

Appendix to report to Planning Committee on the 29 March 2012.
Brush Garage, 86 Lichfield Road, Sheffield

The agent acting for this site made comments in letter dated 29th February 2012 in response to the published committee report that was withdrawn from the agenda for the Planning Committee meeting on 1st March 2012. The committee report was withdrawn by the Chairman for an updated report to be presented to the next meeting. This appendix has been prepared to enable Committee to consider the points in detail.

1. Agent *The Officers letter dated 19th January 2012 alleging a breach of planning control and the receipt by the applicant of the planning and enforcement files at 4.30pm on 17th February has not given a reasonable opportunity to respond.*

Officers The applicant had 12 days (from receipt of copies of the files) and the full and detailed letter does not indicate that there are any matters that cannot be addressed by the applicant for lack of time. The matter was withdrawn from the agenda of the Committee of 1st March to give the applicant the fullest of opportunities to respond.

2. Agent *In the absence of any material change of circumstances in the three months since the previous officers report it is contradictory to formulate a different professional opinion as to the expediency of enforcement action based on the same facts.*

Officers A previous enforcement report in respect of the size, height and design of the building beyond the details approved by the planning permission was withdrawn from the agenda of the Planning Committee of 10th November 2011 to seek Counsel Opinion about whether what had been built falls within the scope of the planning permission. The owner was made aware this advice was being sought at the time.

As a result, and in the light of counsel's advice, officers have concluded, in particular, that

- (i) the works that have taken place are the erection of a new building, not the alteration of an existing building;
- (ii) a new planning unit has been created;
- (iii) there is no surviving underlying lawful use of the premises for repair etc of motor vehicles; and accordingly
- (iv) there is no fall back position that the applicant can rely on.

These are each materially different conclusions of fact and /or law which justify reconsideration of the issue of expediency. In the light of these conclusions and having regard to the development plan, officers have reached different conclusions as to the expediency of enforcement action. In the end it will be for members to decide, in their own exercise of discretion, whether they consider it expedient to follow the recommendations and to take enforcement action.

3. Agent *Part of the original structure remains and the planning permission has been partially implemented, so the garage use remains extant. The pit has been present throughout.*

Officers No. The development that has taken place should be considered holistically and in this case there is a firm professional consensus that as a matter of fact and degree the works constitute the erection of a new building. The development that has taken place has created a new planning unit and any previous lawful use has been lost. The suggestion that the lawful use could take place on the open site or that the continuing presence of a pit preserves the previous lawful use is misconceived. In any case, there is evidence that the pit was filled in with concrete and has been very recently (February 2012) excavated. The new planning unit having been created, any previous lawful use has been lost and cannot be reinstated by demolition of the building. There is no lawful fall back position.

4. Agent *The assessment of the impact of the building on residential amenity and the character of the area is different to the previous assessment.*

Officers The previous assessment compared the building on the site with the dilapidated previous existing building on the site. In the light of the conclusions that (i) the works that have taken place are the erection of a new building, not the alteration of an existing building; (ii) a new planning unit has been created; (iii) there is no surviving underlying lawful use of the premises for repair etc of motor vehicles; and accordingly (iv) there is no fall back position that the applicant can rely on, the correct comparison is not with the previous use and building but with the situation with no fall back building or use. Making that comparison it is clear that both amenity and character would be adversely affected. To resolve the breach of planning control and the harm the development is having, it is expedient to seek removal of the building.

5. Agent *The Council previously concluded that the access drive to Green Lane will improve access and pedestrian safety of the site.*

Officers Again the applicant is making the wrong comparison.

6. Agent *The development accords with policy.*

Officers Having regard to the absence of any lawful fall back building or use, officers take the view that the development is contrary to policy.

7. Agent *The applicant has suffered damages as a result of the actions of the planning authority.*

Officers This is not a planning issue. In any case, the development, including the unauthorised works on the Council's open land to the rear of the premises took place without planning permission or the consent of the Council. They cannot now complain that the ensuing difficulties are the Council's fault.

8. Agent *The delay has been compounded by the Council's Estates Department's refusal to issue a licence to cross the land.*

Officers The refusal to issue the licence has not caused any delay. The applicant sought to create and use an access without planning permission or authority from the Council to use its land as a private right of way. The Council's Estates Department is perfectly entitled to withhold any licence to cross its land, irrespective of the planning merits or otherwise of such a use.

9. Agent *The actions of the Council in proposing enforcement action have come like a bolt from the blue and are contrary to guidance in PPG18. This has a disproportionate impact on a small business.*

Officers The delays result from the actions of the developer in carrying out works in breach of planning control, seeking to retrospectively regularise them by an application for permission for works of alteration when in fact they had erected a new building. The actions of the Council are reasonable and proportionate. There has been no "bolt from the blue".

10. Agent *The time scale does not facilitate a meaningful response or provide a realistic timescale to resolve matters.*

Officers Any decision by the Committee to authorise enforcement action does not prevent the applicant from seeking to resolve matters by making an application for planning permission, if he/she wishes to. In any case, officers take the view that an application would be unlikely to succeed, for the same reasons as they have concluded that it is expedient to issue an enforcement notice. Of course, any future application would be considered on its own merits.

11. Agent *Previous opinions expressed by officers indicated a difference of opinion as to what the works comprised and in particular Mr Scrivens took the view that it is likely that the vehicle repair use of the rear building is lawful. The applicant was invited to regularise the development by making the application which was subsequently granted.*

Officers The applicant quotes the correspondence with Mr Scrivens selectively and it is clear that he considered that the development was the erection of a new building. Officers take the view that there is no surviving lawful use of the site.

12. Agent *The LPA were content that the previous application addressed the requirement to regularise the situation. If not, they should have refused to entertain the application or requested the application in a different format.*

Officers The LPA agrees that it would have been far preferable to have either refused to entertain the previous application or to have requested it in a different formulation. However, if the LPA had acted as the applicant now suggests they should, the result would have been the situation that now exists. The problems were created at root by the applicant carrying out the

works comprising the erection of a new building, then trying to retrospectively pass off the works as the alteration and repair of an existing building, which they were not. The applicant was told in clear terms by Mr Scrivens, in his letter of 22 July 2009 that he considered that the works constituted a new building and planning permission was required for the whole building.

13. Agent *The use of sheet profiled steel for the roofing material was clear from the application and its use was acceptable and was the subject of Condition 9 of the planning permission that was granted.*

Officers The roof is shown as being covered with tiles on the application form. The drawings do not indicate the materials to be used for the roofing of the buildings and the accompanying letter makes no reference steel profile sheeting.

14. Agent *The Council's actions in saying that the grant of permission in August 2010 did not authorise the building already there, having regard to the time taken until January 2012 and given that the Council is not entitled to grant planning permission for development that cannot be implemented would suggest maladministration.*

Officers If the applicant wishes to pursue a claim for maladministration, they may make a complaint to the Commissioner, which falls outside of the matters that are relevant to the decision whether to take enforcement action. In terms of the relevant planning issues, clearly, it would have been preferable if the Council had correctly identified the fact that the works comprised a new building at the time of the determination of the application in August 2010. However, it lies ill in the mouth of the applicant's planning consultant to complain that the Council misdirected itself as to the true nature of the works at that time, when the applicant knew better than anyone what was the true extent of the works. Nevertheless, although regrettable that it was not recognised at the time that the works that had taken place were not as described in the application, the proposed enforcement action seeks to remedy those oversights and/or errors, rather than compounding them, as the application appears to be urging the Council to do.

15. Agent *The Council sought exact compliance with the approved plans, entertained and approved planning conditions attached to that permission and confirmed in writing that the resultant building now complies with the approved plans.*

Officers As a result of the Council's misapprehension that the works had been concerned with alteration and repair rather than the erection of a new building, the Council sought to confirm that certain works complied with the permission that has been granted.

16. Agent *The roof and uprights have the benefit of planning permission, as does the new extension, so only the walls need permission. The real issue is whether the replacement of some of the external walls due to their instability constituted a repair or alteration or rendered the whole of the building a*

completely new structure, bearing in mind the length of time some of those repairs have now existed on site.

Officers This is *not* the real issue. The development must be considered as a whole. There is no doubt that the works constitute the erection of a new building, a new planning unit has been created and there is no fall back position. The real issue is therefore whether the development that has taken place accords with policy and in all the circumstances whether it is expedient to take enforcement action to require its removal. Those circumstances are considered in the committee report and the recommendation is that enforcement action as proposed should be taken.

17. Agent *The Building on site benefits from planning permission as to both use and the appearance of the building.*

Officers The building has been erected in breach of planning control and does not benefit from planning permission.

18. Agent *The LPA's control could be secured by the provision of a suitably worded section 106 Obligation.*

Officers Yes. The use of the site could be controlled by section 106. This would not overcome the harm caused to residential and visual amenity and the character of the area which the development causes.

19. Agent *The LPA is now attempting a complete U turn to pacify a neighbour who has complained to the Ombudsman.*

Officers The LPA is seeking to ensure that it exercises its planning functions lawfully and appropriately.

20. Agent *The building that appears on site is not materially different to the expectation of Members when planning permission was granted.*

Officers The expectation of members was the re-roofing and repair to an existing building, not the erection of a new building.

21. Agent *The comments to noise and general disturbance are unfounded as Environmental Health raised no objection to the proposals back in August 2010, subject to conditions subsequently imposed on the planning permission issue.*

Officers This position was reached because of the fallback position. As this is a new building the conditions referred to are not enforceable and therefore an unrestricted use gives rise to potential to noise and disturbance, contrary to planning policies.

22. Agent *Members at their meeting of the 10th August 2010 concluded that no harm arises from this development. To suggest at this late stage that harm has now arisen undermines the proper Authority of the Planning Committee.*

Officers The planning permission relied on a lawful fallback position; this has been lost by the construction of a new building. A new unrestricted industrial building in this location has the potential to give rise to harm to residential amenity and also has an impact upon visual amenity. This position does not undermine the authority of the Planning Committee.

23. Agent *The report says that the roofing material is out of character with other roof types in the locality, but there is an identical roof covering at the garage at number 94 Lichfield Road.*

Officers The domestic garage at number 94 is not comparable with this building. The shallow pitch roof is constructed from profile metal sheets, but the small proportion of this roof covering compared to that used within the wider area (a mix of concrete and clay tiles) results in the building at number 86 appearing out of character.