



PLANNING COMMITTEE

Date: 26th April 2011

Report of Head of Planning and Building Control

71 Walsall Road, Darlaston

1.0 PURPOSE OF REPORT

To inform Members of the unauthorised use of the premises as a retail shop, contrary to restrictions on the type of shop, and consider the justification for taking planning enforcement action.

2.0 RECOMMENDATIONS

- 2.1 That authority is granted for the issuing of 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 that the decision as to the institution of 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 control; be delegated to the Assistant Director - Legal and Democratic Services in consultation with the Head of Planning and Building Control Services.
- 2.3 That, in the interests of ensuring an accurate and up to date notices are served, authority be delegated to the Assistant Director - Legal and Democratic Services in consultation with the Head of Planning and Building Control, to amend, add to, or delete from the wording set out below stating the nature of the breach(es) the reason(s) for taking enforcement action, the requirement(s) of the Notice, or the boundaries of the site :

Details of the Enforcement Notice

The Breach of Planning Control:-

Use as a retail shop without complying with condition 1 attached to planning permission BC14834, and condition 1 attached to planning permission BC16529, both being conditions which restrict retail use to a chemist's shop and pharmacy only.

Steps required to remedy the breaches:-

Cease to use the premises as a retail shop unless complying with special conditions attached to planning permissions BC14834 and BC16529 which restrict retail use to a chemist's shop including a pharmacy, only.

Permanently remove all displays, goods, materials and equipment which are on the premises in connection with any other type of shop, including a shop for the display and sale of kitchens, bathrooms and related fittings and furnishings.

Period for compliance:-
4 months

Reason for taking Enforcement Action:-

The use of the premises as shop within Use Class A1 but outside a district or local centre such as Darlaston is considered to conflict with the objectives of policies seeking to locate new retail development within such centres. No special need for the present use is known, and there is no evidence that this location complies with a sequential approach which aims to direct new shops towards district or local centres wherever possible. The continuation of the use would undermine this aim and impact on the prosperity and attractiveness of district and local centres such as Darlaston, and would set a precedent which would encourage similar case which cumulatively would cause substantial harm to such centres. The continuation of the use would be contrary to planning policy to sustain and enhance existing centres, especially given the vacant shop/commercial units now existing in Darlaston. The proposed shop would also be unlikely to be accessible by a choice of means of transport nor promote less dependence on access by car, compared to locations within the centre of Darlaston. The application is therefore contrary to paragraphs 5.2, 5.12, 5.4-5.6 and 'saved' policies S1, S6 and S7 of Walsall's Unitary Development Plan (2005), policies CEN5 and CEN7 in the Black Country Joint Core Strategy and to Government policy in the NPPF section 2, 'Ensuring the Vitality of Town Centres'.

3.0 **FINANCIAL IMPLICATIONS**

None for the Council. The existing business would experience costs in relocating. An ample compliance period is intended in order to minimise these.

4.0 **POLICY IMPLICATIONS**

The report recommends enforcement action in order to seek compliance with planning policies aimed at directing retail activity to the district and local centres in order to sustain and enhance those centres.

5.0 **LEGAL IMPLICATIONS**

Enforcement Notices issued under section 172 of the Town and Country Planning Act are often issued in respect of development carried out without the necessary planning permission, but may also be issued for failing to comply with a condition or other limitation subject to which planning permission has been granted. The Enforcement Notice recommended in this report would be of the latter type.

Power to issue a Breach of Condition Notice under section 187A also exists in cases of the latter type, but this power gives much lower penalties for non-compliance and also gives no right of appeal. Due to the policy issues involved, and the impact on the premises, it is considered that the use of full Enforcement Notice powers is more appropriate in this particular case..

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

Enforcement action would be in the interests of sustaining and enhancing the district and local centres, and one aspect of this would be the associated environmental benefits, such as reducing the number of vacant and potentially neglected shops.

8.0 WARD(S) AFFECTED

Bentley and Darlaston North

9.0 CONSULTEES

None

10.0 CONTACT OFFICER

Philip Wears

Planning Enforcement Team: 01922 652485

11.0 BACKGROUND PAPERS

Enforcement file not published

Planning applications BC14834, BC16529, BC40750P, 05/1911/FL

D Elsworthy

Head of Planning and Building Control

Planning Committee
26th April 2012

12 BACKGROUND AND REPORT DETAIL

Introduction

- 12.1 71 Walsall Road is a small terraced shop located to the east of the Darlaston district centre. It is in a predominantly residential area, but there is a mobile phone shop adjoining at number 73, a pub at number 83, and a few scattered vacant commercial premises in the area. The shop is currently in use as a kitchen and bathroom showroom. This is a breach of control because conditions attached to planning permissions granted in 1980 restrict the retail shop use to a chemists and pharmacy only.

History

- 12.2 The planning history of retail use at this address is unusual. Planning permission BC 14834 was granted in 1980 for change of use from a house to a shop, but subject to a special condition restricting the retail use to a chemist's shop including a pharmacy. The reason given for this restriction was that the planning permission was only granted because of the need for a pharmacy in this area, and any other form of retailing from the property would be unlikely to receive permission. This reflected the objective of concentrating new retail uses in town centres unless there were special circumstances.
- 12.3 Later in 1980 planning permission BC16529 was granted for change of use from a house to a dispensing chemists, with ancillary offices or storage on the first and second floors and a new shop-front. The same condition was attached and with a similar reason. Then in 1993 planning permission BC39784P was granted for change of use from a house to retail at 69a Walsall Road, as extension to the adjacent use at number 71, together with a new shop-front. Again the restriction to use the premises as a retail chemist and pharmacy was attached and for a similar reason. All these applications for change of use to a retail shop would have been refused under the policies for district and local centres if it were not for a local need for a dispensing pharmacy being recognised and accommodated under the same policies.
- 12.4 The history took a different turn in 1994 when application BC40750P was refused for 69a and 71 Walsall Road to be used as a general shop without being restricted to a chemists including pharmacy. The application stated that the local need for a chemists and pharmacy had gone following the relocation of a doctors surgery. The application was refused, with a main reason being that a general shop use would conflict with the objective of sustaining the local and district centres including Darlaston.
- 12.5 A similar application was next received in 2005. Application 05/1512/FL proposed removing the restrictive conditions attached to the previous permissions at 69a and 71 Walsall Road, but it was withdrawn. Then a resubmission 05/1911/FL was made in respect of 71 Walsall Road only. The covering letter noted that the permission at 69a had expired owing to non-implementation, with that property remaining as a house. If this application had been permitted the current use as

kitchen and bathroom showroom would be lawful, but this application was refused permission for the following reasons:-

It has not been demonstrated that there is a need for the proposal nor compliance with the sequential approach in terms of consideration of sites in Darlaston District Centre, the proposal is therefore contrary to planning policy to sustain and enhance existing centres, including Darlaston. The proposed shop would also be unlikely to be accessible by a choice of means of transport nor promote less dependence on access by car, compared to locations within the centre of Darlaston. The application is therefore contrary to paragraphs 5.2, 5.12, 5.4-5.6 and Policies S1, S6 and S7 of Walsall's Unitary Development Plan (2005) and to Government Policy in PPS6: Planning for Town Centres.

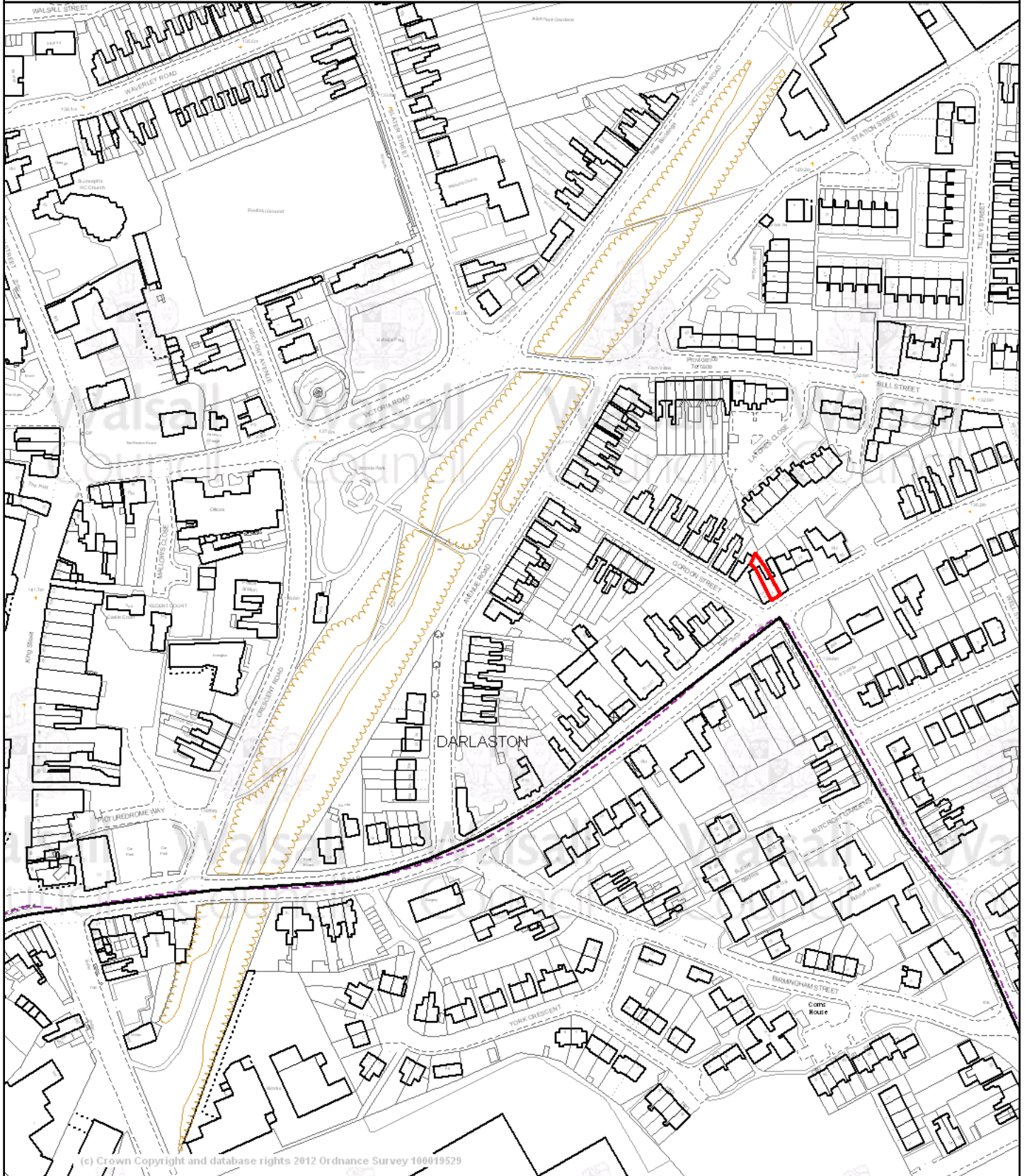
Policies

- 12.6 The Walsall UDP policies referred to in the 2005 planning refusal remain relevant and they have been joined by Black Country Core Strategy policies including CEN7 'Controlling out of centre development'. This takes a similar sequential approach to the location of new retail development (and other town centre uses), in which new development should be located in a district or local centre unless suitable premises are not available. Failing that it should be located in an edge-of-centre location. An out-of-centre location will only be acceptable if in-centre and edge-of-centre locations are not available. ..
- 12.7 Policy CEN7 also defines edge-of-centre as within 300 metres easy and fairly direct walking of the primary shopping area of the centre concerned. Number 71 Walsall Road is about 340 metres from Darlaston's primary shopping area (as defined in the UDP), and when measuring along Walsall Road as the most direct route. Number 71 Walsall Road is therefore clearly in an out-of-centre location.
- 12.8 At national level policies have been changed since the 2005 refusal of permission, with PPS 4 replacing PPS 6 and that in turn being replaced with the recently published National Planning Policy Framework. At section 2 this takes a generally similar approach to sustaining centres and the sequential approach as do the Walsall UDP and Black Country Joint Core Strategy policies.
- 12.9 It appears to your officers that there is no prospect that a special case based on local need exists for the current use as a kitchen and bathroom showroom in this location. Similarity with the special case for a dispensing pharmacy cannot be found. This use of the shop is therefore contrary to the objectives of the above policies. Owing to the small size of the shop it is unlikely to measurably undermine the success of the Darlaston centre on its own. However its use does undermine the sustaining and enhancing of Darlaston centre to some extent, and the continuation of the use would tend to set a precedent which would support similar changes of use which cumulatively could have a serious impact. There are vacant commercial/shop units in Darlaston district centre both within and outside the primary shopping area, and an objective of the policies would be to steer new businesses to those, rather than have them in scattered locations for which 71 Walsall Road is an example.

Enforcement action and impact on the business.

- 12.10 Officers therefore see no justification for the use as general, unrestricted shop continuing. If use as a chemists and pharmacy is no longer viable in this location an appropriate use would be for 71 Walsall Road to revert to use as a house.
- 12.11 Officers have previously given general advice on possible alternative locations, and a meeting has recently taken place with them to review their options. One option is to make a planning application containing special justification for the unrestricted use continuing at 71 Walsall Road, if, notwithstanding the vacant units in Darlaston, they consider they can demonstrate that there is a shortage of suitable, available premises for them in a centre. Another option is to investigate different premises, within or outside a district or local centre. Clearly if looking outside such a centre it would be preferable to identify premises which already have a lawful use as an unrestricted retail shop. The tenants have stated that they have been unaware of the restrictive conditions.
- 12.12 For the business involved the outcome of enforcement action could be serious. Allowing a compliance period which is ample for the business to find alternative premises would reduce the potential impact on the business, but there would be costs associated with relocating. However, officers recommend that enforcement action is appropriate, providing that a reasonable period is given for relocation.

71 Walsall Road, Darlaston



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