment area as the only store of its kind in the region  
has a distinctive image  
many goods sold are bulky  
There is heavy reliance on access by car. This modest but significant increase in floorspace should not occur without improvements in accessibility.
3. The building has an adverse impact on the local road network contrary to policy 2.2(a) of the adopted Unitary Development Plan. There has been an approximate increase in floorspace of 5% (with this and the modular building). In general, traffic generated is directly proportionate to floorspace. Hence the floorspace increase will have generated approximately 5% more traffic causing extra loading on an already overloaded road network, in turn causing harm to traffic safety and free-flow. This increase is even less acceptable because of the additional traffic generation already expected from the lawful development of the mezzanine floor currently under construction.

### **The unauthorised use of land as a compound for ancillary retail purposes such as overflow parking and open storage**

1. This has place on land that should be used for employment purposes under the provisions of the adopted Unitary Development Plan. It has thereby eroded the supply of employment land. The Council is not aware of any over-riding need for

the use, nor is it aware of any evidence that it has increased the range or quality of employment available relative to an alternative employment development. Accordingly the use and formation of the compound is considered to be in conflict with Unitary Development Plan policy JP7.

2. Additional parking on the site acts as a reserve for peak period trips to the site as a whole. This has been identified as a factor which encourages peak time trips and discourages customers from planning trips at less busy times, nor has it received any evidence to justify the unauthorised car parking in the context of the Highway's Agency's policies relating to the management of the M6 motorway. The additional parking is contributing to undesirable peak trip rates, contrary to policy 2.2(a) of the adopted Unitary Development Plan. In addition, the provision of the unauthorised car parking raises the parking provision for the Ikea store above the levels specified in Government guidance and in Walsall's UDP. Accordingly the use and formation of the compound is considered to be in conflict with UDP policy JP7, with UDP policy T4, with UDP policy and with UDP policies T7 and T13.
3. It is a requirement of planning policy that there must be a commercial need for the expansion. The Council is not aware of any over-riding need for the increased site area used for storage and overspill parking, contrary to the provisions of policy S7 of the adopted Unitary Development Plan

### **The modular building**

1. The building is contrary to the provisions of policy S7 of the adopted Unitary Development Plan in that the location does not offer easy access by public transport, cycling and walking, and does not reduce the need to travel, especially by car. Because the store:-
  - has a wide catchment area as the only store of its kind in the region
  - has a distinctive image
  - many goods sold are bulky,there is heavy reliance on access by car. This modest but significant increase in floorspace should not occur without improvements in accessibility.
2. The building has an adverse impact on the local road network contrary to policy 2.2(a) of the adopted Unitary Development Plan. There has been an approximate increase in floorspace of 5% (with this and the steel framed building). In general, traffic generated is directly proportionate to floorspace. Hence the floorspace increase will have generated approximately 5% more traffic causing extra loading on an already overloaded road network, in turn causing harm to traffic safety and free-flow.. This increase is even less acceptable because of the additional traffic generation already expected from the lawful development of the mezzanine floor currently under construction.

### **3.0 FINANCIAL IMPLICATIONS**

None arising directly from this report.

### **4.0 POLICY IMPLICATIONS**

The report recommends enforcement action in order to seek compliance with planning policies.

### **5.0 LEGAL IMPLICATIONS**

Non-compliance with an Enforcement Notice is an offence and if this occurred it would be open to the Council to instigate legal proceedings.

### **6.0 EQUAL OPPORTUNITY IMPLICATIONS**

The unauthorised uses are in an out-of-centre location, which is not readily accessible to all members of the community, particularly those without a car.

### **7.0 ENVIRONMENTAL IMPACT**

The report recommends enforcement action to remedy adverse impacts from traffic.

### **8.0 WARD(S) AFFECTED**

Bentley and Darlaston North

### **9.0 CONSULTEES**

Discussions have taken place with officers of the Highways Agency and Sandwell MBC regarding the impacts on Junction 9 of the M6, and adjacent roads.

### **10.0 CONTACT OFFICER**

Philip Wears– Planning Enforcement Team  
Tel; 01922 652411.

### **11.0 BACKGROUND PAPERS**

All planning applications referred to in text.

MARTIN YARDLEY  
HEAD OF PLANNING AND TRANSPORTATION

**DEVELOPMENT CONTROL COMMITTEE**  
**28th June 2005**

**Ikea Ltd , Park Lane , Wednesbury.**

## **12.0 BACKGROUND AND REPORT DETAIL**

### Introduction

12.1 This report first appeared on the Committees agenda on 7<sup>th</sup> June 05 but owing to some earlier debates it was not possible to reach this item.

12.2 Following publication of the report a letter was received from the agents for Ikea, advising as follows;

- The steel framed building was constructed in April 2001
- It is intended to remove the steel framed building in 12 months time (approx.) when work on the mezzanine is complete
- A planning application for a temporary permission for the steel frame building is in preparation
- The fenced compound is to be removed (the letter estimates) by the first week in July.
- The modular building will be removed by the end of June

The officer recommendations are not changed, but the possibility of an amicable solution as outlined in the letter is welcomed. Given the stance taken by Ikea, the Planning Contravention Notice was not served, though officers will seek clarification of the date of the steel-framed building.

12.3 This section of the report continues below as previously circulated.

### Planning History

12.4 The history of the site is complex but important to this report, and begins when the Black Country Development Corporation granted planning permission for the construction of the store in 1989. (ref BCW104 subject to a number of conditions including one requiring non-food retailing only). The store building is close to its north boundary and beyond this there has been a vacant area of former industrial land.

12.5 In 2002 outline planning application 02/0960/OL/02 was made for a major expansion of the store, using this land to the north, to add almost 8,000 square metres of retail floorspace and 300 more parking spaces, this involved a departure from the Walsall UDP as the land was designated for employment use, and officers felt that the information and methodology in the submitted Transport Assessment and Retail Impact Study was deficient. Following correspondence and a meeting the application was withdrawn.

- 12.6 In 2003 the company made two applications to build a 5,500 square metre warehouse on the land to the north, and extensions to the store totalling 2270 square metres. (applications 03/1481/FL/W2 and 03/1762/FL/W2). However there were anomalies with the floorspace figures, officers considered that the development would be a retail development despite the description as a warehouse, and the Highways Agency gave a holding direction for refusal of the store extensions, because of congestion at Junction 9 of the M6. Both applications were withdrawn.
- 12.7 In October 2004 the company submitted further applications for an extension to the store, and on land to the north a distribution warehouse (applications 04/2206/FL/W2 and 04/2192/FL/W2). There continued to be problems about information submitted and the description of the development to the north as a warehouse. The warehouse application is now the subject of an appeal against non-determination and a Public Local Inquiry will take place at a date yet to be announced by the Planning Inspectorate. Subsequently the extension application has been withdrawn, but the appeal process continues for the 'warehouse' application.
- 12.8 Also of importance is a further application in 2004, seeking a certificate of lawfulness (a determination of whether planning permission is needed) for the installation of a mezzanine floor. This was granted by the Council in February 2005 on the basis that no external alterations of significance would take place and the proposal would not therefore fall within the current definition of 'development'. The work to provide this is currently underway. There is no planning control over the new mezzanine floor area to determine whether it is self-serve, 'full-serve' or showroom. The new floor area adds about 5,500 sq metres to the store; about a 32% increase in the store's trading capacity and traffic generation.

#### The unauthorised developments

- 12.9 It will be apparent from the above that in recent years the company have shown a consistent desire to expand the retail facilities, and a degree of expansion will already occur as a result of the new mezzanine floor. In addition, recently, the company has been directing customers to collect goods from a former industrial / warehouse unit in Sandwell, which does not have planning permission and which is understood to be under investigation by Sandwell Council.

In addition, on the site in Walsall, there has been an element of unauthorised extension which is now the subject of this report. Letters have been sent in the past raising these issues, but there has been no response. Whilst officers have sought to resolve these issues with the company, with the passage of time and the forthcoming appeal the balance needs to swing to the safeguarding of planning control.

- 12.10 The three developments which appear to officers to be unauthorised are as follows;  
Erection of steel-framed building measuring about 25m by 18m. It was erected for retail purposes, and has been used for such. It may now be in use for training, but this is still a use ancillary to the retail use of the Ikea site. The works to add

the 'mezzanine' floor in the main store may change that status, but it is still an unauthorised building, known as the 'Bargain Corner'. It is located just outside the boundary of Ikea's authorised site, north of the main building. Whilst the Council's first record of the 'Bargain Corner' building dates from mid 2002, the building may be older and approaching the end of the 4 year period within which any enforcement action must be taken. If enforcement action is not taken the building will be immune from planning control.

Use and formation of a fenced compound for open storage and overflow parking. This compound is formed by palisade fencing and has an old concrete surface which probably dates from the previous steel works on this site. It measures about 60m by 50 m. It is also outside the authorised Ikea site.

Erection of modular building. This structure comprises about 342 square metres. This is in use for selling garden furniture and gardening supplies. It was in place in November and December 2004, was removed, and returned in March 2005, remaining to the present. Although having sides and a roof of canvas officers consider that it has sufficient permanence to require planning permission as a building. Unlike the two other developments, it is within the authorised site and occupies some parking spaces. It is adjacent another (taller) modular building near the south-east corner of the store, which is long-standing (and therefore lawful) and not the subject of this report.

- 12.11 However, enforcement action depends not only on evidence of unlawfulness but also on identifying a development inconsistent with planning policies. The report therefore concludes by examining this area.

#### Relationship with Employment policies

- 12.12 Two of the developments, the steel-framed building and the fenced compound for storage and overspill parking, are located outside the authorised site and on part of an area of land which has previously had planning permission for development for employment (Class B2/B8 development) granted in 1998. Whilst the permission has now expired and it is understood Ikea have since acquired the site, Policy JP7 of Walsall's UDP seeks that such an area should be used for employment and related uses and not for retailing. It should be noted that Ikea objected to the part of the site, fronting Park Lane, being designated for employment use, but the UDP Inspector upheld the employment designation. The retail development and use (including for parking) associated with retailing conflict with Policy JP7.

#### Relationship with policies for retail and other town-centre type development

- 12.13 The existing store is in an 'out of centre' location and UDP policy S7 is therefore directly relevant. This sets out tests for out of centre and edge of centre retail developments, one of which, the protection of employment land, has already been discussed above. The relevant remaining tests are discussed below, although reflecting the fact that planning applications with relevant information have not been received. Together the steel framed building and the modular building have added about 800 sq metres to 17,130 sq metres of existing floor

space, equivalent to nearly 5% which officers consider to be a significant increase. Recent Government policy in PPS6 ('Planning for Town Centres', March 2005) has introduced some amendments to the policy tests, but does not impose any lower limit to the application of the tests in the context of the key objective of planning for the growth and development of existing centres.

- (a) Firstly, the proposer of an out-of-centre development is required to demonstrate a need for it, particularly in terms of there being available consumer expenditure. No evidence has been provided and the Walsall Retail Capacity Study shows that there is no justification for out-of-centre retail development in Walsall's catchment area.

The developer is also required to demonstrate that, under the sequential approach, there are no alternative sites in more central locations (i.e. within and then on the edge of centres) within the catchment area. Again, no evidence has been provided, but it is clear that the additional shopping floorspace provided could be accommodated in any one of several centres in the catchment area, including Walsall, several of the district centres and in West Bromwich.

- (b) The next test is that, individually or in combination with other proposals, the developments should not divert trade from or deter investment in any existing centre and thereby undermine it economically. Although the combination of developments around the area could threaten to have adverse impacts on Walsall and several of the district centres, Officers consider that the modest level of floorspace increase in this case would not in itself be likely to have a significant adverse impact, and the increased site area is not impacting in this consideration. However, if action is not taken now, it might be more difficult to resist or control other developments in the future, which could have adverse impacts.
- (c) The next two tests are that the location offers easy access by public transport, cycling and walking, and as much as possible reduces the need to travel, especially by car. It appears to officers that the store draws customers from the entire West Midlands Region as the company has a distinctive image and this is the only store in the region. Relatively heavy reliance on access by car can therefore be expected for this location. However the 2002 planning application for major expansion triggered detailed assessment which indicated very poor accessibility by public transport and connecting pedestrian routes. It appears to officers that any increase in floorspace provided by the above buildings should not occur without improvements in the accessibility situation. This could be brought about by providing supporting bus services into the site and connecting pedestrian routes within it. The retention of this increased floorspace without such improvements would in officers opinion set a precedent which would undermine the application of the policy to expansion proposals elsewhere in the Borough. In addition, the unauthorised car parking area is likely to make the store more attractive to car-borne customers, contrary to national and local policy to reduce the need to travel.
- (d) The final relevant requirement is that the expansion will not have an adverse impact on the local road network. The work on the 2002 application highlighted the well-known serious congestion on the M6 and the peak trip rates to the store on late Friday afternoons and Saturday afternoons. The Transport Assessment with the application was extensively criticised for methodology and not illuminating the issues. The issue is now whether the near 5% increase in floorspace is causing significant extra loading on an already overloaded road network, causing harm to traffic safety and free-flow. In general, traffic generated is directly proportionate to floorspace. Hence the floorspace increase will have

generated nearly 5% more traffic. This increase is the less acceptable because traffic generation is likely to be also increased by the lawful development of the internal 'mezzanine' floor.

Furthermore, the additional parking can be seen as not just as an additional quota to accompany this increased floorspace but also as a reserve for peak period trips to the site as a whole. This has been identified as a factor which encourages peak time trips and discourages customers from planning trips at less busy times. It is considered therefore that the additional parking is contributing to undesirable peak trip rates.

It is clear from the directions made in respect of the various planning applications that have been made and from discussions with Officers - that the Highways Agency is concerned at the impact of the Ikea store on the M6 and particularly on Junction 9. In the situation where traffic levels on the M6 might be seen as becoming critical, the Highways Agency has been reviewing the future of Junction 9. The Junction has been the subject of temporary closures in the past and there is a real risk that relatively minor increases in traffic could have serious consequences.

- 12.14 The company has recently been asked to comment and provide information on the three developments identified above, but again this has not been received. At the time of writing a Planning Contravention Notice is being prepared to require factual information about the dates and origins of these developments from the company. The answers to this notice will help confirm or contradict the officers assessment that the developments are unauthorised. The answers may not be available until after the Committee's meeting, but there may be an element of urgency regarding the steel-framed building as indicated above, and Members are requested to delegate authority for enforcement action

## CONCLUSIONS

- 12.15 The three developments, individually and collectively have an adverse effect on employment land, shopping activity and traffic. Enforcement is the appropriate response.

