



PLANNING COMMITTEE
7th March 2013

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL
11, Greenslade Road, Walsall, WS5 3QH

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:-

Without planning permission, the erection of a 2.8 metre high detached, brick building currently under construction within the rear garden of a dwelling house, within 2 metres of a boundary thereby exceeding the height of current permitted development legislation for garden structures.

Steps required to remedy the breaches:-

Permanently dismantle the brick built garden building and remove any resulting debris arising from the land or, carry out remedial works to reduce the height of the building to ensure no part of the building within 2 metres of any boundary exceeds a maximum height of 2.5 metres from ground level.

Period for compliance:-

One month

Reason for taking Enforcement Action:-

The position and height of the garden building has an overbearing impact on the visual amenity available to the occupiers of nearby properties. This impact is worsened further by the change in land levels which affects the view from the properties at no.8, 10 and 12 Norman Road.

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**

Paddock

9.0 **CONSULTEES**

None

10.0 **CONTACT OFFICER**

Tim Pennifold

Planning Enforcement Team: 01922 652612

11.0 **BACKGROUND PAPERS**

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
7 March 2013

12. BACKGROUND AND REPORT DETAIL

- 12.1 A complaint was received on 30th January 2013 concerning the erection of a detached brick built garden structure under construction in the rear garden of no. 11 Greenslade Road. The rear garden adjoins the boundaries with no's 9, 11, 15, 19 and 17 Greenslade Road.
- 12.2 A Planning Enforcement Officer visited the site on 31st January and established that the breeze/brick block structure under construction measured 2.8 metres to the top of the breeze/brick work and the beginnings of a wooden roofing framework would raise the overall height to 4 metres. The structure measured 2.2 m to the rear boundary, 2.1 metres to the boundary with no.9, and 1.9 metres to the boundary with numbers 15 and 17, Greenslade Road.
- 12.3 The owners advised their original intention was to comply with permitted development legislation by positioning the building to be more than 2 metres from the boundary thereby allowing a height of 4 metres to the top of a dual pitched roof. However, the rules also state that the eaves height on a building cannot exceed 2.5 metres. Officers advised that the building did not comply with permitted development legislation and that planning permission would be required to retain the garden building unless remedial works were carried out to ensure the building met permitted development legislation.
- 12.4 The owners advised that the building would be used for general garden storage and also in part as a kennel for a single dog.
- 12.5 The owner later advised officers that they intended to carry out remedial work to reduce the height of the breeze/brick work and would be applying a flat roof with a slight slope to the rear ensuring that no part of the building exceeded 2.5 metres.
- 12.6 Officers attended the property on the 7th February to confirm whether remedial works had been carried out. They were unable to access the property as works had temporarily ceased on site but part of the building was visible from an adjoining property and officers concluded that works had not been carried out to reduce height of the brick work.
- 12.7 The owner later advised on the 7th February that they intend to carry out the remedial works to ensure the building complies with permitted development legislation and would invite officers in due course to inspect the works.
- 12.8 No further response has been received from the owner and a planning application has not been submitted.

Efforts to resolve the matter without serving an enforcement notice have failed. The garden building remains in situ and no further response has been received. No remedial works have been carried out to amend the height of the building.

In view of the above, it is considered expedient that enforcement action is now taken through to the issue of an enforcement notice to rectify the breach of planning control and the **harm the building is causing** by its overbearing impact on the visual amenity available to the occupiers of nearby properties. This impact is worsened further by the difference in land levels which affects the view from the properties at no.8, 10 and 12 Norman Road in particular. Officers request authorisation is given to take this course of action.

Comment [OU1]: Tim.. you need to set out what the harm is!!!!!!!