



PLANNING COMMITTEE

Date: 8th September 2022

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL.

Address: 26 Lodge Road, Darlaston, Wednesbury, WS10 7RZ
Reference no. E22/0099

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against the following unauthorised departure from planning permission granted under 21/0038.
- a) Without planning permission, the introduction of a Box Dormer Extension, flush with the ridge of the roof at the rear of the property.
 - b) Without planning permission, an additional 1st floor flat roof rear extension has been constructed above the rear single storey extension.
 - c) Without planning permission the formation of a rear balcony with security rails.
 - d) Without planning permission the introduction of veranda attached to the rear ground floor extension.
 - e) Without planning permission the roof of the side extension has been built flush with the existing front elevation.
 - f) Without planning permission the introduction of two windows to the side extension.

A. Ives - Head of Planning and Building Control.

- g) Without planning permission the introduction of a veranda to the side elevation of the side extension.
- h) Without planning permission the introduction of a flat roof and balcony with glass screening introduced to the 1st floor front elevation.
- i) Without planning permission the introduction of patio doors to the 1st floor front elevation providing access to the unauthorised front balcony.
- j) Without planning permission the introduction of a projecting canopy extended across the front elevation.
- k) Without planning permission the introduction of two Velux windows to the unauthorised canopy.
- l) Without planning permission the introduction of an alternative porch and entrance to the dwelling.
- m) Without planning permission the introduction of two Velux windows introduced to the principal elevation of the original roof plane.
- n) Without planning permission the introduction of grey roof tiles.
- o) Without planning permission the introduction of external cladding applied to the exterior of the building.
- p) Without planning permission the introduction of a hard surface area for parking cars to the front curtilage.
- q) Without planning permission the introduction of boundary wall erected to the front of the dwelling with pillars over 1 metre high.

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

- a) Without planning permission, the introduction of a Box Dormer Extension, flush with the ridge of the roof at the rear of the property.
- b) Without planning permission, an additional 1st floor flat roof rear extension has been constructed above the rear single storey extension.
- c) Without planning permission the formation of a rear balcony with security rails.
- d) Without planning permission the introduction of a rear veranda attached to the rear ground floor extension.
- e) Without planning permission the roof of the side extension has been built flush with the existing front elevation.

A. Ives - Head of Planning and Building Control.

- f) Without planning permission two windows have been introduced to the left-hand side elevation.
- g) Without planning permission the introduction of a veranda to the side elevation of the side extension.
- h) Without planning permission a flat roof balcony and glass screening introduced to the 1st floor front elevation.
- i) Without planning permission the introduction of patio doors to the first floor front elevation giving access to the unauthorised balcony.
- j) Without planning permission the introduction of a projecting canopy extended across the front elevation.
- k) Without planning permission the introduction of two Velux windows to the unauthorised front canopy.
- l) Without planning permission the introduction of an alternative porch and entrance to the dwelling
- m) Without planning permission the introduction of two Velux windows introduced to the principal elevation of the original roof plane.
- n) Without planning permission the introduction of grey roof tiles.
- o) Without planning permission the introduction of external cladding applied to the exterior of the building.
- p) Without planning permission the introduction of a hard surface area for parking cars to the front curtilage.
- q) Without planning permission the introduction of boundary wall erected to the front of the dwelling with pillars over 1 metre high.

A. Ives - Head of Planning and Building Control.

3.2.1 Steps required to remedy the breach:

In respect of (a-d) above:

Demolish the rear box dormer, rear first floor extension, rear balcony and associated railings and rear veranda attached to the ground floor rear extension. Introduce the dual pitch dormer, below the ridge of the existing roof in accordance with planning permission 21/0038 drawing no. C433/Rev B dated 31/03/2021.

Introduce the small rear dormer with obscure glazed, rear facing window to serve the bathroom as depicted in the approved planning application 21/0038 drawing no. C433/Rev B dated 31/03/2021.

Entirely remove all associated materials resulting from the required demolition from the site to a place identified as a licensed facility.

In respect of (e-g) above, reduce and set back the roof height of the side elevation from the front of the dwelling as depicted in the approved planning application 21/0038 drawing no. C433/Rev B dated 31/03/2021.

Remove the veranda attached to the ground floor side extension.

Remove the windows introduced to the side extension.

Ensure the side extension is built in accordance with the original, matching materials of the original dwelling in accordance with the approved planning application 21/0038.

Entirely remove all associated materials resulting from the required demolition from the site to a licensed facility.

In respect of (h-n) above,

Demolish the flat roof balcony and associated glass screening introduced to the 1st floor front elevation, remove the Patio doors introduced to the 1st floor front elevation to be replaced with windows in the manner depicted on the approved plans 21/003, drawing no. C433/Rev B.

Demolish the porch attached to the front of the dwelling to be replaced with the porch in the manner depicted on the approved plans 21/003, drawing no. C433/Rev B.

Remove the canopy from the front of the dwelling. Introduce the canopy to the correct position above the porch as in accordance with the approved planning application 21/0023, drawing no. C433/Rev B dated 31/03/2021.

Entirely remove all associated materials resulting from the required demolition from the site to a licensed facility.

In respect of (o) above,

Remove the external cladding applied to all external surfaces of the dwelling. Return the exterior of the dwelling to the original brickwork in accordance with planning permission 21/0038.

Entirely remove all associated materials resulting from the required removal of the external cladding from the site to a licensed facility.

In respect of (p) above,

Reduce the surface area of the hard standing on the front of the curtilage to not exceeding 5 square metres in order to comply with schedule 2, Part 1, Class F of

the Town & Country Planning (General Permitted Development) (England) Order 2015.

Entirely remove all associated materials resulting from the required demolition from the site to a licensed facility.

In respect of (q) above,

Reduce the height of the boundary walls and pillars on the front of the curtilage to not exceeding 1 metre in height to comply with schedule 2, Part 2, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015.

Entirely remove all associated materials resulting from the required demolition from the site to a licensed facility.

3.3 Period for compliance:

5 months from when the notice takes effect - to undertake the works as set out in paragraph 3.2

3.4 The reasons for taking enforcement action:

In respect to works undertaken to the principal elevation;

(a), the front balcony and patio doors to give access to the balcony are considered a dominant and incongruous addition to the street scene which presents a substantial and domineering vantage point to frontal amenity spaces of neighbouring properties and properties across the road and further down each side of the street. Thus, having a significant detrimental aspect to the street scene, currently characterised either by largely open plan front gardens, parking spaces for private cars and generally low-level front enclosures of either dwarf type brick walls or hedges. Condition 2 of the approved planning application 21/0038 states *'The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans, details and documents: Site and Block Plan, drawing no. C433/002 Rev B submitted 31/03/2021 and Proposed Plans and Elevations, drawing no. C433 Rev B submitted 31/03/2021'*. The reason being *'to ensure the development undertaken under this permission shall not be otherwise than in accordance with the terms of the application on the basis of which planning permission is granted, (except in so far as other conditions may so require)'*. The balcony does not fall under the description of permitted development on the grounds that, The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 1 Class B (*additions etc to the roof of a dwellinghouse*) states Development Not Permitted B.1 (e) it would consist of or include (i) the construction or provision of a veranda, balcony or raised platform.

(b) The external cladding presents a visually dominant, overbearing impact, detrimental to the street scene and fails to maintain a sympathetic relationship with the adjoining property. It was not approved as part of the planning application 21/0038 where condition 3 clearly states *'The walls and roof of the development hereby permitted shall comprise facing materials that match, in size, colour and texture, those which are used in the existing building and the rear flat roof shall be constructed from a single ply membrane and the facing materials shall be retained thereafter for the lifetime of the*

development' The external cladding does not constitute permitted development as described in The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 1 Class A.3 *Development is permitted by Class A subject to the following conditions* (a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The result is a visually prominent and intrusive aspect, causing harm to the character of the site itself and wider area, and to the significance of the neighbouring properties.

(c) The porch and canopy to the principal elevation deviate significantly from the approved planning application 21/0038. Condition 2 of the approved planning application 21/0038 states 'The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans, details and documents: Site and Block Plan, drawing no. C433/002 Rev B submitted 31/03/2021 and Proposed Plans and Elevations, drawing no. C433 Rev B submitted 31/03/2021. According to drawing no. C433 Rev B. The canopy was proposed to project from the front of the dwelling above the porch, covering 50% of the front elevation of the proposed side extension with a window situated above (where patio doors have been installed), on the front facing elevation of the side extension to enable light to enter a room identified on the plans as a bedroom.

(d) the introduction of boundary wall erected to the front of the dwelling with pillars over 1 metre high did not form part of the approved planning application. They do not comply with the conditions stipulated in The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 2 Class A.1 *Development is not permitted by Class A if* (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed (ii) 1 metre above ground level.

In respect to the works undertaken to the rear elevation;

(a), the box dormer is projecting from the ridge line of the roof at the rear of the dwelling. Its appearance is as a rectangular block which is incongruous with the character of the dwelling and provides no architectural merit in its design or function. It is providing access to the rear balcony and therefore contributes to the harm of the neighbouring amenity spaces and privacy related to the enjoyment of the neighbouring amenity spaces. The box dormer fails to comply with Condition 2 of the approved planning application 21/0038 which states 'The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans, details and documents: Site and Block Plan, drawing no. C433/002 Rev B submitted 31/03/2021 and Proposed Plans and Elevations, drawing no. C433 Rev B submitted 31/03/2021. The box dormer does not correspond with the description provided in The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 1, Class B *The enlargement of a dwellinghouse consisting of an addition or alteration to its roof* B.2. *Development is permitted by class B subject to the following conditions* – materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the dwelling house.

(b) the balcony introduced to the unauthorised first floor rear extension above the single storey rear extension is considered a dominant and incongruous addition to the rear of the dwelling which presents a substantial and domineering vantage point to neighbouring rear amenity spaces. Thus, having a significant detrimental impact to the enjoyment of the neighbouring amenity spaces and privacy related to the enjoyment of the neighbouring amenity spaces. The balcony does not fall under the description of permitted development on the grounds that The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 1 Class B (*additions etc to the roof of a dwellinghouse*) states Development Not Permitted B.1 (e) it would consist of or include (i) the construction or provision of a veranda, balcony or raised platform.

(c) the rear canopy attached to the rear extension does not comply with the description of permitted development by virtue of not being attached to the rear wall of the original dwellinghouse as identified in The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 1 Class A (*the enlargement, improvement or other alteration of a dwelling house*). Development Not Permitted A1 (f) (i) the enlarged part of the dwelling house would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3 metres.

(d) grey roof tiles have been introduced to the roof of the dwelling replacing the original orange/red roof tile. The re-tiling of the roof does not correspond with the approved development in planning application 21/0038 drawing no. C433/004/Rev B, Condition 3 clearly states 'The walls and roof of the development hereby permitted shall comprise facing materials that match, in size, colour and texture, those which are used in the existing building and the rear flat roof shall be constructed from a single ply membrane and the facing materials shall be retained thereafter for the lifetime of the development' The reason being to ensure the satisfactory appearance of the development and to comply with saved policies GP2 and ENV32 of the Walsall Unitary Development Plan. Neither does it correspond with the description provided in The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 1, Class B, B.2. *Development is permitted by class B subject to the following conditions – materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the dwelling house.* Furthermore, it is visually intrusive, fails to maintain a sympathetic relationship with the adjoining property, causing harm to the character of the area and subsequently has a detrimental aspect on the uniformity of the street scene.

In respect to the works undertaken to the side elevation;

(a) planning permission 21/0038 drawing no C433/004/Rev B approved the introduction of the two storey side extension. However, the roof line and front elevation were clearly set back from the frontage. Whilst it is acknowledged that the front elevation of the side extension has been set back, this has been undertaken to facilitate the introduction of an unauthorised balcony. The roof line for the side extension has been constructed flush with the original roof line of the house therefore presenting no distinction between original and additional building works.

(b) Two windows introduced to the side extension were not depicted in the approved planning application 21/0038 drawing no C433/004/Rev B. Condition 4 of the approved

planning application clearly states 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) or any Order revising, revoking or succeeding that Order with or without modification, no side facing windows, doors or other openings other than those shown on the approved plans, shall be installed in any part of the development'. The reason for this condition is to safeguard the amenities of the occupiers of the adjoining premises and to comply with the saved policy GP2 of the Walsall's Unitary Development Plan

(c) The introduction of the veranda to the side extension does not comply with the description of permitted development by virtue of not being attached to the wall of the original dwellinghouse as identified in The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 1 Class A (*the enlargement, improvement or other alteration of a dwelling house*). Development Not Permitted A1 (k) it would consist of or include (i) the construction or provision of a veranda, balcony or raised platform.

For these reasons the development undertaken is considered contrary to the guidelines of the NPPF and the requirements of ENV2 and ENV3 of the Black Country Core Strategy (2011) and saved policies 3.6, GP2 and ENV32 of the Walsall Unitary Development Plan (2005), and is also not consistent with DW3 and DW9 of the Designing Walsall Supplementary Planning Document.

Members are requested to note that the option of the submission of a retrospective planning application for the retention of the unauthorised works has been considered. However, such is the level of harm to the dwelling, the immediate neighbouring properties and the street scene in general that it would be futile to request the alterations be regularised through the planning process as it is believed that the unauthorised works are significantly contrary to the Local Authorities Policies and the National Planning Policy Framework.

Permitted development rights do not provide scope for the works that have been undertaken at 26 Lodge Road as has been previously explained. In this instance, it is considered that a large part of the harm caused by the unauthorised works arises from the effect the unauthorised balconies, extensions and external cladding, not only across the frontage, but the side and rear and is considered excessive and detrimental to the neighbouring properties and the street scene as a whole.

To that end, a limited reduction or alteration of the unauthorised development would unlikely restore sufficient visual amenity in the street scene. Furthermore, it would not restore a balance the amenity of the neighbouring dwellings. The requirements of an enforcement notice seeking partial removal of the unauthorised works would likely be unworkable. For these reasons it is considered that demolition to ground level achieves is a simpler solution whilst still being proportionate to the harm. This would enable the owner of 26 Lodge Road the opportunity to implement the approved planning permission 21/0038 within the remaining timescale of the date planning permission was granted. It would not be feasible to count the unauthorised works as implementing the planning permission within 3 years of the approved date due to the fact that the unauthorised works undertaken did not reflect the approved planning application and therefore planning permission was not implemented.

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

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

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 require high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- Find ways to enhance and improve places in which people live their lives
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas
- Encourage the effective use of land by reusing land that has previously been developed

Key provisions of the NPPF relevant in this case:

- NPPF 12 – Achieving well-designed places
- NPPF 4 – Decision making

58. 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.

5.2 Local Policy

Black Country Core Strategy

- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2: Environmental Protection
- ENV32: Design and Development Proposals
- T13: Parking Provision for Cars, Cycles and Taxis

Designing Walsall SPD

Policies are available to view online:

http://cms.walsall.gov.uk/planning_policy

- DW3: Character
- DW9: High Quality Public Realm

6.0 LEGAL IMPLICATIONS

- 6.1 Pursuant to section 171A (a) of the Town and Country Planning Act 1990 (as amended) the carrying out of 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.
- 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. 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.
- 6.3 The local planning authority considers the breach of planning control that has occurred at this site commenced within the last 4 years.
- 6.4 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.

- 6.5 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.
- 6.6 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**

The enforcement action will improve the visual amenities of the environment and protect the amenities of the surrounding neighbours.

9.0 **WARD(S) AFFECTED**

- 9.1 Darlaston South

10.0 **CONSULTEES**

- 10.1 None

11.0 **CONTACT OFFICERS**

- 11.1 Richard Saunders - Enforcement Officer
11.2 Arshad Mahmood – Planning Enforcement Manager

12.0 BACKGROUND PAPERS

- 12.1 Planning Application 21/0038
Enforcement file E22/0099 not published.

PLANNING COMMITTEE

DATE: 8th September 2022

13.0 BACKGROUND AND REPORT DETAIL

- 13.1 A plan showing the location of the site considered in breach of planning control is attached to this report.

13.2 Number 26 Lodge Road is a semi-detached house. Front access is afforded via Lodge Road.

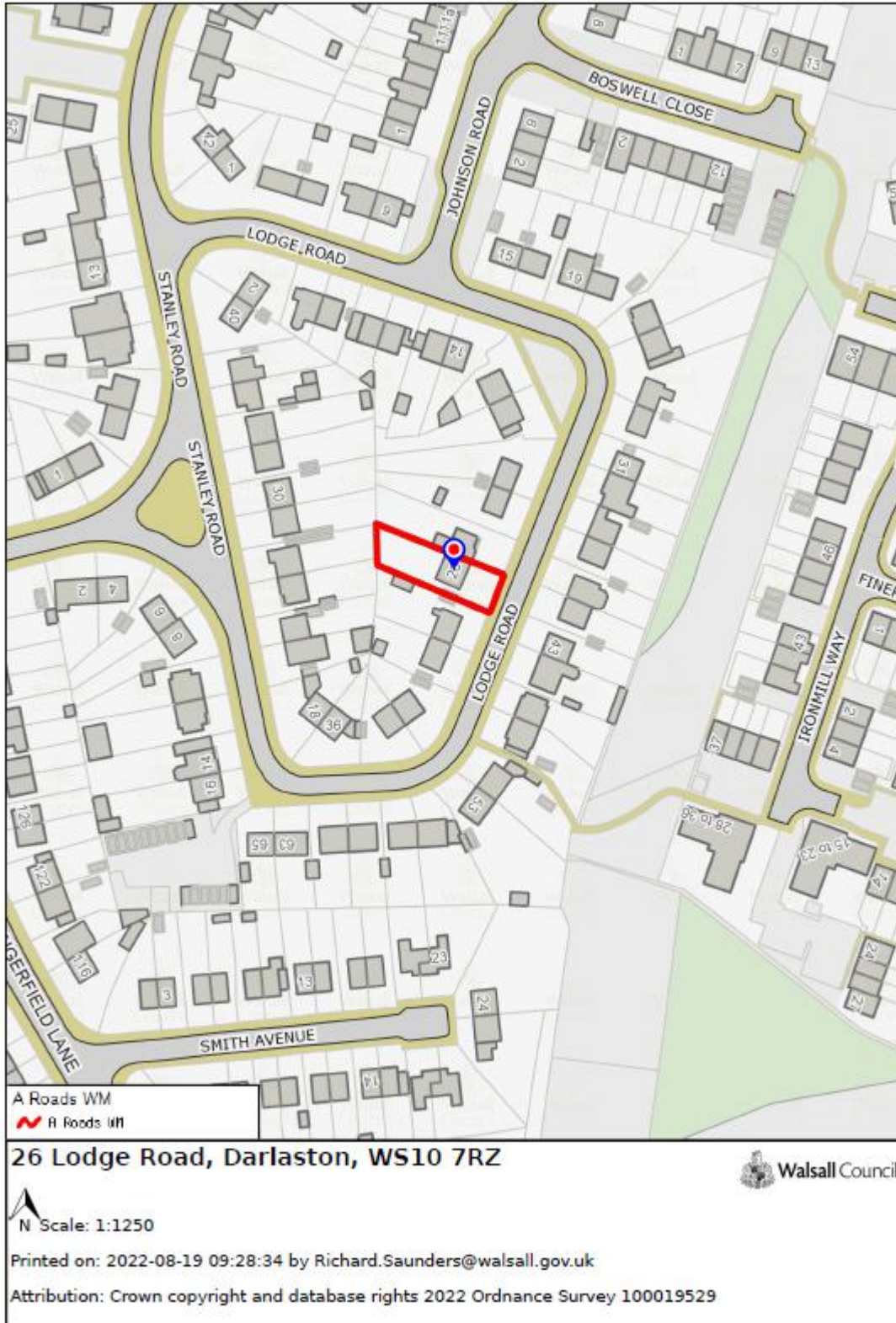
13.3 In April 2022, the Council received a complaint that the owner of a residential property at 26 Lodge Road had began to develop the boundary treatment different to that stated on the approved plan.

13.4 On 7th July 2022, the Local Planning Authority visited 26 Lodge Road taking digital images of the site, including the land surrounding.

13.5 On visiting the premises and reviewing images it was immediately apparent that the owner has built extensions to the dwelling significantly different in place of the agreed extensions stated on the agreed planning permission ref 21/0038. The owner and the builder who were present were advised to cease work and to remove the unauthorised structures and comply with the approved planning permission (ref 21/0038).

13.6 On 26th July 2022, the Local Planning Authority wrote to the owner explaining the works were unauthorised and setting out actions required to remedy the breach including demolition of the unauthorised works. It was agreed that the submission of a retrospective planning application for consideration would be unlikely to be approved due to the significant harm caused to the neighbouring properties.

- 13.7 On 9th August 2022, the Local Planning Authority had a telephone conversation with the agent representing the owner. It was confirmed that Enforcement Action would be pursued due to the direct breach of the approved planning permission. Advice was given that a retrospective planning application for the retention of the unauthorised works was not likely to be successful given the harm arising to the neighbouring properties and the character of the area.
- 13.8 Enforcement action should be commensurate with the breach of planning control to which it relates. It will normally be inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity. This is often referred to as the **expediency** test.
- 13.10 When assessing whether to instigate enforcement action the committee are advised that the following needs to be considered:
- i. the proposed action must be in the public interest
 - ii. the breach must be sufficiently harmful to justify taking action
 - iii. the proposed action must be reasonable and commensurate with the breach in planning control to which it relates
 - iv. the action undertaken should be cost effective
 - v. whether or not the development is in accordance with planning policies.
- 13.11 The unauthorised works form a significant feature, are visually prominent and intrusive, causing harm to the character of the site itself and wider area. For these reasons the unauthorised works are considered contrary to the guidelines of the NPPF and the requirements of ENV2 and ENV3 of the Black Country Core Strategy (2011) and saved policies 3.6, GP2 and ENV32 of the Walsall Unitary Development Plan (2005) and is also not consistent with DW3 and DW9 of the Designing Walsall Supplementary Planning Document.
- 13.12 Therefore, the recommended enforcement action is considered expedient as the breaches are sufficiently harmful. The action is reasonable and commensurate with the breaches, cost effective and in accordance with planning policies.



A. Ives - Head of Planning and Building Control.