



# Walsall Council

## **PLANNING COMMITTEE**

**Date: 2 DECEMBER 2021**

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

**117 SANDRINGHAM AVENUE WV12 5TG**  
**CASE REFERENCE E21/0104**

*(Exempt information under Paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972) (as amended).*

#### **Annexes:**

1. Plans 1-3, and Photos 1-2

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

- 1.1 To advise Members of alleged unauthorised development relating to 117 Sandringham Avenue, WV12 5TG

#### **2.0 RECOMMENDATIONS**

- 2.1 **That Members of the Planning Committee take note of the investigation and agree to recommendations:**
  - To monitor progress of planning application 21/1540 to determination.
  - To monitor the building regulations process and to further assess outcomes as material considerations to possible enforcement action.
  - To monitor the party wall dispute progressing through the civil courts, and to further assess outcomes as material considerations to possible future enforcement action.
  - To review enforcement options in the event planning application 21/1540 is refused or remains undetermined, by liaison with the planning application team, and recommend action accordingly with reference to the Councils Local Planning Enforcement Plan.
  - To continue to liaise with Pollution Control on potential ground gas issues. Conclusions will inform determination of planning application 21/1540 and possible enforcement action.
  - To bring further updates to Committee if necessary.
  - To update Ward Members at the expected determination date of planning application 21/1450 – currently 23 December 2021, and when the building regulations process is completed.

### 3.0 SITUATION

#### Site Description

- 3.1 117 Sandringham Avenue is a typical semi-detached brick under tile two storey dwelling in a prominent corner position at the junction of Arundel Road. No.117 shares a party wall with No.119 Sandringham Avenue. Prior to development taking place (Annex 1 Plan 1), No.117 had the following characteristics (“the existing dwelling”):

- The main two storey element had a frontage of 5.9m and a depth of 8.8m.
- The additional single storey side extension had a frontage of 6.3m and a depth of 8.8m. The side extension was partly an additional bedroom with store behind and partly a single garage.
- Total footprint of the dwelling was 107sqm.

#### Planning Background

- 3.2 Planning permission was granted for a *two storey side extension and single storey front extension for front porch and bay window* ref 20/1629 on 17 May 2021. Essentially the existing two storey element would double in width as it would appear from the front, and a further two storey element (albeit with a stepped down roofline) would be added alongside (“the approved scheme”). A covered porch would feature to the front.

- 3.3 The approved scheme has a frontage width of 12.8m, being 0.6m wider than the existing width. Footprint of the approved scheme would be the same as before, albeit with an additional front porch of 6sqm (Annex 1, Plan 2)

#### Enforcement background

- 3.4 The planning enforcement team is investigating reports that the build has not progressed as approved under application 20/1629 (enforcement case reference E21/0104). Allegations of damage to 119 Sandringham Avenue were first received on 19 July 2021. The site has been visited three times by enforcement officers and a thorough inspection of the partly completed replacement dwelling carried out on 17 August 2021. Brick walls are completed, floors and staircases installed and the roof has been fitted and tiled. The structure remains supported by scaffolding. There is also a partly constructed outbuilding to the rear. All work on the dwelling has ceased and the site has been secured.

- 3.5 The Senior Enforcement Officer has discussed the situation with the owner and his former agent. As a result of this discussion and correspondence with the enforcement team, a new agent has been appointed. A retrospective planning application was submitted on 1 November 2021 under case reference 21/1540 intended to regularise the “as built” scheme (Annex 1, Plan 3).

#### Scheme as Constructed

- 3.6 It is clear from a comparison of the existing dwelling and the originally approved extension scheme that the dwelling would undergo significant visual changes on its entire frontage, beyond the mere addition of a side two storey extension. The agent has stated, *while this work was being carried out, the builders on site removed most of the existing walls of the residential.*

- 3.7 Photographs taken by a neighbour during development, establish that the existing dwelling was completely demolished by the time officers were first

notified of any issue. The photographs appear to indicate holes in the party wall to No.119, particularly under the eaves and roof. The brick chimney above the party wall appears to remain intact, but after demolition, part of it overhung the empty space below. The roof of the new dwelling appears to support the chimney over the party wall, as illustrated by Annex 1, Photo 1.

- 3.8 A replacement brick under tiled roof dwelling and outbuilding to rear have been constructed in place of the existing (Annex 1, Photos 1&2). According to plans intended to regularise the as built scheme, the main part of the replacement dwelling has a frontage of 12.2m wide, and is 8.2m deep on the exposed gable. An additional two storey box section extends from the front with a covered porch. Maximum depth of the dwelling as constructed is 11.1m. Total footprint as built is approximately 112sqm (not including rear outbuilding).
- 3.9 A structural assessment of the replacement dwelling and its party wall has not been carried out by planning enforcement officers since they are not qualified to do so. Separately, Building Control Officers have carried out their own inspection, who have reported that the process of building regulations is being dealt with by Assent Building Control ([assentbc.co.uk](http://assentbc.co.uk)). Approval has yet to be granted.
- 3.10 Visually, the most obvious difference to the approved scheme, is the end to end roof apex and continuous roof plane front and rear. By comparison, the “extension” part of the approved scheme has its roof apex stepped down, and its front roof plane also stepped back.

### **Party Wall**

- 3.11 Members may be aware that under the Party Wall Act (1996), in general terms, where works may affect a neighbouring property by a shared wall, agreement should be sought beforehand. In as far as such matters are relevant to the planning enforcement investigation, it is understood no agreement was sought.
- 3.12 It is known there has been an ongoing dispute between the owner of 117 Sandringham Avenue and the owner/occupier of 119 Sandringham Avenue. It is understood both parties now have building surveyors acting on their behalf to assess the extent of damage to the party wall. It is purported, and has been brought to the attention of the Council that the Courts on 2 November made an award of £10,000 to the owner of the neighbouring property as an interim payment, and that the owner of 117 Sandringham Avenue was told repairs to the party wall would cost at least £25,000. According to the letter supplied to the Council, the surveyor has seen *numerous structural defects, including the fact the main support beam is supported solely in the party wall. There are no footings and no support column to hold the beam in place.*

### **Enforcement Implications**

- 3.13 It is acknowledged the case has similarities to 18 Walstead Road, where an unauthorised dwelling has been constructed and there are also party wall issues. Members will recall they recently resolved to demolish the structure by direct action, along with other measures. The Council would be entitled to serve an

enforcement notice requiring demolition, as it did in March 2019 for Walstead Road. However, at this time, it is considered such action would be premature for the following reasons:

- There is an ongoing dispute being dealt with in the Courts over party wall issues and is purported to have ruled in the neighbour's favour. It is likely that this process will resolve the neighbour's concerns and before the planning enforcement process could achieve such a resolution.
- A planning application (subject to amended description and the addition of the rear outbuilding) has been submitted which indicates the owners intention to regularise the as built scheme. Subject to negotiations with the applicant and subject to the planning application assessment, depending on the final design of the proposed dwelling, the level of harm may be reduced to a point where it is insufficient to justify enforcement action prior to determination, also having due regard to the concurrent Court action dealing with the party wall. Resolution to take early enforcement action would in any event unreasonably pre-judge the outcome of the planning application.
- Further, in general terms, the prospect of successful enforcement action (should it be necessary) is strengthened when the relevant development has already been refused planning permission.

**3.14 Enforcement Recommendation, as also set out at Para 2.1 above:  
That Members of the Planning Committee take note of the investigation and agree to recommendations:**

- To monitor progress of planning application 21/1540 to determination.
- To monitor the building regulations process and to further assess outcomes as material considerations to possible enforcement action.
- To monitor the party wall dispute progressing through the civil courts, and to further assess outcomes as material considerations to possible future enforcement action.
- To review enforcement options in the event planning application 21/1540 is refused or remains undetermined, by liaison with the planning application team, and recommend action accordingly with reference to the Councils Local Planning Enforcement Plan.
- To continue to liaise with Pollution Control on potential ground gas issues. Conclusions will inform determination of planning application 21/1540 and possible enforcement action.
- To bring further updates to Committee if necessary.
- To update Ward Members at the expected determination date of planning application 21/1450 – currently 23 December 2021, and when the building regulations process is completed.

#### 4.0 FINANCIAL IMPLICATIONS

There are no financial risks associated with the current recommendation. In as far as there may be similarities with unauthorised development at 18 Walstead Road, WS5 4LX, Members may wish to note there may be financial risks in the future, if the planning enforcement team is required to take direct action (by way of demolition or alteration), or if any decisions relating to enforcement action are challenged. Decisions relating to the investigation may be subject to legal challenge.

#### 5.0 POLICY IMPLICATIONS

The following planning policies are relevant in this case:

##### 5.1 National Planning Policy Framework (NPPF) revised 20 July 2021

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, for example:

- Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities
- Developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development
- Developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

Key provisions of the NPPF particularly relevant in this case:

- NPPF 2 – Achieving sustainable development
- NPPF 4 – Decision making
- NPPF 5 – Delivering a sufficient supply of homes
- NPPF 12 - Achieving well-designed places

##### 5.2 Local Policy

Black Country Core Strategy

- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2 Environmental Protection
- ENV32: Design and Development Proposals
- T7: Car Parking

- T13: parking Provision for Cars, Cycles and Taxis

Policies are available to view online:

[http://cms.walsall.gov.uk/planning\\_policy](http://cms.walsall.gov.uk/planning_policy)

Designing Walsall SPD

## **6.0 LEGAL IMPLICATIONS**

Non-compliance with an Enforcement Notice constitutes an offence. In the event of non-compliance, the Council may instigate legal proceedings. The Council may also take direct action to carry out works and recover the costs of those works from the person on whom the Enforcement Notice was served. Any person on whom an Enforcement Notice is served has a right of appeal to the Secretary of State.

## **7.0 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 development and its use overrules the owner's right to the peaceful enjoyment of his property.

The Equality Act 2010. The Council has had regard to its duties under the Equality Act 2010 and considers that the issue of the notice will not affect the exercise of those duties under S149 to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b). Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c). foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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

Willenhall

## **9.0 CONSULTees**

None

## **10.0 CONTACT OFFICERS**

Frank Whitley Senior Planning Enforcement Officer  
Frank.whitley@walsall.gov.uk, 01922 65836

**Annex 1 Plans and Photos**

Plan 1: 117 Sandringham Avenue as “Existing”



Plan 2: 117 Sandringham Avenue – Scheme proposed and approved under 20/1629





Plan 3: 117 Sandringham Avenue- Scheme proposed under application 21/1540 reflecting “as built” (undetermined)



Photo 1: 117 Sandringham Avenue as built, taken from front of 119 Sandringham Avenue





Photo 2: Rear of 117 Sandringham Avenue and outbuilding as built taken from Arundel Road

