



Planning Committee

17<sup>th</sup> February 2011

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

44 Foxwood Avenue, Great Barr, B43 7QX

**1.0 PURPOSE OF REPORT**

- 1.1 To request authority to take planning enforcement action in respect of the reduction to slope of drive, provision of retaining walls and wheelchair lift.

**2.0 RECOMMENDATIONS**

- 2.1 That authority is granted for the issuing of 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 Assistant Director - Legal and Constitutional 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 Assistant Director - Legal and Constitutional 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 raised platform.

**Steps required to remedy the breach:-**

- i. remove the raised platform;
- ii. remove all resultant components and debris from the land; or
- iii. alter the works so that they comply with the terms and conditions of planning permission 09/0867/FL dated 26/8/2009.

**Period for compliance:-**

2 months

**Reasons for taking Enforcement Action:-**

The size and length of the raised platform creates a prominent and incongruous feature which has an adverse impact upon the appearance of the house and the streetscene. The development is contrary to the aims and objectives of policies GP2, 3.6, ENV32 of Walsall's Unitary Development Plan, policy ENV3 of the Black Country Core Strategy, policy DW3 of Supplementary Planning Document Designing Walsall and Planning Policy Statement 1: Delivering Sustainable Development.

### 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:

#### **Joint Core Strategy**

The Joint Core Strategy was adopted by the Council on 3<sup>rd</sup> February 2011 and now forms part of the statutory development plan. It replaces certain "saved" policies in the UDP. It sets out how the Black Country should look in 2026 and establishes clear directions for change in order to achieve this transformation.

ENV3 requires high quality design.

#### **Saved Policies of Walsall's Unitary Development Plan (2005)**

Policy 3.6 development should help to improve the environment of the Borough.  
GP2: The Council 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

ENV32: Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted.

#### **Supplementary Planning Document Designing Walsall (2008)**

Policy DW3: The Council expects new development to be informed by the surrounding character and to respond in a positive way to it by reflecting local urban design characteristics.

#### **National Policy**

PPS1: Design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and the quality of an area and the way it functions, should not be accepted.

### 5.0 **LEGAL IMPLICATIONS**

None arising from the report.

### 6.0 **EQUAL OPPORTUNITY IMPLICATIONS**

None arising directly from the report.

### 7.0 **ENVIRONMENTAL IMPACT**

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 **WARD(S) AFFECTED**

Pheasey Park Farm

9.0 **CONSULTEES**

Planning application 10/0800/FL was subject to the normal consultation process and publicity. Objection letters from seven neighbours were received, including (amongst others) objection on the grounds of the development being out of character.

The Council's Housing Standards and Improvement Services commented on the planning application confirming that a Disable Facility Grant application had been approved but would only be payable upon satisfactory completion of the works. The works that have been undertaken contrary to the original planning approval would not be satisfactory for the grant to be released.

10.0 **CONTACT OFFICER**

Paul Hinton 01922 652486

11.0 **BACKGROUND PAPERS**

Planning applications 09/0867/FL and 10/1336/FL.  
Enforcement file not published.

**David Elsworthy**  
**Head of Planning and Building Control**

**Planning Committee**  
**17<sup>th</sup> February 2011**

## **12.0 BACKGROUND AND REPORT DETAIL**

12.1 This is a semi-detached house located in the middle of a residential area. The property is approximately 2m higher than Foxwood Avenue. Planning permission was granted subject to conditions in August 2009 (09/0867/FL) for the reduction to the slope of the drive and provision of retaining walls and a wheelchair lift. The development alongside the conversion of the garage to a utility and wet room (which did not require planning permission) was to improve the living conditions of the disabled occupier. The Council awarded Disability Facility Grant on the basis of the approved drawings and the owner's personal circumstances.

12.2 A complaint was received in September 2010 stating that the ongoing development appeared not to be in accordance with the planning permission. The drive level had been excavated to a level which was in accordance with the planning approval; however the raised platform to provide a landing at the top of the wheelchair lift had been extended by a further 2.5m towards the road. The retaining 1.8m high wall had also been extended resulting in a development 4.2m closer to the road than originally approved. Following officer advice works on site ceased. A part-retrospective planning application was submitted (10/1336/FL). The planning application was refused for the following reasons:

1. The increased size and length of the proposed platform nearest to number 46, projecting 5.5 metres from the front of the house and with the lift platform and equipment fully visible from the road would create a prominent and incongruous feature which would have an adverse impact on the appearance of both the house and the street scene.

2. The design of the driveway, particularly where it meets the flat area proposed in front of the lift platform would because of the difference in levels present a trip hazard to users of the driveway and would be a step over which the wheelchair user will have to be negotiated.

As such the proposal would be contrary to Walsall's Unitary Development Plan, in particular polices GP2, GP6, 2.28, ENV32, H10 and the Supplementary Planning Document Designing Walsall.

12.3 The platform due to its excessive projection is an incongruous feature which is at odds with the character of the area. It fails to integrate into the streetscene and therefore has an adverse effect on the visual amenity of the area.

12.4 The owner's son has confirmed that the owner is in dispute with both the builder and her planning agent as the owner did not agree to the unauthorised works and instead wanted works to progress in accordance with the planning permission and to meet the terms of the Disability Facility Grant. Their agent has confirmed that a claim on his professional indemnity insurance has been submitted to fund works to build in accordance with the planning permission. While efforts are being made to resolve the matter, at this time no date has been provided for when works will be undertaken. The breach of planning control

remains. It is not in the public interest for an unacceptable development to remain for an excessive period of time.

- 12.5 While it is recognised that there is a right of appeal against the planning refusal. The applicants have expressed their will to comply with the terms of the planning permission. The serving of an Enforcement Notice could be held in abeyance until the insurance claim is settled. Officers consider that enforcement action should be authorised at this time to allow the early service of a notice should the matter not be resolved in a reasonable period of time. The financial circumstances of an applicant should not outweigh the planning merits of enforcement action.

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