



## **PLANNING COMMITTEE**

**2nd May 2013**

### **REPORT OF HEAD OF PLANNING AND BUILDING CONTROL**

**18 & 20, Athlone Road, Walsall, WS5 3QX**

#### **1.0 PURPOSE OF REPORT**

To request authority to take planning enforcement action in respect of the erection of an unauthorised single storey side extension providing internal access to both properties.

#### **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 to require remedial actions to be undertaken as shown below.
- 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, the non-return of Requisitions for Information or a Planning Contravention Notice, and the institution of injunctive proceedings in the event of a continuing breach of control, in accordance with paragraph Part 3.2 – 6(a)(7) of the constitution.
- 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 breach(es) the reason(s) for taking enforcement action, the requirement(s) of the Notice, or the boundaries of the site, in the interests of ensuring the accurate and up to date notices are served.

#### **Details of the Enforcement Notice**

##### **The Breach of Planning Control:-**

A single storey side extension has been constructed linking numbers 18 & 20 Athlone Road within the site boundary of number 18 to provide internal access between both properties.

A retrospective planning application 12/1582/FL was refused at the 4<sup>th</sup> April Planning Committee on the following grounds:

The proposed flat roofed link connecting to number 18 and 20 Athlone Road would introduce an incongruous feature in the street and by closing the gap would create a terracing effect. The development represents poor design which would have a detrimental impact on the appearance of the existing house and would be out of character with the street scene and the immediate vicinity.

### **Steps required to remedy the breaches:-**

- Permanently dismantle the brick built link between numbers 18 and 20 Athlone Road. Dig up its foundations and reinstate the ground to levels that are compatible with those of the immediately adjoining ground.
- Reinststate the original side elevation walls of both number 18 and 20 Athlone Road where the brick built link currently exists.
- Remove all resultant building components and debris from the land

### **Period for compliance:-**

Two months

### **Reason for taking Enforcement Action:-**

1. The extension requires planning permission which has been refused.
2. The flat roofed link connecting to number 18 and 20 Athlone Road is has introduced an incongruous feature in the street and by closing the gap has created a terracing effect.
3. The development represents poor design which has a detrimental impact on the appearance of the existing house and is out of character with the street scene and the immediate vicinity
4. The development is contrary to the National Planning Policy Framework in particular paragraphs 56, 57, 58 and 64, 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 in particular Appendix E.

### **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"*.

**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.

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
- Establish a strong sense of place

- Respond to local character and history and reflect the identity of local surroundings and materials
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.

### **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.

### **Regional Strategy (RS)**

The NPPF confirms that the Regional Strategy remains part of the development plan, until / unless it is abolished by order of the Secretary of State.

It is considered that the relevant RS policy is;

QE3: Creating a High Quality Built Environment for All

Creation of high quality built environment through use of architecture, urban design and landscape design which respects local character.

It is considered in this case that the relevant provisions of the RS are consistent with the NPPF.

### **Local**

#### **The Black Country Core Strategy (BCCS) (2011)**

[http://www.walsall.gov.uk/index/environment/planning/local\\_development\\_framework/ld\\_f\\_core\\_strategy.htm](http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ld_f_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 in planning decisions.

It states that the councils will create cohesive, healthy and prosperous communities with equal access to a mix of affordable and aspirational housing.

The relevant policies are:

ENV2: Historic Character and Local Distinctiveness

States that development proposals will be expected to preserve and, where appropriate, enhance local character and distinctiveness.

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

### **Walsall's Unitary Development Plan (UDP) (2005)**

[www.walsall.gov.uk/index/environment/planning/unitary\\_development\\_plan.htm](http://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. This policy will be applied to all development but will be particularly significant in the following locations:-

- Areas with a special character arising from the homogeneity of existing development in the neighbourhood.

(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.
- The materials proposed for buildings, external spaces and means of enclosure.
- The integration and co-ordination of buildings and external space.
- Community safety and security.
- The visual relationship of the proposed development with adjacent areas, the street and the character of the surrounding neighbourhood.
- The effect on the local character of the area.
- The proposed vehicular and pedestrian circulation patterns.
- The integration of existing natural and built features of value.
- The maintenance requirements of the development.

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

### **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 the NPPF policy. The relevant SPD's are;

#### **Designing Walsall (Feb 2008)**

Provides guidance on how to achieve good urban design within Walsall, including a range of key issues that developers must address. For residential developments, Privacy and aspect distances between dwellings must ensure that all occupants have a satisfactory level of amenity, whilst reflecting the existing and emerging character of the area. This will normally mean designing developments that, as a minimum, meet the numerical guidelines contained in Appendix E (listed below) although distances greater than these guidelines state will be applicable where it is appropriate to the character of the area. It may be possible to achieve shorter distances through creative design or in order to protect an area's character.

- Terracing: avoid the creation of terracing to existing developments as a result of side extensions where this is not characteristic of the area by retaining a minimum 0.9m gap to the boundary (may be increased in some circumstances), set back first floor extensions by a minimum of 1m (may be increased in some circumstances) and the use of hipped roofs where in keeping with existing character.

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**

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 appearance of the land and building overrules the owner's right to the peaceful enjoyment of his property.

#### **7.0 ENVIRONMENTAL IMPACT**

The report seeks enforcement action to remedy adverse environmental impacts.

#### **8.0 WARD(S) AFFECTED**

Paddock

#### **9.0 CONSULTTEES**

None

#### **10.0 CONTACT OFFICER**

Stuart Crossen  
Planning Enforcement Team: 01922 652608

11.0 **BACKGROUND PAPERS**  
Enforcement file not published

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

**Planning Committee**  
**2nd May 2013**

**12. BACKGROUND AND REPORT DETAIL**

- 12.1 A single storey side extension has been constructed between numbers 18 & 20 to provide access to both properties. Both houses are owned by the same person.
- 12.2 The houses are detached and similar in design to the neighbouring houses. The character of the area is defined by detached houses.
- 12.3 It is recognised that small scale extensions below 4m in height and with eaves heights not exceeding 3m, or flat roofed extensions 3m in height, can be erected at the side of single house as 'permitted development' which does not require permission from the Council. The materials have to match the house. In this case the extension does not benefit from these rights as it links two properties and exceeds the maximum height allowable under permitted development rights. It is considered unacceptable.
- 12.4 A retrospective planning application 12/1582/FL was refused at the 4<sup>th</sup> April Planning Committee on the following grounds:

*The proposed flat roofed link connecting to number 18 and 20 Athlone Road would introduce an incongruous feature in the street and by closing the gap would create a terracing effect. The development represents poor design which would have a detrimental impact on the appearance of the existing house and would be out of character with the street scene and the immediate vicinity.*

- 12.5 The applicants agent has indicated verbally that his client does not intend to remove the unauthorised link and instead intends to appeal against the refusal of planning permission. It is considered expedient that enforcement action is now taken through the issue of an enforcement notice to confirm the Councils requirement that the breach of planning control should be remedied and to remove the harm it is causing. Officers request authorisation is given to take this course of action.