



## DEVELOPMENT CONTROL COMMITTEE

Date: 4<sup>th</sup> March 2010

### Report of Head of Planning and Building Control

#### 101 Woden Road West, Darlaston

#### 1.0 PURPOSE OF REPORT

A report concerning failure to comply with a Breach of Condition Notice requiring implementation of an approved planting scheme.

#### 2.0 RECOMMENDATIONS

- 2.1 That authority is granted to the Assistant Director - Legal and Constitutional Services to institute legal proceedings, in consultation with the Head of Planning and Building Control, in respect of the failure to comply with a Breach of Condition Notice which requires planting to be carried out.

#### 3.0 FINANCIAL IMPLICATIONS

None arising from the report.

#### 4.0 POLICY IMPLICATIONS

The report recommends further action to seek compliance with planning policies.

#### 5.0 LEGAL IMPLICATIONS

The legal remedy available in situations of failure to comply with a Breach of Condition Notice is prosecution. If convicted for non-compliance the defendant would be liable to a maximum fine on 'level 3', currently £1000. If the defendant continues to not comply with the Notice then they could face further prosecution.

#### 6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

#### 7.0 ENVIRONMENTAL IMPACT

The report recommends further action to improve visual impact and thereby comply with planning policies.

#### 8.0 WARD(S) AFFECTED

Darlaston South

#### 9.0 CONSULTEES

Landscape officers, Regeneration and Housing.

Planning application BC 54724P for erection of light industrial building and the subsequent application 05/2418/FL for its use as a warehouse, were both . subject to normal publicity.

10.0 **CONTACT OFFICER**

Philip Wears

Planning Enforcement Team: 01922 652527 / 01922 652411

11.0 **BACKGROUND PAPERS**

Planning application BC 54724P for erection of industrial building .

Planning application 05/2418/FL for its use as a warehouse .

Enforcement file not published

David Elsworthy - Head of Planning and Building Control.

## **12.0 BACKGROUND AND REPORT DETAIL**

- 12.1 This report concerns a failure to comply with a Breach of Condition Notice which was issued under delegated powers. The report is necessary because the further actions that are available to the Council are not delegated to officers.
- 12.2 In October 1999 planning permission was granted for an industrial unit of simple design (reference BC54724P). One of the conditions attached to the permission required details of proposed planting to be submitted and approved before building commenced, and also controlled implementation of the planting. Problems occurred in negotiating satisfactory proposals for landscape planting around the building, with the building proceeding notwithstanding. The permission granted in 2006 for change of use to warehouse (ref 05/2418/FL) reinforced the situation by incorporating a condition to require that the original landscaping condition be fulfilled before occupation of the building or in the first planting season thereafter.
- 12.3 A Breach of Condition Notice was served in February 2008 under the original condition, to require a scheme to be submitted for approval within 28 days. A scheme was approved in March 2008. A second Breach of Condition Notice was then served to require planting of the approved scheme in two stages. Six Birch trees at the rear of Phoenix Rise, and 2 Cherry trees on the road frontage, were to be planted by 23<sup>rd</sup> April 2008, and the remainder of scheme by 12<sup>th</sup> December 2008.
- 12.4 All the trees were planted and all were growing during Summer 2009 (this will be checked again in Spring 2010). However the other requirements have not been met. These comprise a hedge to supplement the trees at the rear of Phoenix Rise, bamboos growing in large containers along the south-west side of the warehouse, and mixed shrubs on the road frontage. The owner was advised in early 2009 of the need to complete the planting or face prosecution for failure to comply with the Breach of Condition Notice. However no further planting has taken place.
- 12.5 The hedge remains important. It is intended to provide infilling of the gaps between the Birch Trees, and also further screening of the building.
- 12.6 The south west elevation of the building has been visually prominent because it overlooks a neighbouring site which is at much lower level. Recently the neighbouring site has been redeveloped with housing. This has incorporated raising of ground levels and the houses have consequently reduced the degree of prominence of this elevation. Nevertheless your officers consider that the planting remains important here, owing to the utilitarian appearance of the cladding and the degree of visual prominence remaining significant.
- 12.7 The absence of the planting of low-growing shrubs at the front of the building is not prominent in the street scene in all places, and officers do not feel that all of this needs to be pursued. However the high level planting bed at the east corner at the front of the site is much more visible. This is currently bare except for a narrow-growing Cherry tree, and it is considered this should be fully planted.

# 101 Woden Road West, Kings Hill, Darlaston.

