



PLANNING COMMITTEE

2 February 2017

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL Land at the corner of Holly Hedge Lane and Wolverhampton Road, Walsall

1.0 **PURPOSE OF REPORT**

To advise members of ongoing issues and to request authority to pursue planning enforcement action against unauthorised change of use of land for the storage of motor vehicles and the associated placing of two temporary buildings on the land and unauthorised development comprising of the erection of security fencing and wire mesh gates on the land. Planning committee on 5th January 2017 refused planning application 16/1160 for the temporary fencing to part of the site and temporary change of use to a car sales lot for the following reasons, members asked for an enforcement report to be brought to the next planning committee.

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 (as amended), to require remedial actions to be undertaken as shown below in 2.5.
- 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 or the non-return of Requisitions for Information or a Planning Contravention Notice; and the decision as to the institution of Injunctive proceedings in the event of a continuing breach of planning control.
- 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.

2.4 Details of the Enforcement Notice

The Breach of Planning Control: -

Without the required planning permission within the last 10 years the change of use of the land from an industrial use to use for the storage of vehicles and the associated placing of two temporary buildings on the land and within the past 4 years the unauthorised development comprising the erection of black 1.9 m high

European wire mesh security fencing to the boundaries with Wolverhampton Road and Hollyhedge Lane and gates off Hollyhedge Lane

3.0 Steps required to remedy the breach: -

3.1

- a) Permanently cease to use any part of the land for the storage of motor vehicles
- b) Permanently remove from the land all vehicles and the two temporary buildings associated with the use of the land for the storage of motor vehicles
- c) Permanently remove all of the security fencing from the land
- d) Permanently remove from the land the wire mesh gates
- e) Reinststate the land to the condition it was in prior to the change of use and unauthorised development

3.2 Period for compliance: -

Carry out all the requirements within One month from the date on which this notice takes effect

3.3 Reason for taking Enforcement Action: -

1. The unauthorised gates, fencing and change of use to car storage, including associated temporary buildings, would be contrary to BCCS Policy DEL2 and Policy HC1 of the emerging SAD by prejudicing the development of the site for housing which is the emerging character of this area.

2. The unauthorised entrance gates

i) fail to provide adequate inter-visibility at the access points on Hollyhedge Lane, contrary to UDP Policy GP2 and BCCS TRAN1, to the safe and satisfactory operation of the development and to highway safety and,

ii) do not provide sufficient set back to allow a standard motor car to pull clear of the carriageway whilst accessing the site in the event that the gates are in a closed position, contrary to UDP Policy GP2 and BCCS TRAN1, to the free flow of traffic along the public highway and to highway safety and

iii) do not enable a delivery/transporter vehicle to safely and satisfactorily make a full turning manoeuvre within the site boundary which could potentially lead to loading and unloading on the public highway, contrary to UDP Policy GP2 and BCCS TRAN1, to the free flow of traffic along the public highway and to highway safety.

3. The surface of the land is not fully consolidated, hard surfaced or suitably drained for parking and vehicle manoeuvring areas in order to prevent unbound surface material from being deposited onto or surface water discharging over the public highway, contrary to UDP Policy GP2 and to highway safety.

4.0 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. Planning applications may also be submitted that require an application fee.

5.0 POLICY IMPLICATIONS

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:

- Proactively drive and support sustainable economic development to deliver the homes, businesses and industrial units, infrastructure and thriving local places the country needs.
- Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas
- Contribute to conserving and enhancing the natural environment and reducing pollution.
- Encourage the effective use of land by reusing land that has been previously developed.

Key provisions of the NPPF relevant in this case:

4: Promoting sustainable transport

32. Decisions should take account of whether:

- Safe and suitable access to the site can be achieved for all people
- Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

35. Developments should be located and designed where practical to:

- Give priority to pedestrian and cycle movements and have access to high quality public transport facilities.
- Create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians, avoiding street clutter and where appropriate establishing home zones.
- Consider the needs of people with disabilities by all modes of transport.

6. Delivering a wide choice of high quality homes

49. Housing applications should be considered in the context of the presumption in favour of sustainable development.

50. Aim to deliver a wide choice of high quality homes and advises local planning authorities to plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community such as older people and people with disabilities amongst others.

7: Requiring Good Design

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.
- Optimise the potential of the site to accommodate development.
- Create safe and accessible environments.
- 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 landscaping.

60. Decisions should not attempt to impose architectural styles of particular tastes and they should not stifle innovation. It is proper to seek to promote or reinforce local distinctiveness.

61. Decisions should address connections between people and places and the integration of new development into the natural, built and historic environment.

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.

On planning conditions, the NPPF says:

Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

On decision-taking the NPPF sets out the view that local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development and look for solutions rather than problems and work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. Pre-Application engagement is encouraged.

The Development Plan

Planning law requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions but recognises that what it terms 'Local Plan' policies should not be considered out-of-date simply because they were adopted prior to the publication of the framework.

The Black Country Core Strategy (BCCS)

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

The Vision consists of three major directions of change and underpins the approach to the whole strategy which includes the delivery of Sustainable Communities, Environmental Transformation and Economic Prosperity.

The relevant key policies are:

CSP4: Place Making

TRAN2: Managing Transport Impacts of New Development

ENV2: Historic Character and Local Distinctiveness

ENV3: Design Quality

Walsall's Unitary Development Plan (UDP)

http://cms.walsall.gov.uk/annotated_2011_udp_-_february_2011.pdf

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

ENV14: Development of Derelict and Previously-Developed Sites

ENV32: Design and Development Proposals

ENV33: Landscape Design

H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings

T7 - Car Parking

T8 – Walking

T10: Accessibility Standards – General

T13: Parking Provision for Cars, Cycles and Taxis

Supplementary Planning Documents (SPD)

On the basis that relevant UDP policies are consistent with NPPF, the related SPD(s) will also be consistent provided they are applied in a manner consistent with NPPF policy. The relevant SPD's are:

Designing Walsall

DW1 Sustainability

DW2 Safe and Welcoming Places

DW3 Character

DW4 Continuity

DW5 Ease of Movement

DW6 Legibility

DW7 Diversity

DW8 Adaptability

DW9 High Quality Public Realm

DW9(a) Planning Obligations and Qualifying development

DW10 Well Designed Sustainable Buildings

Emerging Site Allocation Document

The Site Allocation Document (SAD) is the plan that will identify specific sites excluding Walsall Town Centre and the District Centres. The SAD will replace many of the policies in Walsall's current saved Unitary Development Plan (UDP), in particular the Proposals Map which shows the land uses that are currently allocated for individual sites. This particular site is proposed to be allocated for housing in the emerging Site Allocation Document as site HO65 in policy HC1.

Policies are available to view online: http://cms.walsall.gov.uk/planning_policy

6.0 LEGAL IMPLICATIONS

Pursuant to section 171A(a) of the Town and Country Planning Act 1990 (as amended) the carrying out development without the required planning permission or failing to comply with a condition or limitation subject to which planning permission has been granted constitutes a breach of planning control.

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. 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 dwellinghouse, in which case a four-year period applies.

Officers consider that the breach of planning control occurring at this site commenced within the last four years in connection with the unauthorised development and 10 years in relation to the unauthorised change of use.

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.

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.

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

Article 8 and Article 1 of the first protocol to the Convention on the Human Rights state that a person is entitled to the right to respect for private 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 protection of the rights and freedom of others. In this case, the wider impact of the appearance of the land overrules the owner's right to the peaceful enjoyment of his property

8.0 ENVIRONMENTAL IMPACT

The enforcement action will improve the visual amenities of the environment.

9.0 WARD(S) AFFECTED

Pleck

10.0 CONSULTEES

None

11.0 CONTACT OFFICER

Karon Hulse

Development Management: 01922 652614

12.0 BACKGROUND PAPERS

Enforcement file not published

Steve Pretty Head of Planning Engineering and Transportation.

PLANNING COMMITTEE

DATE: 2nd February, 2017

13.0 BACKGROUND AND REPORT DETAIL

13.1 A plan showing the location of the site is attached to this report.

13.2 A planning application was submitted on 15th August, 2016 for a partial retrospective temporary permission (2 years) for the change of use of land on the corner of Wolverhampton Road and Hollyhedge Lane for car parking and car sales. The site is currently being used for the storage of vehicles but not for sale.

13.3 The application was made valid on the 27th October, 2016. A report was considered by the planning committee on 5th January, 2017 and it was determined to refuse the application on the following grounds:

1. *The proposed development and change of use to car sales would be contrary to BCCS Policy DEL2 and Policy HC1 of the emerging SAD by prejudicing the development of the site for housing which is the emerging character of this area.*

2. *The proposed change of use application fails to:*

i) provide adequate inter-visibility at the access points on Hollyhedge Lane, contrary to UDP Policy GP2 and BCCS TRAN1, to the safe and satisfactory operation of the development and to highway safety and,

ii) show the access gates set back sufficiently to allow a standard motor car to pull clear of the carriageway whilst accessing the site in the event that the gates are in a closed position, contrary to UDP Policy GP2 and BCCS TRAN1, to the free flow of traffic along the public highway and to highway safety.

iii) demonstrate that the largest delivery/transporter vehicle expected to serve the site can safely and satisfactorily make a full turning manoeuvre within the site boundary which could potentially lead to loading and unloading on the public highway, contrary to UDP Policy GP2 and BCCS TRAN1, to the free flow of traffic along the public highway and to highway safety.

iv) provide details of the parking layout showing the car sales pitches and customer and staff parking areas, contrary to UDP Policy GP2, T7 and T13.

v) provide details of a fully consolidated, hard surfaced and suitably drained parking and vehicle manoeuvring areas in order to prevent unbound surface material from being deposited onto or surface water discharging over the public highway, contrary to UDP Policy GP2 and to highway safety.

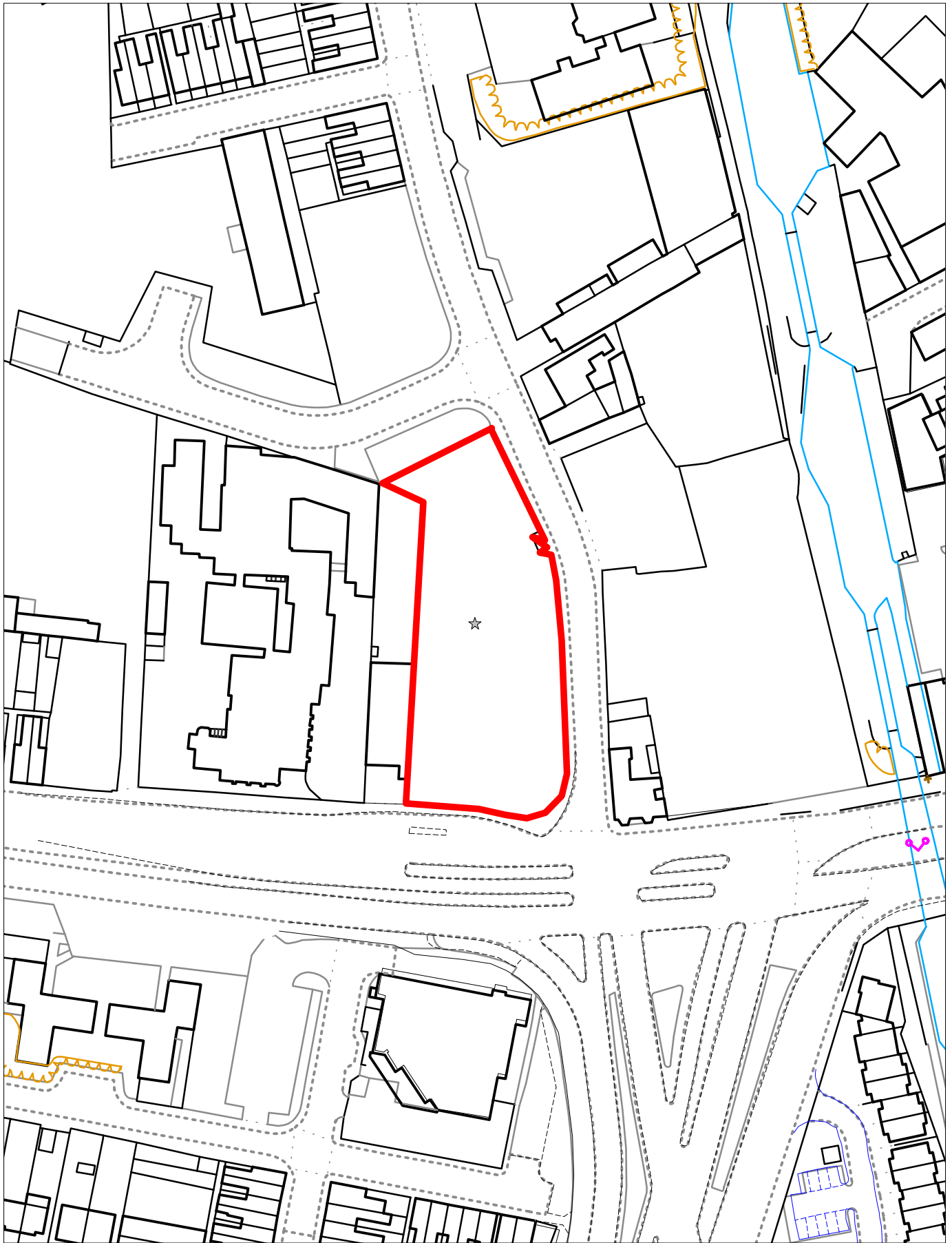
13.4 The decision notice was issued on 12th January, 2017.

13.5 Along with refusing the application the planning committee resolved that an enforcement report was to be presented to the 2nd February planning committee

on the unauthorised use of the land for storage of motor vehicles and associated works.

- 13.6 The owners were advised of the committee's resolution by letter dated 18th January, 2017 and that this breach of planning control would be reported to the 2nd February, 2017 planning committee to request authorisation to pursue enforcement action. They were also advised that the use should cease and the site be cleared. On the 24/1/17 the land owner submitted an appeal form to the Council and PINS although the Council at the date of writing this report had not received an official appeal start date. Planning Committee will be updated verbally should an appeal start date be received. If the planning application appeal receives a formal start date and planning committee authorises enforcement action as set out between 2 and 3 of the report above, the enforcement notice it may be appropriate to await the outcome of the appeal before serving the enforcement notice.
- 13.7 Planning Committee are therefore requested to authorise officers to pursue enforcement action as set out in paragraphs 2 through 3 requiring the cessation of the use of the land for the storage of vehicles, remove all vehicles, buildings, chattels, water supply, electrical supply and fencing and ensure the site is left in a clean and tidy state.

E17/0009 - Land c/o Hollyhedge Lane and Wolverhampton Road, Walsall



Map Scale: 1:1250

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Walsall
Council

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