



PLANNING COMMITTEE

7th March 2013

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

2 Bradgate Close, Short Heath, Willenhall , WV12 5QP

1.0 **PURPOSE OF REPORT**

To request authority to take planning enforcement action in respect of the erection of an unauthorised garden building.

2.0 **RECOMMENDATIONS**

- 2.1 That authority is granted 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 2.3.
- 2.2 To authorise that the decision as to the institution of 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 control; be delegated to the Head of Legal and Democratic Services in consultation with the Head of Planning and Building Control.
- 2.3 That, in the interests of ensuring an accurate and up to date notice is served, authority be delegated to the Head of Legal and Democratic Services in consultation with 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 and the reasons for taking enforcement action, the requirements of the Notice, or the boundaries of the site.

Details of the Enforcement Notice

The Breach of Planning Control:-

The erection of a 3.13 metres high, detached, timber, summerhouse (including a raised timber base) in the rear garden of a dwelling house without planning permission, and exceeding the height of current permitted development allowances. The ground level of the rear garden had previously been increased by approx. 0.5 metres in excess of 4 years ago, which further impacts on the current situation.

Steps required to remedy the breaches:-

Permanently dismantle the summer house and remove any resulting debris arising from the land or carry out remedial works to reduce the height of the building to a maximum of 2.5 metres from the ground level to the highest point of

the roof (The height of the timber base should be included in the total height measurement).

Period for compliance:-

One month

Reason for taking Enforcement Action:-

The southern position, height and close proximity of the summer house to the rear garden boundary with no. 4 Bradgate Close has an overbearing impact and unacceptable impact on light and visual amenity available to the occupiers of the neighbouring property. This impact is worsened further by the combined effect of an existing lawful conservatory located along the same boundary next to no. 4. Existing low boundary fencing, topped with open trellis and glazing in the front elevation of the summer house combined with its elevated position results in an unacceptable loss of privacy for adjacent neighbours.

The development would be contrary to the National Planning Policy Framework, the Black Country Core Strategy policies ENV2 and ENV3, and Walsall's saved Unitary Development Plan, in particular policies GP2 and ENV32, and the Supplementary Planning Document, Designing Walsall.

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:

- Always seek to secure high quality design and good standards of amenity for all existing and future occupants

Key provisions of the NPPF relevant in this case:

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.

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.

207. Enforcement action is discretionary, and local planning authorities should

act proportionately in responding to suspected breaches of planning control.

The Black Country Core Strategy (BCCS)

http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm

This was adopted in February 2011 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 ... even if there is a limited degree of conflict with this Framework*”. The relevant policies are:

ENV2 and ENV3 states that all development should aim to protect and promote the special qualities, design quality and local distinctiveness of the Black Country.

It is considered in this case that the relevant provisions of the BCCS can be given full weight.

Walsall’s Unitary Development Plan (UDP)

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

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

The Council will expect all developments to make a positive contribution to the quality of the environment and 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.

VI. Overlooking, loss of privacy, and the effect on daylight and sunlight received by nearby property.

ENV32: Design and Development Proposals.

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

(b)When assessing the quality of design of any development proposal the Council will use some or all of the following criteria:-

- The appearance of the proposed development.
- The height, proportion, scale, and mass of proposed buildings / structures.

It is considered in this case that the relevant provisions of Walsall’s saved UDP policies are consistent with the NPPF.

Supplementary Planning Document Designing Walsall (2008)

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.

Policy DW3: New development should be informed by the surrounding character and to respond to it in a positive way.
It is considered in this case that the relevant provisions of Designing Walsall are consistent with the NPPF.

5.0 LEGAL IMPLICATIONS

None arising from the report.

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

Willenhall South

9.0 CONSULTEES

None

10.0 CONTACT OFFICER

Helen Smith

Planning Enforcement Team: 01922 652606

11.0 BACKGROUND PAPERS

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

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12. BACKGROUND AND REPORT DETAIL

- 12.1 A complaint was received in December 2011 about a detached summer house in the rear garden of no. 2 Bradgate Close located next to the rear garden boundary with no. 4. A Planning Enforcement Officer visited the site in April 2012 and established that a 2.98m high summer house had been erected on a raised timber base, a further 0.15m high, giving an overall height of 3.13m. The rear garden ground level is understood to have been increased by approx. 0.5 metres in excess of 4 years ago and the summer house had been erected 2 years prior to the complaint. A plan showing the location of the garden building is attached to this report. The owners were advised during the site visit that planning permission would be required to retain the summer house and advice was also provided on permitted development legislation.
- 12.2 Letters were issued to the owners of no. 2 on the 18/6/12, 9/8/12 and 6/12/12 regarding the breach of planning control and the need for a planning application or a reduction in height of the summer house to a maximum of 2.5 metres. The owners were also advised to consider locating the garden building elsewhere within the garden.
- 12.3 The owners of the property then contacted Council officers on 4/9/12 requesting an extension of the time allowed to submit an application which was agreed.
- 12.4 No further response has been received and a planning application has not been submitted.
- 12.5 Efforts to resolve the matter without serving an enforcement notice have failed. The summer house remains in situ and no further response has been received. In view of the above recommendations 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. Officer's request authorisation is given to take this course of action.