



PLANNING COMMITTEE
2nd May 2013

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

Tempus Ten Site, Tempus Drive, Walsall

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the change of use of the land from an employment development site to the deposition of waste material.

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 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, 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:-

Without the required planning permission the change of use of the land from an employment development site to the deposition of waste material.

Steps required to remedy the breach:-

Permanently remove the overburden of deposited waste arising from the construction works carried out for development of the Village Hotel.

Provide evidence that the waste removal has been carried out in accordance with waste management regulations to the satisfaction of the Environment Agency and Local Planning Authority.

Period for compliance:-

Six months.

Reason for taking Enforcement Action:-

By reason of its continued presence on site the overburden of deposited waste is an incongruous feature out of character with its surroundings having an adverse visual impact upon the amenity of the area. The deposition of waste is also an unauthorised change of use of the land. The waste needs to be removed as it is preventing bringing forward an Enterprise Zone designated site to the detriment of the aims of the Enterprise Zone and regeneration of the area. The development is contrary to the aims and objectives of the National Planning Policy Framework and sustainable development, the objectives of Walsall Unitary Development Plan saved policies GP2, 3.6, ENV10 and ENV32 and policies EMP1, ENV3 and WM1 of the Black Country Core Strategy.

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:

4. Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;

Key provisions of the NPPF relevant in this case:

Paragraph 58: Decisions should aim to ensure that developments:

- respond to local character and history, and reflect the identity of local surroundings and materials.
- are visually attractive as a result of good architecture and appropriate landscaping.

Paragraph 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.

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

The development plan

The Black Country Core Strategy (BCCS) (2011)

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. The results of this assessment are to be published on the BCCS and Council websites and it is planned to report to the Council’s Cabinet to confirm this view. In the absence of evidence to the contrary it is considered that the BCCS policies should be given full weight in planning decisions.

EMP1: Aims to provide land for employment purposes.

ENV3: Requires high quality design.

WM1: Aims to achieve zero waste growth and sustainable waste management.

Walsall Unitary Development Plan

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

GP2: The Council 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
- iii. Potential problems of land stability, contamination or landfill gas
- xx. Any other factor of environmental significance

Policy 3.6 development should help to improve the environment of the Borough.

ENV10: Development that may cause pollution will only be allowed if it would not have an unacceptable adverse effect on nearby land uses or restrict the type of new development that could be permitted in the locality.

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

5.0 LEGAL IMPLICATIONS

The applicant has a right of appeal to the Planning Inspectorate.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Pleck.

9.0 CONSULTEES

9.1 Environment Agency – There is a need to establish the extent, nature, density and ultimate risks of the overburden that has been deposited on the “Opal” site. The material appears to consist of a mixture of typical Made Ground, alluvial deposits and original Alumwell landfill material placed in a mound on the Opal site as a result of other local developments (notably the Village Hotel) creating excess spoil. The material was never deposited under a valid planning permission, or waste permit, so is illegal and needs to be dealt with forthwith.

9.2 Pollution Control (Contaminated Land) – The overburden material located on the southern “Opal” site appears to have arisen from construction of the Village Hotel, part of the wider scheme of development for the Tempus Ten site. As the remainder of the Tempus Ten site has not progressed the material has not been used as originally intended for re-use in the wider development and is waste material that has been deposited onto a development site that does not benefit from planning permission for that purpose. Further development of the southern site as a stand alone project would require the removal of the overburden thus consolidating its status as waste material.

10.0 CONTACT OFFICER

Alison Ives

Principal Planning Officer: 01922 652604

11.0 BACKGROUND PAPERS

Enforcement file not published.

David Elsworthy

Head of Planning and Building Control

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 On 9th July 2002 outline planning permission, reference BC56152P, was granted for a mixed use development at land at junction 10 now known as the Tempus Ten site. The development proposed a combined 3 storey budget hotel and 5 storey complex including hotel, conference and leisure complex; B8 (Storage & Distribution) Depot B1 (Offices) and A3 (hot food take-away/restaurant) purposes. The site is near to Junction 10 of the M6 on the approach into Walsall town centre and is within the Black Country Enterprise Zone.
- 12.2 On 6th June 2003 planning permission 02/2279/FL/W2 was granted for development of part to the Tempus Ten site for a Hotel with Conference/Leisure facilities and a Restaurant with 'Drive-Thru' facilities - the Village Hotel and McDonalds' (now KFC). During the development of the Village Hotel waste material was deposited at the rear of the hotel on the southern part of the Tempus Ten site known as the Opal site. The landowners advise that it was their original intention to redistribute this waste across the northern site, the Onyx site, to raise ground levels.
- 12.3 The material deposited from the hotel development onto the Opal site was deposited in 2003 according to Building Control records. These confirm that the first inspection for the hotel was carried out on 25th June 2003 and the site was complete on 26th November 2004. There is no planning permission for storage or re-use of the material elsewhere on the site so it is regarded as an unauthorised waste disposal operation.
- 12.4 The overburden material has been stored on the site for a significant period of time as the remaining sites have remained undeveloped despite the granting of planning permission for an office development on the northern Onyx site in November 2009. The overburden material is now classed as waste material and constitutes a planning breach due to the change of use of the land. Allowing for the earliest commencement on site the 10 years for the developer to claim established use would expire at the earliest on 25th June 2013.
- 12.5 Discussions have taken place between officers and the land owners to try and bring forward development of the remainder of the site, particularly in light of the fact that this is a prominent site key to the regeneration of the Borough and now benefiting from Enterprise Zone status. Despite best efforts to resolve the matter without serving an enforcement notice it is considered expedient to do so at this time as the period for pursuing enforcement action is about to end. Due to the harm the overburden waste material has upon visual amenity 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 request authorisation is given to take this course of action. Even if the recommendation to enforce is agreed by committee officers will continue to work with the land owner to prepare a remediation and site delivery strategy for the Tempus Ten sites which would also remove the waste material.
- 12.6 The recommendation is to require permanent removal of the overburden of deposited waste within 6 months arising from the construction works carried out for development of the Village Hotel and provide evidence that the waste removal

has been carried out in accordance with waste management regulations to the satisfaction of the Environment Agency and Local Planning Authority.

