



Walsall Council

PLANNING COMMITTEE

7 APRIL 2022

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

E20/0385: 36 Upper Lichfield Street, Willenhall, WV13 1PF

Annex 1: Photos of 36 Upper Lichfield Street before and after rendering work.

Annex 2: Draft enforcement notice.

Annex 3: Draft enforcement notice plan

Enforcement Notice Expediency Report (Operational Development)	
Responsible Officer: Alison Ives, Head of Planning and Building Control Economy, Environment and Communities Alison.Ives@walsall.gov.uk	
Case Number: E20/0385	
Site Address: 36 Upper Lichfield Street, Willenhall, WV13 1PF	
1.0	PURPOSE OF REPORT
1.1	To request from Members authority to pursue enforcement action in respect of the following alleged unauthorised development: Without planning permission, the application of a render finish to the front elevation of the building.
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 specified in 5.5 of this report.
2.2	To authorise the Head of Planning and Building Control to institute prosecution proceeds 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.	PLANNING HISTORY AND BACKGROUND
	Origin of enquiry
3.1	Complaints have been received from a local resident and Cllr Butler about the appearance of the building following application of the render finish.
	Details of Planning Contravention Notice
3.2	A Planning Contravention Notice has not been served.
4	ALLEGED BREACH
4.1	The alleged breach of planning control is without planning permission on the Land, the application of a render finish to the front elevation of the building.
5	ENFORCEMENT
5.1	Enforcement Policy and Guidance
	<p>National Planning Policy Guidance (NPPG) advises a breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:</p> <ul style="list-style-type: none"> •the carrying out of development without the required planning permission; or •failing to comply with any condition or limitation subject to which planning permission has been granted. <p>Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, constitutes a breach of planning control against which enforcement action may be taken.</p> <p>When should enforcement action be taken?</p> <p>There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.</p> <p>Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.</p> <p>In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 59.</p>
	<p>National Planning Policy Framework dated 2021 advises (paragraph 59) <i>“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate”</i>.</p>
5.2	Enforcement Notice

	NPPG states there is a public interest in enforcing planning law and planning regulation in a proportionate way. The provisions of the European Convention on Human Rights are relevant.
	<p>Effective enforcement is important to:</p> <ul style="list-style-type: none"> • Tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area • Maintain the integrity of the decision-making process • Help ensure that public acceptance of the decision-making process is maintained
	<p>Section 172 of the Town and Country Planning Act 1990 states:</p> <p>(1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them-</p> <p>(a) There has been a breach of planning control: and</p> <p>(b) That it is expedient to issue the notice having regard to the provisions of the development plan and to any other material considerations.</p> <p>(2) A copy of the enforcement notice shall be served-</p> <p>(a) on the owner and on the occupier of the land to which it relates; and</p> <p>(b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.</p>
	Under Section 179 of the Town and Country Planning Act 1990 it is an offence not to comply with the requirements of an enforcement notice.
5.3	Expediency/ public interest/ harm
5.3.1	It appears to the Council that the above alleged breach of planning control has occurred within the last four years.
5.3.2	<p>36 Upper Lichfield Street dates from the 1800s and is a two storey traditional brick dwelling, with a slate roof, corbel brick detailing at the eaves and a single remaining chimney on the south end.</p> <p>The building may have been two separate residential properties originally, as there are two front doors on the ground floor and from the positioning of the first floor window on the right hand side.</p> <p>The ground floor elevation has a central doorway with a segmental brick arch, central keystone and corbels at the ends above. Either side of the front door are single timber sash windows with horns (two over two light panes) set as a pair. The windows have a segmental brick arch and central keystone above.</p> <p>The door located to the right hand side of the building is also dressed the same as the main door, having a segmental brick arch, central keystone and corbels at the ends above.</p> <p>The first floor windows are positioned above the ground floor and front door on the left hand side and in between the ground floor and door on the right hand side. The windows are timber sash (two over two light panes) with horns.</p>

	<p>Number 36 Upper Lichfield Street is a non-designated heritage asset, which has a degree of heritage interest and significance.</p> <p>The site is within Willenhall Conservation Area, which was designated in 1977.</p>
5.3.3	<p>The 2014 Conservation Area Appraisal and Management Plan notes that since 2008, the Townscape Heritage Programme has made significant progress to a number of properties and businesses by reinstating historic shop frontages and undertaking a programme of repair and maintenance.</p> <p>There has been a culture of poor maintenance, loss of historic fabric and the continued need to enforce against unauthorised development.</p> <p>Due to the success of the Townscape Heritage Initiative programme, the Willenhall Conservation Area was removed from Historic England's Heritage at Risk Register.</p> <p>However, the long period of having no heritage expertise in house, has resulted in poor schemes being approved and unauthorised works having been undertaken, which is having a degree of harm to the significance of the Willenhall Conservation Area.</p>
5.3.4	<p>In common with other similar buildings along Upper Lichfield Street, the character of 36 Upper Lichfield Street is derived from its traditional brick construction.</p> <p>The use of render is inconsistent with the building and fails to enhance and preserve the character and appearance of the Willenhall Conservation Area.</p> <p>It is understood render was applied to resolve a damp issue in the building, previous images of the site show, the building was in need of repointing, repair and maintenance works to make the building watertight.</p> <p>It has been converted for residential use where previously used for office/commercial purposes.</p>
5.3.5	<p>It is noted the gable ends and rear elevation have been rendered in the past. This has had some impact upon the character of the building, though the planning enforcement investigation has dated the work to approximately 2017 and by different owners. Accordingly, rendering carried out at this time is considered immune from enforcement action. Rendering work to the front elevation took place after August 2020, so is still within time to take enforcement action. It has also had the greatest harm on the street scene, character and appearance of the building and the significance, character, appearance and setting of the Willenhall Conservation Area. Accordingly, rendering work on other elevations, which is likely immune from enforcement, is excluded from the enforcement notice.</p>
5.3.6	<p>It appears that modern slates of poor quality have been fitted to the roof, to replace traditional slate. Works to the roof have been dated to approximately 2016 so are most likely immune from enforcement action. It is understood works at this time also include the removal of the chimney at the north end of the roof.</p>

5.3.7	The owner of 36 Upper Lichfield Street has pointed to other examples in the area where buildings have been rendered without planning permission. This may be the case, but enforcement action is still proportionate and in the public interest in order to prevent further harm to the significance and character and appearance and setting of the Conservation Area. Enforcement action is entirely consistent with the 2014 Appraisal and Management Plan referred to above and according to the planning policy references as set out in the draft enforcement notice.
5.3.8	Removal of the render finish will need to be undertaken by hand by building professionals with suitable knowledge and experience of historic buildings. Traditional bricks and mortar, which are softer, can easily be damaged during the process and there would be concern the removal of the render may damage brickwork. In order to avoid the risk of further damage, the recommended enforcement notice requires that works are supervised by a competent person and according to a scheme of works to be submitted and approved by the LPA prior to works taking place. The scheme of works is likely to include an opportunity for inspections by the Conservation Officer at appropriate times.
5.4	Who to Serve?
5.4.1	HM Land Registry indicates the land is owned by: <ul style="list-style-type: none"> • Jasbinder Singh, 26 The Bantocks, West Bromwich, B70 0PA • Sandeep Kaur, 26 The Bantocks, West Bromwich, B70 0PA • Palveer Singh Cheema, 26 The Bantocks, West Bromwich, B70 0PA • Palveer Singh Cheema, 76 Church Lane, West Bromwich, B71 1AS • The Occupier, 36 Upper Lichfield Street, WV13 1PF
5.5	Steps required to remedy the Breach
5.5.1	<p>5.1 Entirely remove the render finish by hand from the front elevation of 36 Upper Lichfield Street, where it faces Upper Lichfield Street in accordance with a scheme of works to be submitted to and approved by the LPA prior to removal. The scheme of works shall include the appointment of a competent person who shall supervise the removal of the render finish.</p> <p>5.2 Upon completion of 5.1 above, carry out restoration and repairs to the brick and mortar finish in order to return the front elevation to the condition and appearance as it was, immediately prior to application of the render finish. Restoration and repairs shall be carried out in accordance with a scheme of works which shall:</p> <p>(a) Be submitted to and approved by the LPA prior to restoration and repairs being carried out.</p> <p>(b) Include reinstatement of the corbelled brick feature underneath the eaves of the front elevation.</p> <p>(c) Include details of and the appointment of a competent person who shall supervise restoration and repairs.</p>
5.5.2	It is considered 5 months is reasonable to complete 5.1 and 7 months to complete 5.2.
6.	HUMAN RIGHTS & EQUAL OPPORTUNITY IMPLICATIONS

6.1	<p>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. These rights have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community. First Protocol Article 1 requires that the desires of landowners must be balanced against the impact of development upon nationally important features and the impact on residents. This legislation has been taken into account in arriving at the above recommendation.</p> <p>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.</p>
7	Risk Management
7.1	<p>The decision may be challenged by way of a Judicial Review. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.</p>
8.0	Equalities
8.1	<p>The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed Planning authorities actions under section 70(2) of the Town and Country Planning Act 1990.</p>
9	FINANCIAL IMPLICATIONS
9.1	<p>There are likely financial implications if the decision to issue a notice is challenged by a judicial review. The costs of defending any decision will be met by the authority.</p>
10.	LEGAL IMPLICATIONS
	<p>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.</p>
11.	WARD(S) AFFECTED
	Willenhall
12.	CONSULTEES
	Conservation Officer

13.	CONTACT OFFICERS Frank Whitley, Senior Planning Enforcement Officer, frank.whitley@walsall.gov.uk Tel 01922 658356
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