



PLANNING COMMITTEE
2nd February 2016

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION

Proposed Local Planning Enforcement Plan (LPEP)

1. PURPOSE OF REPORT

- 1.1 This report provides a summary of the proposed Local Planning Enforcement Plan (LPEP) and a recommendation to support the Cabinet resolution to take the document to consultation with the aim of adopting the Plan in early 2017.
- 1.2 A report was been presented to Cabinet on 14th December recommending the commencement of a six week period of consultation on the draft plan with the intention of seeking subsequent adoption. Cabinet unanimously endorsed the recommendations to commence consultation with the aim of subsequently adopting the plan. This report is to inform members of the Planning Committee about the emerging policy and the associated consultation work.
- 1.3 The Plan provides details on the legal framework which supports the Council in its duties to ensure development within the Borough is undertaken in an appropriate manner that complies with existing legislation notably The Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning Act 1990.
- 1.4 The document sets out what works are deemed to be 'development' i.e. those matters which can be considered by planning for example building operations, material changes of use or subdivision of a premises. Internal alterations or changes of use in the same planning category are not deemed to be development.
- 1.5 Information is also provided within the Plan on what constitutes a breach of planning control and identifying harm.
- 1.6 To ensure resources are targeted effectively at the most significant cases, a scoring matrix is provided in the Plan to identify the level of harm associated with the matter in hand. This addresses impact to environmental assets, highways, breaches of planning conditions and extent of harm arising.



Background

- 1.7 The Council's Planning service regulates development within Walsall. Development can constitute physical building works ranging from the construction of small factory extensions and other small works through to major schemes such as the construction of new factories and housing estates. In addition development can comprise the change of use of existing premises to a new use for example the conversion of an office building to a block of flats.
- 1.8 A large proportion of development work in the Borough requires approval through the granting of planning permission though some smaller works can be undertaken without need to apply for consent from the Local Planning Authority (LPA) if they fall within the parameters for permitted development. The legislation on permitted development is complex in part because it addresses nearly all forms of development from household extensions through to infrastructure projects including highway and railway works.
- 1.9 Through these two principle routes, planning applications to the LPA and permitted development, the vast majority of development in the Borough is regulated. The Planning Service also manages the other, less frequently used, routes through which development may be allowed including the planning appeal process and separate legislation such as the Caravans Act 1968.
- 1.10 Despite these opportunities existing for development to secure approval through the appropriate legislation, there has historically been a low level of development in Borough that does not benefit from consent either through an application to the Council or through permitted development. This work is considered to be unauthorised and therefore the LPA can consider where enforcement action is necessary to remedy any breach that has occurred.
- 1.11 Whilst the Council has a range of powers to enforce against unauthorised development, the Government through paragraph 207 of the National Planning Policy Framework (NPPF) states that enforcement action is discretionary and LPA's should act proportionately in responding to suspected breaches of planning control.
- 1.12 At the heart of the consideration of an enforcement case is the amount of harm the breach of planning control may cause. This harm may manifest itself in detriment to the amenity or privacy to neighbours, environmental harm particularly protected habitats or species, damage to the character and appearance of the surrounding area or conflict with established national and local planning policies including those in the Council's own UDP or new emerging policies.



- 1.13 Sometimes though this harm may be marginal for example a boundary built slightly in excess of the prescribed height limit remote from any neighbouring roads or properties. Even in this simple example though differing views may emerge of what constitutes a slight exceedence of the height or how remote the boundary is to neighbours. Accordingly, nearly all breaches brought to the attention of the planning service need to be inspected before any conclusions about harm can be made.
- 1.14 In instances where it is considered the breach is minimal, the option exists for the LPA not to take action. Part of this assessment is consideration of whether planning permission would be likely to be granted should a retrospective planning application be submitted to regularise the unauthorised works.
- 1.15 In instances where it is considered the breach is more significant, the Local Enforcement Plan sets out the steps the LPA will take to investigate a matter raised for consideration.
- 1.16 The key sections of the Local Planning Enforcement Plan deal with the following matters:
- Defining what constitutes breach of planning control and the different forms a breach may take including retrospective and intermittent breaches
 - Identifying harm and its impacts
 - A scoring matrix to assist in quantifying harm
 - Prioritisation of enforcement cases
 - Methods of communication with the Council including timescales
 - Different routes to taking enforcement action including prosecution.
- 1.17 In paragraph 207 of the NPPF, the Government states that LPAs 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 it is appropriate to do so.
- 1.18 The proposal to adopt the Local Planning Enforcement Plan would therefore comply with this guidance and in doing so assist in ensuring any future action taken by the LPA would be carried out in accordance with established best practice.

Council priorities

- 1.19 The Corporate Plan 2016-2020 sets out the purpose and priorities over the next four years.



- 1.20 The Local Planning Enforcement Plan will contribute to the following Corporate Plan priorities:
- Sustainable change and improvement for all
 - Safe, resilient and prospering communities
- 1.21 Besides meeting statutory and procedural requirements, consultation on the plans should accord with the council's commitments to openness, listening and involvement. Positive plans for the future of the borough also represent tangible commitments to leadership.

Risk management

- 1.22 Failure to have an adopted Local Planning Enforcement Plan could result in the Borough failing to deliver an effective, prioritised enforcement service. This in turn would limit the Council's ability to regulate effectively development being undertaken and therefore adequately protect amenity levels, businesses and habitats.
- 1.23 Delivery of the plan will be monitored and assured through the quarterly reports presented to the Planning Committee.

2. RECOMMENDATIONS

- 2.1 That Planning Committee notes the decision of Cabinet to agree to commence a period of public consultation commencing in January 2017 for a period of no less than 6 weeks on the attached Planning Enforcement Plan with the intention of adopting the measures within the plan subject to the comments received during consultation.
- 2.2 That Planning Committee notes the decision of Cabinet to agree to receive a report to a future meeting on comments received during the consultation period with consideration to adoption of the plan subject to the comments received.
- 2.3 To note that Cabinet will advise Planning Committee of the proposed consultation on the Plan.

3. FINANCIAL IMPLICATIONS

- 3.1 Whilst there are staffing costs associated with the resourcing of the enforcement service and the processing of any action taken including prosecution and if necessary direct action, the procedures set out in the Local Planning Enforcement Plan does not expose the Council to any additional costs.



3.2 Through setting out clear steps for undertaking enforcement action, the risks of abortive action should be minimised hence reducing the potential for unnecessary costs to be incurred by the Council.

4. **POLICY IMPLICATIONS**

4.1 Enforcement of legislation and both national and local planning policies through the effective operation of a planning enforcement protocol can have a strongly positive impact on ensuring the policies of the Council particularly those relating to the economy and regeneration, ecology and the creation of a robust social infrastructure are supported and where appropriate, delivered.

5. **LEGAL IMPLICATIONS**

5.1 The adoption of the Plan should assist in ensuring action taken by the LPA is in accordance with legislation and therefore minimise opportunities for action to be taken against the Council.

5.2 The proposals within the Plan do not raise any new legal risks for the Council.

6. **EQUALITY**

6.1 None identified.

7. **ENVIRONMENTAL IMPACT**

7.1 The adoption of an up to date enforcement plan will enable the Council to effectively monitor development and ensure that the policies within the plan are effectively operated and thus ensuring the Development Plan is implanted in accordance with the SEA and EIA assessments.

8. **WARD(S) AFFECTED**

8.1 All

9. **CONSULTEES**

9.1 Consultation has been undertaken with the following:

- Legal Services
- Communities & Public Protection



- Regulatory Services.

10. CONTACT OFFICER

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11. BACKGROUND PAPER

National Planning Policy Framework/ National Planning Policy Guidance

Information on planning enforcement can be found on the Governments website at www.planningportal.gov.uk.

[Walsall Planning Policy Framework](#)

The strategic planning aims of the Council are set out in the Development Plan, which is a group of documents comprising the following:-

The Black Country Core Strategy:

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

The Unitary Development Plan (UDP):

http://www.walsall.gov.uk/index/environment/planning/unitary_development_plan/udp_documents.htm

The Emerging Walsall Site Allocations Document and Town Centre Area Action Plan:

http://cms.walsall.gov.uk/index/environment/planning/planning_policy/planning_policy_2026.htm

Steve Pretty, Head of Planning, Engineering and Transportation



Walsall Council

PLANNING COMMITTEE - 27TH April 2017 : Progress of formal enforcement actions

Case Number & Case Officer(s)	Address	Date of committee authorisation for Enforcement Action	Type of action and date of issue	Current position
1 AT	Site of Mellish Road Church, Lichfield Road, Walsall	Latest resolution 10/3/2011	Section 215 Notice – issued 18/4/2011	The demolition has taken place.. Last site visit undertaken on 13 th April 2016.The site remains in a condition that is not currently expedient to pursue a prosecution and will be continue to be monitored.
2 KP	17 Newport Street, Walsall	26/10/2004	Listed Building Enforcement Notice and Prosecution	Continued non-compliance with Listed Building Enforcement Notices for installation of second floor windows and painting exterior of building. Also other external alterations including first floor windows continue to be an offence. Case has been reviewed. Consolidated report being prepared with intention to report to committee in the near future. An invalid planning application has been submitted in an attempt to regularise the listed building breaches. Currently awaiting an update from the Building Conservation Officer. A site visit was undertaken on 10 th May 2016 and further discussions have taken place. Planning application 16/0120 was valid 24/6/16 with officers requesting amendments. To date this still remains outstanding.
3 DM	74, 75, 76, Stafford Street, Willenhall (Dainty's)	Latest resolution 21/10/2010	Section 215 Notices Issued on 4 th July 2012	Section 215 notice required the repair of numbers 74 and 75. The notice took effect on 6 th August. The first compliance period expired on 6 th September; the second compliance period expired on 6 th December 2012. Requirements of the first two parts of the notice were not met. Prosecution was progressed with each Defendant being fined. A planning application for the conversion of the building to one retail unit and five flats has been approved. Following the planning consent the applicants have established that the quality of the existing building may not be suitable for refurbishment/redevelopment. A current planning application 15/1883 for the redevelopment of the site to a mixed retail and residential development was received in

				February 2016. There are still outstanding issues to be resolved in terms of design, layout, security, highway matters and the need for a S106 Agreement to secure improvements to Fox Avenue. Following a meeting the applicant was notified of these requirements in September 2016. No response from the applicant since September 2016 so officers will seek further confirmation of progress this application from them.
4 PH	Land at Canalside Close, Walsall	9/1/2007	Enforcement Notice – 5/11/2007	Erection of boundary wall, building and gates. Appeal partially upheld on 15/8/08. Planning permission granted subject to conditions for a change of use to motor vehicle salvage and breakers yard including alterations to the boundary wall by September 2012 subject to time limit actions. Actions not complied with. Discussions about new tenant and advice sought from officers in regard to a new planning application to address the issues. Site visit undertaken on 13 th April 2016. Site was locked up and secured with nobody on site. Sign on wall outside states that the facility will be opening soon. Contact is to be made with the current owners to ascertain their intentions. A further monitoring visit is proposed to assess the situation.
5 DM	80 Noose Lane, Willenhall	28/10/2008	Enforcement Notice	<p>Planning Contravention Notice issued 7/1/2011 to clarify fluctuating vehicle repair/sales/recovery and later partially completed by occupier during Pace interview. Use appears to be mainly vehicle storage but also includes change of use of neighbouring garden also in the same ownership for storage of vehicles. Additional kerb side fencing has been erected over the 1.0m PD allowance taking the fence to over 2.0m in height.</p> <p>9-3-15 Update – Although the stored vehicles are to the rear of the properties, they are visible from neighbouring properties and unsightly. Officers will therefore be pursuing enforcement action through a s215 notice and separate action to restore the garden to the</p>

				<p>neighbouring property.</p> <p>Following further investigations vehicle repairs are now infrequent and car storage predominately non-commercial. However storage of vehicles has spilled over onto rear of adjacent property, issue will be pursued. New issue has arisen regarding storage of reclamation items.</p>
6 DM	The Manse, 100 and 101 Union Street, Willenhall	31/3/2009	Section 215 Notices	<p>Initially, the owner for 101 Union St was contacted, prompting Officers to write to the owner requesting a timetable for resolving the breaches. Owners intended to carry out works to the building to improve its appearance. Scaffolding was erected and works were carried out to re-slate the damaged areas of roof, and add boarding to some windows.</p> <p>Planning application (15/1450) granted subject to conditions and Planning Obligation 13-06-16 for conversion of the buildings with a two storey rear extension to create 11 apartments. Non-Material Amendment application submitted 03-08-16 for minor changes to the windows and doors approved 19-10-16.No recent complaints</p>
7 MB	Land rear of Tempus Drive, Walsall	2/5/2013	Enforcement Notice	<p>Change of use to deposition of waste material.</p> <p>Enforcement Notice issued. Appeal lodged but subsequently withdrawn. Enforcement notice compliance period expired April 2014. New EIA Screening Opinion issued 11/12/14 confirming Environmental Statement not required. Planning permission 15/0333/FL was granted on 8th January 2016 for earthworks comprising the redistribution of spoil from the south of the site (the Opal site) to the north (the Onyx site), including on-site remediation of material as necessary, to provide a level platform for future development. The permission requires commencement of the works within 12 months of the grant of permission to remedy the issue of unauthorised waste on site. Works</p>

				have progressed on site and are likely to have triggered commencement under permission 15/0333/FL. Commencement of permission confirmed as 14 th October 2016. Further planning application received 12 th December 2016 to vary conditions under 15/0333/FL regarding importation of materials, drainage, flooding and mining risk.
8 PH	12-14 Lower Lichfield Street, Willenhall	2/5/2013	Prosecution in respect of S215 Notice.	Unightly void properties. Letter received in July 2013 sets out intention to paint, replace glass and repair the roof within a month. No works carried out. Difficulty demonstrating legal owner of the land, legal advice to be sought on likelihood of securing a prosecution or whether direction action would be the only way to bring improvements. Site visit undertaken on 13 th April 2016. Officers proposed to meet to discuss the way forward. Following advice from Legal Services, the owners were contacted by letter dated 24 th May 2016 and a response was been requested within 7 days. As no response has been forthcoming this case will be reviewed for further action.
9 SC	3 Walsall Road	September 2013	Enforcement notice	Unauthorised change of use, signage, fencing and building works. Authorisation to prosecute was approved by September planning committee. Planning applications for the retention of the works have now been refused. Enforcement notice served on 23 rd June 2015 for compliance on the 24 th September 2015. Requirements of the notice have not been met. Prosecution with legal services. Legal services have asked for further land ownership details which is currently being investigated
10 DM	24 Larkspur Way	16/01/14	Enforcement Notice	Enforcement Notice served, with the compliance period expiring at the beginning of October. Officer inspection confirms requirements of Enforcement Notice not complied with – With Legal Services for prosecution proceedings to be prepared.
11	Ravenscourt Shopping	March 2014	Section 215 Notice	Awaiting return of Section.16, this is required to establish all parties

SF	Precinct			<p>responsible for the land before serving Section 215 Notice. Notice being prepared.</p> <p>Update 9-3-15 – Owners of the site have been in contact with the LPA to discuss future the enforcement action and the future of the site. Officers have been negotiating with developers who intend to submit a planning application early 2017.</p> <p>The owner has confirmed they have appointed a highways consultants and are in the process of finalising a planning consultant. In addition they wish to work closely with the Town Centre Manager to ensure the security of the site and minimise ASB issues.</p>
12 SC	Land Adjacent 26 Bradley Lane	June 2014	Enforcement Notice	<p>The carrying out of engineering works to alter land levels and create access onto the highway, laying down of hard-surfacing, the erection of boundary gates and fencing, the erection of two stabling blocks and the partial construction of a storage barn. Applicant contests that the access has lawful use rights and there is a current certificate of lawfulness to be determined. Appeal decision concluded requiring the serving of a revised notice. Application for Certificate of Lawful Use(16/1096) valid 22/11/16. . Consultations taken place and discussions with legal services ongoing.</p>
13 JF	1 Halford Crescent	May 2014	Enforcement Notice	<p>Enforcement Notice served 24th October 2014 regarding the change of use from residential to car repairs, storage and valeting, plus additional fencing and hard surfacing. Compliance period ends 24thDecember 2014. PACE interview conducted on 25th Feb to establish further grounds for prosecution. Prosecution proceedings being prepared by officers.</p> <p>Continued monitoring confirms compliance with the requirements of enforcement notice. It was considered the original harm to the neighbouring properties had subsided to a degree whereby it would</p>

				<p>not currently be in the public interest or meet the standards of the Councils prosecution policies to pursue the matter further.</p> <p>Officers have recently been advised of a number of vehicles returning to the property and this is currently being investigated. The requirements of the notice remain on the land in perpetuity so if the breach returns officers will re-evaluate the current position.</p>
14 SF	Middlemore Lane West – Former GKN	September 2014	Enforcement Notice	<p>Owners have removed the unauthorised embankment and are in discussions with officers for the submission of a planning application to landscape the front of the site.</p> <p>Meeting to be proposed with planning case officer to ascertain the current situation.</p>
15 KH	Three Crowns Public House	2 nd April 2015	Enforcement notice	<p>The 2nd April 2015 Planning Committee authorised the pursuance of enforcement action for unauthorised excavations at the pub site and the dumping of spoil on the adjacent SINC field. Notice served on 29th September 2015 with compliance due on 28th January 2016. Officers are in discussion with the owners.</p>
16 MB	105 Skip Lane	August 2014	Enforcement Notice	<p>Enforcement Notice Served on 7th January 2015 regarding the Change of Use from Agricultural to Garden Land and erection of Lighting/Camera Column. The land owner has not appealed the enforcement notice. Compliance was required by 6th March 2015. A certificate of lawfulness was subsequently submitted and refused. Partial compliance with notice confirmed, with the materials being removed and now stored adjacent to two shipping containers. The owner has been written to confirming partial compliance and that they are liable for prosecution. Further visit has been undertaken to inspect final works and compliance is under review. Officers wrote on the 22/11/16 to owners requesting removal of the shipping containers. To date no response from the owners, a site visit and chasing letter are being timetabled.</p>

17 MB	Land between River Tame and Railway, Darlaston Road, Walsall	09/07/15	Enforcement Notice	Enforcement Notice served on 30/09/15 which took effect on 02/11/15. Requires removal of all materials, packaging and waste from the land and cessation of the use of the land for the storage of commercial building materials. Initial visit noted the majority of the materials removed. Currently assessing whether the remainder of the material is expedient to pursue a prosecution.
18 SF	Former Jack Allen Holdings, Middlemore Road	6 /8/15	Enforcement Notice	The operator has now vacated the site and the importation of soil and timber has ceased. The owners have secured possession of the site and agreed measures with the Environment Agency and the Councils Pollution Officers to clear the site. Owner was required by the Environment Agency to remove all wastes by November 2015. The site is almost cleared of all stockpiles and use for importation of waste has ceased. It is recommended that monitoring continues until the site is fully cleared.
19 SF	Hawthorns, Former Baytree House, Erdington Road, Aldridge	3/9/15	Enforcement Notice	The operators of the site have begun proceedings with officers of the Council to look at improving the provision of care available to residents including registration with the Care Quality Commission (CQC) to operate as a care home and ensure compliance with planning application 12/1400/FL. The measures put forward are being considered by officers. Officers are negotiation with the applicants on the terms of the revised s106 and will be preparing a report to update Members on the situation.
21 SC	51-53 Wolverhampton Street		Enforcement action authorised by 31/3/16 planning committee	Change of Use from Factory/Offices to HMO. A planning application has been received and further details are required. A meeting has taken place with planning agents and the agent to address any shortcoming with the scheme and amendments are expected. Enforcement action currently on hold pending the outcome of the current planning application. Officers to progress enforcement if planning application not valid by February 2017.

22 MB	16 Butts Road	31/03/16	Enforcement action authorised by 31/3/16 planning committee	A planning application has been received and further details are required. A meeting has taken place with planning agents and the agent to address any shortcoming with the scheme and amendments are expected. Stroud Avenue planning inspectorate decision will inform how this case is progressed. Enforcement action currently on hold pending the outcome of the current live planning application. The applicant's agent is due to meet with officers in February to progress the current planning application.
23 HS	30 Skip Lane – 16/0661		Enforcement action authorised by 3/11/16 planning committee	The proposal was to reduce the height of the existing unlawful garden building with a fall- back position that the applicant could reduce the height by a further 0.54 metres to revert to permitted development allowances. The applicant decided to revert to PD rather than appeal
24 JT	100 Whitehorse Road, Brownhills	01/09/16	Enforcement action authorised by 01/09/16 committee	Bike shed adjacent highway – last warning letter sent 06/10/16 – visited site 21/10/16 shed remains in place. Enforcement notice to be served.
25 JT	39 Shire Ridge, Walsall Wood	01/09/16	Enforcement action authorised by 01/09/16 planning committee	The fence and wall to the side have been reduced in height in accordance with the approved planning application. The owners have been advised that an application will be required for the change in levels of the rear garden. Officers in negotiation regarding this matter.
26 AI	The Eagle PH, Cresswell Crescent	01/12/16	Prosecution following non-compliance with S215 Notice	Failure to comply with S215 notice to tidy up the derelict site. Planning application 17/0026 received on 06/01/17 for redevelopment for a new apartment scheme but not yet valid. Prosecution being prepared.
27 AI	The Leathern Bottle, Cresswell Crescent	01/12/16	Prosecution following non-compliance with S215 Notice	Failure to comply fully with S215 notice to tidy up the derelict site although the pub has been demolished and site secured. Prosecution case being prepared..
28 PH	38-40 West Bromwich Street	5/1/17	Enforcement Notice and authorisation to prosecute in regard to the advert	Unauthorised ATM and advert. Following the committee resolution action was undertaken on site to remove the ATM and advert. Resolved. No further action