



Planning Committee
29th March 2012

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

Brush Garage, 86 Lichfield Road, Shelfield, Walsall, WS4 1PY

1.0 PURPOSE OF REPORT

- 1.1 To request authority to take planning enforcement action in respect of the erection of a building which does not have the required planning permission.

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 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 the required planning permission the erection of a new building.

Steps required to remedy the breach:-

1. Demolish the building.
2. Remove all resultant materials, rubble and other debris from the land.

Period for compliance:-

Four months

Reasons for taking Enforcement Action:-

Following demolition of the original building the site has a nil use. The erection of a replacement building has taken place for which no planning permission exists. The likely use of the site for industrial purposes in this context, between residential properties, would be unacceptable due to the potential impact on the levels of amenity residents could reasonably expect to enjoy. Furthermore, the design and scale the building is out of character with the adjacent domestic properties causing visual harm.

The development is therefore contrary to the aims and objectives of saved Unitary Development Plan policies GP2, 3.6, 3.7, ENV10, ENV32, ENV35, 4.4, JP5, JP7, policy ENV3 of the Black Country Joint Core Strategy, policies DW3, DW9 and appendix E of Supplementary Planning Document Designing Walsall and national Planning Policy Statement 1: Delivering Sustainable Development, Planning Policy Statement 4: Planning for Sustainable Economic Growth and Planning Policy Guidance 24: Planning and Noise.

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:

Black Country Core Strategy & UDP Policies

(Note the full text version of the BCCS and UDP is available from First Stop Shop in the Civic Centre and on the Council's web site)

The current version of the Black Country Core Strategy and associated appendices can be accessed at;

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

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

The Black Country Core Strategy

The Black Country Core Strategy was adopted by the Council on 3rd 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)

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

- ii. The creation of, or susceptibility to, pollution of any kind.
 - vi. Overlooking, loss of privacy and the effect of daylight and sunlight.
- Policy 3.6 development should help to improve the environment of the Borough.
- Policy 3.7 seeks to protect people from unacceptable noise.
- ENV10: Development will only be permitted if it would not: ii. Cause unacceptable adverse effect in terms of....noise.
- ENV32: Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted.
- ENV35: The design of frontage to shops and other commercial premises should be appropriate to their setting.
- 4.4: Core employment uses are defined as industry and distribution in Classes B1b, B1c, B2 and B8 of the Use Classes Order.
- JP5: Core Employment Areas: These areas will be safeguarded for core employment uses.
- JP7: Other Employment Areas: Uses that will normally be permitted in these areas include: i. Core Employment Uses.

Supplementary Planning Document Designing Walsall (2008)

- DW3: The Council expects new development to be informed by the surrounding character and respond in a positive way to it.
- DW9: The public realm can be enhanced by designing buildings to respect and enhance local distinctiveness.
- Appendix E: relating to dwellings has relevance, in terms of the relationships normally expected between buildings. .

National Policy

The National Planning Policy Framework: Consultation Draft was issued on 25 July 2011. The document has yet to be considered through consultation and this may result in amendments to the document and as such carries very limited weight. Officers note paragraph 62 which states that the planning system is planned and Local Plans are the starting point for the determination of any planning application.

PPS1 – Delivering Sustainable Development: 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.

PPS4 – Planning for Sustainable Economic Growth: Planning applications for economic development should be viewed constructively and assessed, amongst other things, against the impact against local employment and whether the proposal secures a high quality and inclusive design which takes the opportunities available for improving the character and quality of the area and the way it functions.

PPG18 – Enforcing Planning Control: The decisive issue for the Local Planning Authority should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings merits protection in the public interest.

PPG24 – Planning and Noise: Local Planning Authorities must ensure that development does not cause an unacceptable degree of disturbance.

5.0 LEGAL IMPLICATIONS

Counsel has been asked to advise on the matter and that advice is reflected in this report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

Human Rights Act 1998 – Protocol 1, Article 1, a public authority cannot interfere with the use of a persons property, unless there is a law that allows it to do this and there is a good reason for it.

Article 8 of the European Convention on Human Rights provides that everybody has the right to respect for his private and family life and his home, and there should be no interference by a public authority with the exercise of this right, except where that interference is (amongst other considerations) in accordance with the law and is necessary in a democratic society for the protection of rights and freedoms of others.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Rushall-Shelfield.

9.0 CONSULTEES

None.

10.0 CONTACT OFFICER

Paul Hinton 01922 652486

11.0 BACKGROUND PAPERS

Enforcement file not published.

David Elsworthy
Head of Planning and Building Control

Planning Committee
29th March 2012

12.0 BACKGROUND AND REPORT DETAIL

- 12.1 A report on this matter was withdrawn from the committee agenda by the Chairman at its meeting on 1st March because a lengthy and detailed letter had been submitted by the landowner's planning agent on the morning of the committee. It was considered necessary to fully consider the contents of the letter before members made a decision on the matter. An appendix to this report considers the relevant points of that letter in turn. The consequences of the letter are also considered within the main report below. Further comments on the report from neighbours are also considered below in this updated report.
- 12.2 Planning Enforcement were first made aware of works at the site in February 2009, which according to neighbours commenced in August 2008. Following investigation a planning application was submitted in March 2010. At its meeting on 19th August 2010, Committee resolved to grant planning permission subject to conditions (application number 10/0211/FL), for
- re-roofing, repair and alterations to rear element of existing garage building; minor extensions to front of the building, formation of car parking area fronting Lichfield Road and formation of hard standing and access at rear.*
- 12.3 The site is located close to the traffic junction of Mill Lane and Lichfield Road in Shelfield and is adjacent to Shelfield Local Centre. The immediate area is dominated by housing, with a barbers shop occupying part of the ground floor of the residential property next door (number 88). There are other commercial uses including a vets, the vacant Spring Cottage Public House (which is currently being converted into a shop) and two takeaways. To the rear of the site is open land in ownership of the Council of which part is used as a car park.
- 12.4 The site of the previous garage building which was to the rear of the site has been expanded to incorporate land to the front on which had previously stood a former house in use for retail purposes, fronting Lichfield Road, which was partly demolished during 2009-2010 as part of the works. This has been replaced with an area laid out for vehicle parking and an access into the site from the front of the garage.
- 12.5 Limited external work took place between July 2009 and May 2011 when works to build the extension part of the building commenced. Since the Committee granted planning permission it has become apparent to officers that what has been done on site is not the repair and alterations to the rear element of the existing garage building, but the erection of what appears to be a completely new building. Almost nothing of the original building has survived.
- 12.6 The planning permission permits only repair and alteration and re-roofing of the existing garage building. The building has a visual appearance externally generally similar to the building as shown in the planning permission, but with some significant differences, in particular concerning the use of materials. The principal difference between the permitted development and the building that has

actually been erected is that the development has not been achieved by the repair and alteration of the existing building but by the erection of a new building. Unless a building is constructed in accordance with the planning permission, the entire development is unauthorised.

- 12.7 The conclusion that a new building exists has been reached by studying photographic evidence showing the internal and external building at various stages of its development. It is clear that a complete new roof and supporting frame work is in place. The rear elevation consisting of plastered breeze block, metal roller shutter door and profiled metal sheeting are all new. No part of the original rear elevation of the building remains. The side elevation of the former garage building adjacent to 84 Lichfield Road is predominantly new blockwork infilling the metal roof supports. Only very small sections of brick wall of the original garage remains. The side of the original garage building next to number 88 is all new blockwork except again, for small areas of brickwork. The front extension permitted under the planning permission is not fully complete at this time, but with the exception of one wall, is all new material.
- 12.8 What has been built is an entirely new building, not repairs and alterations approved by the planning permission. Further, the materials used in the construction of the building, breeze block walls and metal profiled roof is not the facing brickwork and tiles as stated on the planning application form. The planning permission granted by the Council does not authorise the erection of a new building.
- 12.9 The site is located in a predominately residential area. A proposal for a new industrial style building sandwiched between residential uses is contrary to the saved policies of the Unitary Development Plan. The planning permission was granted because of a longstanding use of the site for vehicle repairs which was understood to be the 'lawful position' at that time. The demolition of the old building and its replacement with a new building creates a new chapter in the planning history of the site. The lawful use rights of the garage have been lost by removing the previous building and erection of an entirely new building in breach of planning control. While the lawful use rights would have survived the repair and alteration of the building, they do not survive the new building.
- 12.10 The situation on site is that a building designed for industrial use has been erected, but that building does not have planning permission for either its use or its appearance. In assessing whether it is expedient to take enforcement action, it must be considered whether the development is in accordance with planning policy. When determining the previous application Committee was considering a case where the policies apply to a situation where there was no change in use of the land proposed. As a consequence of erecting a new building there is no fallback situation where the applicant could rely on subsisting lawful use rights. This has entirely different policy considerations. The development is therefore considered afresh.
- 12.11 Turning to the appearance of the building first. The use of a metal profiled roof is out of character with other roof types in the locality which are of traditional clay and concrete tile construction. The height and length of the building in close proximity to the ground floor lounge window of both neighbouring properties has an adverse impact upon the outlook from these properties to the detriment of

residential amenity. The general scale and proportions of the building is inappropriate in its context.

- 12.12 The adjoining neighbour comments that the extension part of the building has enclosed their rear garden which they consider has greatly affected the sunlight and daylight to their garden and furthermore the industrial building spanning the whole length of the rear garden greatly affects visual amenity. Further, the original Brush Garage had a vehicle maintenance pit, but the owner filled the pit in and concreted over it when he rebuilt the garage (August 2008 onwards). The pit was re-dug in February 2012.
- 12.13 Another local resident has raised the following concerns: the inspection pit was reopened in February 2012, an inspection pit excavated immediately inside the rear shutter would have implications for the operation of a one way system through the workshop; there are building regulations anomalies; the agents recent letter has quoted incorrect dates for various actions taking place (the resident has provided a detailed chronology relating to purchase of the premises and works which subsequently took place on site); the ongoing investigation has not led to the cessation of work since August 2010; the Council's instruction to remove the block paving have been ignored; the owner claims that Asset Management have agreed to reconsider the issuing of the license to use the rear egress; the roof at No 94 is not comparable as it is not made of the same material, covers a domestic garage and is not the high large roof of a new industrial building; the planning application for No 86 states that the new building should be brick and tile; why have Walsall Council not been stronger and actually taken actions which were of benefit to local residents?; for over three years residents have had to put up with the inconvenience of this development proceeding unchecked with the associated noise etc from the building site and damage caused to the approach to the rear of our homes by the vehicles using the rear access to number 86. These comments are noted and have been taken into account in the assessment, the appendix and recommendations in this report
- 12.14 The building has been designed for an industrial use. An unrestricted industrial use sandwiched between residential properties, spanning the whole depth of their gardens could potentially give rise to unacceptable noise and disturbance by virtue of its operations. It must be recognised that as a consequence of the unauthorised development there are no planning conditions attached to the building or use that would require noise insulation measures or restrict the times of use and type of activities etc. For example, unrestricted people and vehicle movements and the uncontrolled use of industrial plant and equipment on a day-to-day basis could take place. Such activities would significantly diminish the quality of residential amenity.
- 12.15 It is therefore considered expedient that enforcement action is taken against this development which is clearly contrary to planning policies which look to safeguard residential amenity and to locate industrial uses within appropriate locations.
- 12.16 The owner has been given an opportunity, on a without prejudice basis, to submit a retrospective planning application for the new building and its use which would test any application to regularise the development. At the time of writing no application has been received. A letter from the planning agent dated 29th

February (but not received until 1st March) in response to the published report prepared for 1st March committee is discussed in detail in the appendix attached to this report. The letter provides no evidence that this is not a new building, and insists that the use as a garage remains. For the reasons explained above, that is not the case. It remains that the breach of planning control can only be resolved by requiring the removal of the unauthorised building, including the removal of the extension to the front.

- 12.17 Under the Human Rights Act, Protocol 1, Article 1, a public authority cannot interfere with the use of a person's property, unless there is a law that allows it to do this and there is a good reason for it. Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence. It goes on to say that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law.
- 12.18 In taking enforcement action against the unauthorised building and requiring its removal, the Council has due regard to the requirements of the Town and Country Planning Act (1990) (as amended). Under the Human Rights Act the Planning Act is the law that permits the Council to require the removal of this unauthorised development. Officers have balanced the rights available under Article 8 against the need to take enforcement action and it is considered that the need to take enforcement action is proportionate.
- 12.19 Because of the harm the development is causing, as explained above, it is considered expedient that enforcement action is now taken through the issue of an enforcement notice requiring the demolition of the building.