



PLANNING COMMITTEE

15th May 2013

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

11, Greenslade Road, Walsall, WS5 3QH

1.0 **PURPOSE OF REPORT**

To request authority to take planning enforcement action in respect of the erection of an unauthorised house and outbuilding.

2.0 **RECOMMENDATIONS**

- 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 to require remedial actions to be undertaken as shown below.
- 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, the non-return of Requisitions for Information or a Planning Contravention Notice, and the institution of injunctive proceedings in the event of a continuing breach of control, in accordance with paragraph Part 3.2 – 6(a) (7) of the constitution.
- 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 breach(es) the reason(s) for taking enforcement action, the requirement(s) 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:-

The part completed building works without planning permission for the construction of a new house and outbuilding.

Steps required to remedy the breaches:-

- Remove the house and outbuilding

Period for compliance:-

Two months

Reason for taking Enforcement Action:-

1. The changes implemented so far require planning permission.

2. The cumulative impact of the construction of the large, excessively high unauthorised new house visible from the street and the rear windows and gardens of houses along Greenslade Road and Norman Road is considered to not reflect the existing character of the neighbouring detached houses due to its excessive size, mass and design.
3. The proximity of the house closer to number 9 than the original house and its excessive height are considered have an overbearing impact on the front lounge window of number 9 which has resulted in a loss of light.
4. The development is contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58, 64 and 109, the Black Country Core Strategy policy ENV2 and Walsall's saved Unitary Development Plan, in particular policies GP2 and ENV32, and the Supplementary Planning Document, Designing Walsall.

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:

- Always seek to secure high quality design and good standards of amenity for all existing and future occupants

Key provisions of the NPPF relevant in this case:

56. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making better places for people.

57. It is important to plan positively for the achievement of high quality and inclusive design for all development.

58. Planning policies and decisions should aim to ensure that developments meet criteria that include:

- Function well and add to the overall quality of the area
- Establish a strong sense of place
- Respond to local character and history and reflect the identity of local surroundings and materials

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.

109. The planning system should contribute to and enhance the natural and local environment by:

- Protecting and enhancing valued landscapes

207. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

The Black Country Core Strategy (BCCS)

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

This was adopted in February 2011 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 ... even if there is a limited degree of conflict with this Framework*”. The relevant policies are:

ENV2 and ENV3 states that all development should aim to protect and promote the special qualities, design quality and local distinctiveness of the Black Country.

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.

VI. Overlooking, loss of privacy, and the effect on daylight and sunlight received by nearby property.

ENV32: Design and Development Proposals.

(a) Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted. This policy will be applied to all development but will be particularly significant in the following locations:-

- Areas with a special character arising from the homogeneity of existing development in the neighbourhood.

- (b) When assessing the quality of design of any development proposal the Council will use some or all of the following criteria:-
- The appearance of the proposed development.
 - The height, proportion, scale, and mass of proposed buildings / structures.
 - The materials proposed for buildings, external spaces and means of enclosure.
 - The integration and co-ordination of buildings and external space.
 - Community safety and security.
 - The visual relationship of the proposed development with adjacent areas, the street and the character of the surrounding neighbourhood.
 - The effect on the local character of the area.
 - The proposed vehicular and pedestrian circulation patterns.
 - The integration of existing natural and built features of value.
 - The maintenance requirements of the development.

Supplementary Planning Document Designing Walsall (2008)

Provides guidance on how to achieve good urban design within Walsall, including a range of key issues that developers must address. For residential developments, Privacy and aspect distances between dwellings must ensure that all occupants have a satisfactory level of amenity, whilst reflecting the existing and emerging character of the area.

5.0 LEGAL IMPLICATIONS

This report makes clear that planning officers consider the owner has built a new house, for which there is no planning permission. The whole of the development i.e. the whole house and outbuilding, is unauthorised and therefore the enforcement notice should specify that the whole development forms the alleged breach of planning control.

The development is built as a residential property. Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights state respectively that a person is entitled to the peaceful enjoyment of his/her property, and the right to respect for private and family life. These rights are, however, qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In this case, officers consider the wider impact of the appearance of the land and building outweighs the owner's right to the peaceful enjoyment of his property. In addition, the development is not occupied, nor was the original house in occupation before development of the new house began. Officers are therefore of the view that the requirement to remove the house and outbuildings is proportionate and reasonable.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

Officers do not consider there are any equal opportunity implications. Action is being taken against the owner based on the unauthorised works he has carried out, and in this respect he is not treated any differently from any other person in the borough who has carried out unauthorised works against which the Council considers it is expedient to take enforcement action.

7.0 **ENVIRONMENTAL IMPACT**

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 **WARD(S) AFFECTED**

Paddock

9.0 **CONSULTEES**

None

10.0 **CONTACT OFFICER**

Stuart Crossen

Senior Planning Officer: 01922 652608

11.0 **BACKGROUND PAPERS**

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
May 2013

12. BACKGROUND AND REPORT DETAIL

The owners of 11 Greenslade Road had received Planning approval 12/1116/FL for a new monopitch roof over existing front single storey projection first floor side extension and two storey rear extension. On the 17/12/12 planning officers visited the site because neighbours were concerned that the owner were not building in accordance with their planning permission. Officers confirmed this and cautioned the owner.

- 12.1 The owners of 11 Greenslade Road have continued to extend their house over the past 19 months, including the addition of a single storey rear extension, two storey side extension, single and double storey front extensions, side elevation window openings (which were later bricked up during the appeal) and the increase of the main roof eaves and pitch height. The extensions were not built in accordance with the 2012 planning permission (12/1116/FL) and it is considered that the owner had not implemented their 2012 permission.
- 12.2 The owner submitted a retrospective planning application (13/0380/FL) on the 25th March 2013 to retain the additional height of the main roof. The planning application was refused at the 2nd May 2013 Planning Committee for the following reasons:
1. The proposed increase in roof height would amount to a disproportionate addition to the application property and would create a jarring effect that would appear incongruous in the street scene. The development would therefore be contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58, 64, 109, 186 and 187, the Black Country Joint Core Strategy policies HOU2 and ENV2 and Walsall's saved Unitary Development Plan, in particular policies GP2 and ENV32, and the Supplementary Planning Document, Designing Walsall.
 2. The proposed first floor side extension, coupled with the increased roof height, would have an overbearing and unacceptable impact on the adjacent ground and first floor, front habitable room windows in 9 Greenslade Road because of its excessive length and height in relation to this property. The development would therefore be contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58, 64, 109, 186 and 18, the Black Country Joint Core Strategy policies HOU2 and ENV2 and Walsall's saved Unitary Development Plan, in particular policies GP2 and ENV32, and the Supplementary Planning Document, Designing Walsall
 3. The combined height and length of the proposed rear two storey extension would have an overbearing and unacceptable impact on the rear lounge window in 11a Greenslade Road. The development would therefore be contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58, 64, 109, 186 and 187, the Black Country Joint Core Strategy policies HOU2 and ENV2 and Walsall's saved Unitary

Development Plan, in particular policies GP2 and ENV32, and the Supplementary Planning Document, Designing Walsall

- 12.3 An Enforcement Report was considered by the 6th June 2013 Planning Committee. Planning Committee authorised the taking of enforcement action.
- 12.4 The Committee considered it expedient having regard to the development plan and all relevant material considerations to address the unauthorised development of the property through the serving of an Enforcement Notice. The Enforcement Notice was issued on the 30th August 2013 requiring the following: "Reduce the overall height and appearance of the roof to match that approved under 12/1116/FL planning permission."
- 12.5 The Enforcement Notice took effect on 30th September 2013.
- 12.6 An appeal against the Enforcement Notice was confirmed as valid by the Planning Inspectorate on 24th September 2013 (APP/V4630/C/13/2205840). The appeal was on ground (a) with the appellant stating that: planning permission should be granted for what is alleged in the Enforcement Notice.
- 12.7 Throughout the planning and subsequent enforcement process, the property owner continued constructing additions to the house, without the benefit of planning permission, thus considerably changing the house during that time. Since November 2013, these changes included; a large single storey rear extension, a single storey front extension with balcony above, windows added to the side elevation and front porch were partially completed. The owner had also started constructing front boundary walls.
- 12.7 On the 23rd January 2014 the Planning Inspectorate quashed the enforcement notice considering that the development had been undertaken in a manner, which differed significantly from what was approved and that the whole of the development (not just the altered part) has been undertaken without planning permission. The Planning Inspector was unable to change the description of the breach given the works that had been carried out (and continued to be carried out) and would not allow further comments from the Council and Appellant; to do so would have resulted in injustice being caused.
- 12.8 The owner continued to carry out the development of the house and outbuilding, and officers consider that all that remained of the original house is a small amount of first floor render and a small section of one of the gable walls. Consequently, what had been built is a new house without planning permission. The owner offered to reduce the roof height by approximately 400mm, in an attempt to comply with the 2012 permission, but officers did not consider this could be done given that what has been built is a new house, which cannot benefit from the 2012 permission. It would not now be possible to restore the development to the original property, given that so little of it remains without substantive demolition and reconstruction, which would require planning permission in its self.
- 12.9 Officers wrote to the owner on the 30/1/14 confirming the Council's position and advising that no further works including and additional construction or any demolition should now be carried out at the property. During the weekend of the

1/2/14 and 2/2/14, the owner demolished the single storey rear projection, the part two storey front projection, large porch, removed the roof over the porch and replaced with a roof similar to that of the 2012 planning permission. All of these works are also unauthorised and did not benefit from planning permission. Officers met with the owner on the 3/2/14 and explained the Council's position that the whole house and outbuilding are unauthorised including the works carried over the previous weekend. Officers asked the owner to cease all works on site in order for the Council and the owner to find a suitable conclusion. Officers explained that the enforcement process would continue as the owner is continuing to make unauthorised changes to the property and if they were to continue, the Council has powers to seek an injunction to stop the works.

- 13.0 Officers recommended to planning committee on the 13th February 2014 that the an enforcement notice required the removal of the two storey house and outbuilding at 11 Greenslade Road.
- 13.1 The 13th February 2014 Planning Committee resolution was *“that the issuing of an Enforcement Notice be delayed for 28 days, to enable the applicant to submit a planning application to be heard by Planning Committee. If no application is issued within 28 days, the Enforcement Notice will be issued.”*
- 13.2 Planning application 13/0245/FL was submitted on the 4th March 2014. Following concerns raised by officers regarding the proposal, three revised proposal plans were submitted and none were considered acceptable. Officers recommended refusal and the 10th April 2014 planning committee resolved to refuse the planning application as recommended subject to no new material issues being raised on expiry of the neighbour consultation period.
- 13.3 The neighbour consultation period expired on the 14th April 2014 and the decision was issued with the following refusal reasons as approved by planning committee:
1. The proposed new house represents a contrived and compromised design due to the accumulative impact of the proposed front gable and main side gable roof design with the large flat section and would result in an incongruous and unduly large and dominant house which would reflect little of the proportions of the neighbouring houses, in a prominent location forward of number 9 and near to the highest part of Greenslade Road. As a result there would be significant harm to the character of the area and street scene. The development would therefore be contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58 and 64, the Black Country Joint Core Strategy policy ENV2 and Walsall's saved Unitary Development Plan, in particular policies GP2 and ENV32, and the Supplementary Planning Document, Designing Walsall.
- 13.4 The 13th February 2014 Planning Committee resolution fell away once the applicant submitted their planning application. Consequently, officers put forward this new enforcement report, recommending that the enforcement notice require the removal of the house and outbuilding at 11 Greenslade Road.

13.5 A complaint has been made about the untidy state of the frontage of number 11 Greenslade, which the agent has been made aware of and which this report seeks to resolve.