



# Walsall Council

## PLANNING COMMITTEE.

Date: 29<sup>th</sup> April 2021.

### REPORT OF HEAD OF PLANNING AND BUILDING CONTROL.

67 Lichfield Road, Brownhills, Walsall. WS8 6HR.

Reference no. E19/0198.

#### **1.0 PURPOSE OF REPORT**

1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against:

- Unauthorised operational development in the form of a concrete detached 1.5 car garage/outbuilding forward of the principal elevation of 67 Lichfield Road, Brownhills, outlined in red on the attached plan.

#### **2.0 RECOMMENDATIONS**

2.1 **That authority is granted to 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 in 3.2.

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.

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 that accurate and up to date notices are served.

### **3.0: DETAILS OF THE ENFORCEMENT NOTICE**

#### **3.1 The Breach of Planning Control**

Without the required planning permission, within the last 4 years, unauthorised operational development has taken place in the form of an outbuilding erected upon the front driveway of 67 Lichfield Road, Brownhills, Walsall, outlined in green on the attached plan.

Thereby now referred to as “the unauthorised development”.

#### **3.2 Steps required to remedy the breach:**

- (i) Permanently remove from the Land the garage structure forward of the principal elevation;
- (ii) Permanently remove all brickwork and concrete pad to ground level and reinstate the block paved driveway to match existing;
- (iii) Permanently remove all materials arising from works carried out under (i) – (iii) of this notice and dispose of any waste materials generated from the works to a suitable facility licensed to accept these items.

#### **3.3 Period for compliance:**

To undertake the works set out in paragraph 3.2, parts (i)-(iii) within **3 months** from when the notice takes effect.

#### **3.4 Reasons for taking Enforcement Action.**

- 3.41 It appears to the Council that the above breach of planning control has occurred within the last 4 years;
- 3.42 The Land upon which the structure is erected forms part of the front residential driveway of number 67 Lichfield Road, a semi-detached property conjoined with number 69 Lichfield Road. The garage is capable of housing at least 1 car, on what was a ‘six-car’ driveway, fronting onto the B4155 Lichfield Road.
- 3.43 Lichfield Road, is a busy road, which carries traffic from Brownhills, northeast in the general direction of Lichfield and the A5. It is flanked in the main by residential houses.
- 3.44 It is considered that the retention of the garage would inflict detrimental harm to the visual appearance of the existing semi-detached dwelling due to its projection in front of the original dwelling; its length and position making it a dominant, obtrusive and incongruous feature that is also prominent within the street scene and thereby causes harm to the visual amenity of the locality. The proposal would therefore be contrary to the National Planning Policy Framework: The Black Country Core Strategy

policies CSP4, ENV2 and ENV3 and Walsall's Unitary Development Plan, in particular policies GP2 ENV32 and Designing Walsall SPD.

### **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 against the Council in making an appeal if it was considered that the Council had acted unreasonably.

### **5.0 POLICY IMPLICATIONS**

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

#### **5.1 National Planning Policy Framework (NPPF) [www.gov.uk](http://www.gov.uk)**

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*".

**Key provisions** of the NPPF relevant in this case:

- NPPF 12 – Achieving well-designed places

#### **5.2 Local Policy**

##### **Black Country Core Strategy**

- CSP4 Place Making
- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

##### **'Saved Policies' Unitary Development Plan**

- GP2 Environmental Protection
- ENV32 Design and Development Proposals

##### **Designing Walsall SPD**

- DW3 Character

Policies are available to view online:

[https://go.walsall.gov.uk/planning\\_policy](https://go.walsall.gov.uk/planning_policy)

### **6.0 LEGAL IMPLICATIONS**

6.1 Pursuant to section 171A (1a) of the Town and Country Planning Act 1990 (as amended) the carrying out of development without the required planning permission.

6.2 Section 171B adds that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years, beginning with the date on which the operations were substantially completed.

- 6.3 In respect of any other breach (such as change of use or breach of condition) no enforcement action may be taken after the end of the period of ten years from the date of the breach except where the breach of planning control consists of a change of use of any building to use as a single dwelling house, in which case a four-year period applies.
- 6.4 Officers consider that the breach of planning control occurring at this site is development commenced without the benefit of planning permission within the last year in connection with the unauthorised uses which is within the 4 years period, within which unauthorised material changes of use may be enforced against. Whilst the operational development in terms of the garage building has occurred without the benefit of Planning Permission within the last 4 years, within which unauthorised operational development at residential premises may be enforced against.
- 6.5 Section 191 (2)  
Lawfulness is defined in section 191(2) of the 1990 Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.
- 6.6 Section 172 of the Town and Country Planning Act 1990 (as amended) provides that the local planning authority may issue an Enforcement Notice where it appears to them:
- (a) That there has been a breach of planning control; and
  - (b) That it is expedient to issue the notice, having regard to the development plan and to any other material considerations.
- 6.7 The breach of planning control is set out in this report. Members must decide whether it is expedient for the enforcement notice to be issued, taking into account the contents of this report.
- 6.8 Non-compliance with an Enforcement Notice constitutes an offence. In the event of non-compliance, the Council may instigate legal proceedings. The Council may also take direct action to carry out works and recover the costs of those works from the person on whom the Enforcement Notice was served. Any person on whom an Enforcement Notice is served has a right of appeal to the Secretary of State.

## **7.0 EQUAL OPPORTUNITY IMPLICATIONS**

- 7.1 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 development and its use overrules the owner's right to the peaceful enjoyment of his property.

- 7.2 The Equality Act 2010. The Council has had regard to its duties under the Equality Act 2010 and considers that the issue of the notice will not affect the exercise of those duties under S149 to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b). Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c). foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

## **8.0 ENVIRONMENTAL IMPACT**

Enforcement action will improve the visual amenities of the environment, protect the environment and remedy the adverse environmental impacts.

## **9.0 WARD(S) AFFECTED**

Brownhills

## **10.0 CONSULTEES**

None.

## **11.0 CONTACT OFFICERS**

Rich Stokes - Enforcement Officer.

## **12.0 BACKGROUND PAPERS**

Enforcement file E19/0198 not published.

Planning Application 19/1264 – retention of detached front garage - Refused 30/09/2019.

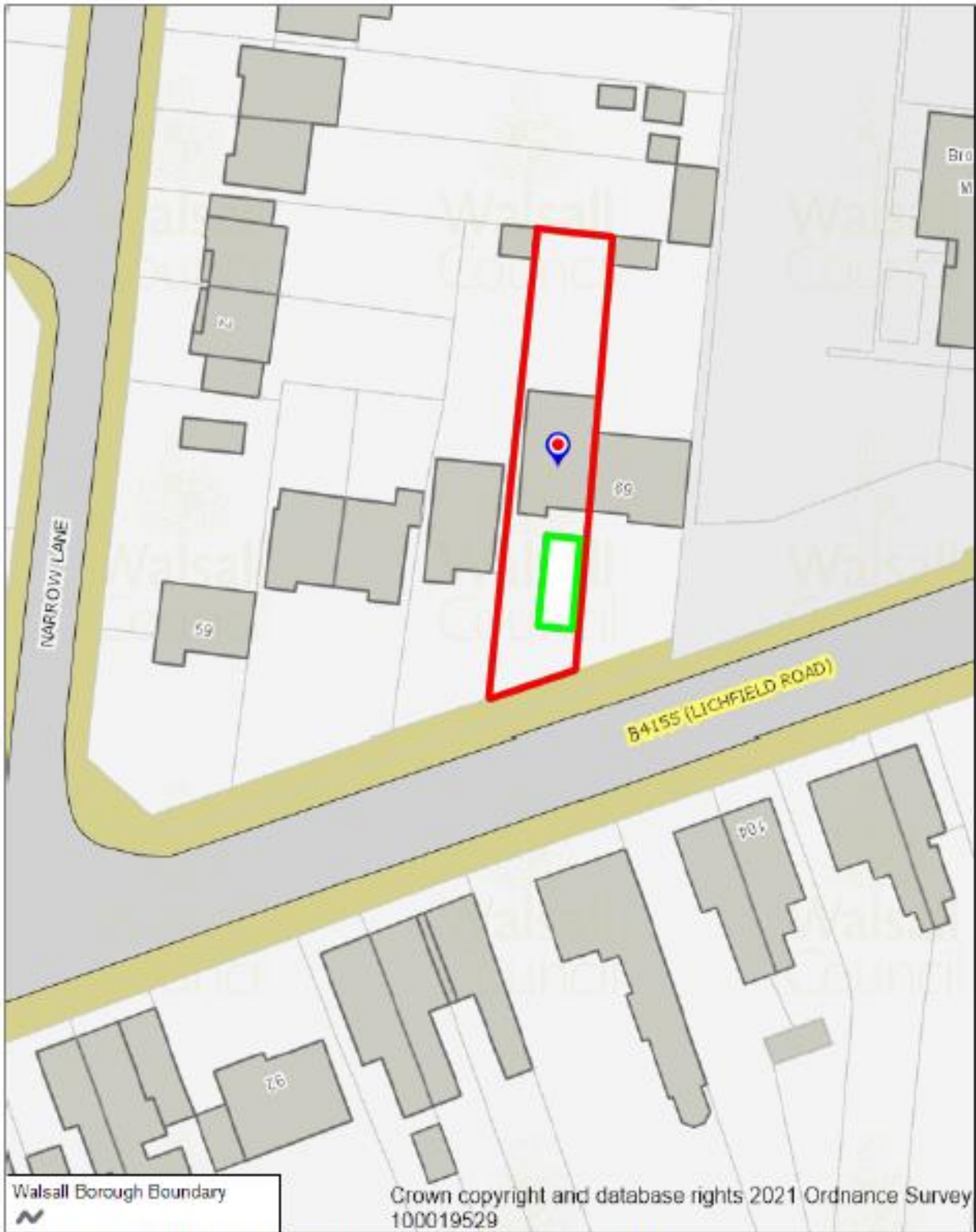
Planning Permission 03/2323/FL/H2 – front extension to house/garage - Refused 26/11/2003.

## **13.0 BACKGROUND AND REPORT DETAIL**

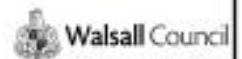
### **Background**

- 13.1 A plan showing the location of the site considered in breach of planning control is attached to this report.
- 13.2 Number 67 Lichfield Road is a semidetached property conjoined with number 69 Lichfield Road. The pair are set back from neighbouring property, 65 Lichfield Road. The B4155 Lichfield Road, is a busy road, which carries traffic from Brownhills, northeast in the general direction of Lichfield and the A5. It is flanked in the main by residential houses.
- 13.3 The occupier applied for planning permission to construct a front extension to the existing garage, which was refused on 13<sup>th</sup> January 2004.

- 13.4 On 28<sup>th</sup> May 2019, the Council received a complaint that a detached garage had been erected on the front driveway of 67 Lichfield Road.
- 13.5 On 4<sup>th</sup> July 2019, the case officer visited the site and confirmed that the concrete garage appeared to be of a 'kit-form' design, which had been erected on the front driveway of the house. The garage is capable of housing at least 1 car, on what was a 'six-car' driveway, fronting onto the Lichfield Road. The structure is forward of the principal elevation of both 67 and 69 Lichfield Road, but also forward of 65, Lichfield Road.
- 13.4 On 22<sup>nd</sup> July 2019, the case officer wrote to the owner of the property requiring that the structure be removed and while the owner / occupier retains the right to submit a Planning application, planning approval in these circumstances was unlikely.
- 13.5 On 30<sup>th</sup> September 2019, the LPA received a retrospective Planning Application (19/1264) for the retention of the structure, which was refused on 17<sup>th</sup> December 2019.
- 13.6 On 16<sup>th</sup> December 2020, the case Officer visited and found that the garage remained in situ and was unaltered. The Officer later spoke to the occupier who stated that they would remove the structure, but requires time to do so.
- 13.7 Having continued to communicate with the owner, the structure remained in place. As such on 15<sup>th</sup> December 2020, the case Officer wrote to the owner, advising that if the structure continues to remain, the matter would be brought before the Walsall Council Planning Committee with a view to issuing and Enforcement Notice requiring its removal.
- 13.8 On 19<sup>th</sup> March 2021, following further contact with the owner, the case officer visited and found that the structure remained in situ. The owner was present and stated they were not prepared to remove it.
- 13.5 The LPA considers that the retention of the garage would inflict detrimental harm to the visual appearance of the existing semi-detached dwelling due to its projection in front of the original dwelling; its length and position - making it a dominant, obtrusive and incongruous feature which is also prominent within the street scene, thereby causing harm to the visual amenity of the locality. The proposal would therefore be contrary to the National Planning Policy Framework: The Black Country Core Strategy polices CSP4, ENV2 and ENV3 and Walsall's Unitary Development Plan, in particular policies GP2 ENV32 and Designing Walsall SPD.



**67 Lichfield Road, Brownhills, Walsall. WS8 6HR**



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