



PLANNING COMMITTEE
15th May 2014

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

1, Halford Crescent, Blakenall, WS3 1PR

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the use of the property for the repair, maintenance and valeting of motor vehicles. The erection of fencing and gates adjacent to the highway, and the hard surfacing of the garden frontage.

2.0 RECOMMENDATION

2.1 That authority is granted for 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 the accurate and up to date notices are served.

Details of the Enforcement Notice

The Breach of Planning Control:-

Without the required planning permission the use of the residential property frontage for the repair, maintenance and valeting of motor vehicles in excess of what would be deemed an ancillary use of a domestic property. The erection of gates and fencing above 1 metre in height, and directly adjacent to the highway and the hard surfacing of the garden frontage which has not been shown to be in conformity with permitted development rules.

Steps required to remedy the breach:-

Cease to use the site for the repair, maintenance and valeting of motor vehicles that are in excess of what could be considered as being ancillary to the domestic use of the property.

Reduce the height of the fencing and gates adjacent to the highway to a height no higher than 1 metre.

In the absence of meeting the requirements of permitted development rules regarding the provision of domestic drive ways to remove the concrete hard surfacing from the garden frontage to a maximum of no greater than 5.0 square metres.

Period for compliance:-

One month

Reason for taking Enforcement Action:-

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:

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*".

All the **core planning principles** have been reviewed and those relevant in this case are:

- Seek to secure high quality design and good standards of amenity for all existing and future occupants
- Take account of the different roles and character of different areas

Key provisions of the NPPF relevant in this case:

4: Promoting Sustainable Transport

32 All development should have safe and suitable access to the site for all people. Development should only be refused on transport grounds where the residual cumulative impacts of development are severe.

7: Requiring Good Design

58. Developments should function well and add to the overall quality of the area.

60. It is proper to seek to promote or reinforce local distinctiveness.

64. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

11: Conserving and enhancing the natural environment

109. The planning system should prevent new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of.... noise pollution.

120. To prevent unacceptable risks from pollution decisions should ensure that new development is appropriate to its location. The effects (including cumulative effects) of pollution on health or general amenity and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account.

123. Planning decisions should aim to:

- Avoid noise from giving rise to significant adverse impacts
- Mitigate and reduce to a minimum other adverse impacts on health and quality of life.
- Recognise that development will often create some noise
- Identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value.

On **planning conditions** the NPPF says:

Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

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. Pre-application engagement is encouraged.

The Development Plan

Planning law requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions but recognises that what it terms 'Local Plan' policies should not be considered out-of-date simply because they were adopted prior to the publication of the framework.

The Black Country Core Strategy (BCCS)

http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm

This was adopted under the current Local Development Framework system, and the NPPF says that for 12 months from the publication of the national framework "*decision-takers may continue to give full weight to relevant policies.* However, it is more than 12 months since the NPPF was published in March 2012. Now (as with the saved policies of Walsall's UDP) the NPPF advises that "*... due weight should be given to relevant policies ... 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).*" To consider the conformity of the BCCS with the NPPF the four Black Country councils have completed a 'Compatibility Self-Assessment Checklist' (published by the Planning Advisory Service) and have discussed the results with a Planning Inspector. Whilst there is no formal mechanism to certify that the BCCS is

consistent with the NPPF the discussions led officers to the conclusion that the exercise identified no issues that would conflict with the NPPF or require a review of the BCCS in terms of conformity.

This checklist has been published on the BCCS and Council websites. Cabinet on 24th July 2013 resolved to endorse the assessment undertaken by officers from the four local authorities and agreed that the Black Country Core Strategy is consistent with the National Planning Policy Framework, so that the Core Strategy policies should be given full weight in planning decisions.

The relevant policies are:

ENV2: Development proposals will be required to preserve and, where appropriate, enhance local character.

ENV3: Development proposals across the Black Country will deliver a successful urban renaissance through high quality design that stimulates economic, social and environmental benefits. Implementation of the principles of “By Design” to ensure the provision of a high quality networks of streets, buildings and spaces.

TRAN2: Planning permission will not be granted for development likely to have significant transport implications.

It is considered in this case that the relevant provisions of the BCCS can be given full weight.

Walsall’s Unitary Development Plan (UDP)

www.walsall.gov.uk/index/environment/planning/unitary_development_plan.htm

Policies that have been saved and not replaced by the BCCS remain part of the development plan. However, in such cases the NPPF says “*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)*”.

The relevant policies are:

GP2: Environmental Protection

The Council will expect all developments to make a positive contribution to the quality of the environment and will not permit development which would have an unacceptable adverse impact on the environment. Considerations to be taken into account in the assessment of development proposals include:

- I. Visual appearance.
- II. Creation of pollution of any kind
- VI. Traffic impact

3.6: Development should help to improve the environment of the Borough.

3.7 Seek to protect people from unacceptable noise, pollution and other environmental problems.

ENV10 states that development which may give rise to pollution such as noise and smell will only be permitted where it would not have an adverse effect on adjoining uses/potential uses.

ENV32: Poorly designed development which fails to properly take account of the context or surroundings will not be permitted

T7 – Car Parking

All development should satisfy the car parking standards set out in Policy T13.

This will involve providing an adequate level of parking to meet operational needs while not exceeding any maximum parking standards that are specified.

T13: Development will provide adequate on-site parking to meet its own needs, and that there will be no adverse effect on highway safety and the environment.

It is considered in this case that the relevant provisions of Walsall's saved UDP policies are consistent with the NPPF

Supplementary Planning Documents (SPD)

On the basis that relevant UDP policies are consistent with NPPF, the related SPD(s) will also be consistent provided they are applied in a manner consistent with NPPF policy. The relevant SPD's are:

Designing Walsall (SPD) (Feb 2008)

Aims to achieve high quality development that reflects the borough's local distinctiveness and character, through eight key design principles and ten policies. The following are the relevant policies;

DW3: Character - all new development must be designed to respect and enhance local identity

DW9: High Quality Public Realm - new development must seek to ensure it creates places with attractive environmental quality

5.0 LEGAL IMPLICATIONS

None arising from the report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

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 appearance of the land and building overrules the owner's right to the peaceful enjoyment of his property.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Blakenall

9.0 CONSULTEES

None.

10.0 CONTACT OFFICER

Tim Pennifold
Development Management

11.0 BACKGROUND PAPERS

Enforcement file not published

David Elsworthy
Head of Planning and Building Control

Planning Committee
15th May 2014

12.0 BACKGROUND AND REPORT DETAIL

- 1, Halford Crescent is a two storey semi-detached house located on a prominent corner within a residential area. In March 2012 a query was received in regard to car storage, vehicle repairs and valeting occurring at the residential property.
- Officers met with the owner on site on the 4th April 2012. The owner admitted the cars present on the site were linked to a car sales business and were being stored there temporarily until a new business site was found.
- Around this time fencing and gates above 1m were then erected at the site adjacent to the highway in excess of permitted development rights. A concrete hard surface was also then laid over the majority of the frontage.
- The site was monitored by officers who noted car valeting activity occurring on the site. In addition it was noted that there were a number of individuals who appeared to be 'working' on the frontage
- A letter was sent to the owner in June 2012 requesting that the business activity ceases. An officer report was prepared recommending enforcement action, however activity ceased and vehicles were moved to a new commercial premises late September /October 2012 negating the need for any action to be taken at that time.
- Officers then considered whether or not further action should be taken against the erection of the gates and fencing and the laying of the hard standing on the frontage.
- It was then noted by officers that activity had started again in October 2013 but in addition to the previous unauthorised valeting use, vehicle repairs now appeared to be carried out also.
- Officers met with the owner on site on the 10th October 2013. It was claimed that all vehicles being repaired or renovated on the site at the time of the visit were under his families ownership.
- Officers then wrote to the owner on the 11th October 2013 requesting the details of vehicle ownership of all the cars present on the site and to cease commercial activity related to the storage, repair and valeting of motor vehicles not within the occupiers ownership, removing any unauthorised vehicles within the next 14 days.
- On the 14th April 2014 a complaint was made regarding activity on the site and the stationing of a caravan upon the frontage and the possibly that it was being used for habitation separate to the main dwelling.

The complaint also raised issues regarding commercial vehicles linked to the property being parked on the highway and restricting pedestrian access. Planning legislation however has no powers in this regard and could not take enforcement action.

- A Planning Contravention Notice is to be served upon the owner of the property in regard to the storage of vehicles and items related to the running of a business in order to gain further evidence. An update on this will be provided at committee.

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 harm it is causing. Officers also request that should any enforcement notice not be complied with and prosecution proceedings are undertaken, that proceedings should also be brought in regard to non-return of the RFI.