



PLANNING COMMITTEE

Date: 8th September 2022

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL.

Address: Land on the west side of Back Lane/junction of Hobs Hole Lane,
Aldridge, Walsall. E18/0407

1.0 PURPOSE OF REPORT

- 1.1 To request from Members authority to pursue enforcement action in respect of the following alleged unauthorised development:

Without planning permission on the Land, the material Change of Use from *the keeping of horses* to a use for storage of domestic items, mixed waste materials, vehicles, and vehicle parts, together with use as a vehicle dismantling yard and creation of hardstanding.

2.0 RECOMMENDATIONS

- 2.1 **That authority is granted to the Head of Planning and Building Control, to issue an Enforcement Notice** under the Town and Country Planning Act 1990 (as amended) to require remedial actions to be undertaken as shown in 3.2.
- 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.
- 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 breaches, the reasons for taking enforcement action, the requirements of the Notice, or the

boundaries of the site, in the interests of ensuring that accurate and up to date notices are served.

3.0: DETAILS OF THE ENFORCEMENT NOTICE

3.1 The Breach of Planning Control

Without planning permission, the material change of use of the Land from a lawful use of grazing by horses to use as a storage, scrap and vehicle dismantling yard and creation of hardstanding, outlined in red on the attached plan.

Thereby now referred to as “the unauthorised development”.

3.2 Steps required to remedy the breach:

3.2.1 Permanently cease use of the land for storage and remove all vehicles, trailers, vehicle parts and bodies, scrap, metal and plastic drums, bins, containers, gas cylinders, pallet truck, building materials, timber, plastic items, road signs/cones, roof sheets, burnt materials, boat, toilet, refuse and domestic paraphernalia including toys, from the land.

3.2.2 Permanently cease use for vehicle dismantling and remove all associated equipment, tools, hoists and paraphernalia from the land;

3.2.3 Permanently remove from the land the area of hard standing located south of the approved stable building which is outlined in green on the attached plan; and

3.2.4 Leave the land in a clean and tidy condition, disposing of all waste materials generated from the activities listed at 3.2.1, 3.2.2 and 3.2.3 to a suitable facility licensed to accept these items.

3.3 Period for compliance:

3 months from when the notice takes effect - to undertake the works as set out in paragraph 3.2

3.4 Reasons for taking Enforcement Action.

3.4.1 It appears to the Council that the above alleged breach of planning control has occurred within the last ten years.

3.4.2 The unauthorised use for the vehicle dismantling and storage is inappropriate and when combined with equipment and paraphernalia relating to each of these uses, results in harm to the visual appearance and the openness of the Green Belt. This is contrary to the fundamental aim of the Green Belt which is to prevent urban sprawl by keeping land permanently open.

The unauthorised uses are therefore inappropriate in the Green Belt and, as no very special circumstances have been provided to justify support for the development, it is expedient to take enforcement action. The continued use of the site for the unauthorised uses also erodes the availability of land for the keeping of horses.

3.4.3 The Land is being used for the uncontrolled and unregulated storage of scrap and mixed waste materials in the open, contrary to Chapter 7 of the adopted Black Country Core Strategy, in particular Policy WM1 Sustainable Waste and Resource Management, WM3 Strategic Waste Management Proposals, WM4 Locational Considerations for New Waste Management Facilities, WM5 Resource Management and New Development. The uncontrolled and unregulated open storage of mixed waste materials is unsustainable and is therefore contrary to Policies W2, W3 and W4 of the adopted Walsall Site Allocation Document (2019).

3.4.4 The alleged storage of scrap and mixed waste material on the Land is considered harmful to the Black Country's Environmental Infrastructure and contrary to Policies ENV1 (Nature Conservation), ENV3 (Design Quality), ENV4 (Canals), ENV5 (Flood Risk, Sustainable Drainage Systems and Urban Heat Island) of the adopted Black Country Core Strategy (2011).

3.4.5 The alleged storage of mixed waste materials on the Land fails to make a positive contribution to the quality of the environment and the principles of sustainable development and has an unacceptable adverse impact on the environment, contrary to Policy GP2 of the adopted Walsall Unitary Development Plan (2005).

3.4.6 The storage of scrap and mixed waste materials on the Land fails to properly take account of the context and surroundings, contrary to Policy ENV32 (Design and Development Proposals) of the adopted Walsall Unitary Development Plan (2005).

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 against the Council in making an appeal if it was considered that the Council had acted unreasonably.

5.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

5.1 National Planning Policy Framework (NPPF) www.gov.uk

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:

- Always require high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- Find ways to enhance and improve places in which people live their lives
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas
- Encourage the effective use of land by reusing land that has previously been developed

Key provisions of the NPPF relevant in this case:

- NPPF 2 – Achieving sustainable development
- NPPF 4 – Decision making
- NPPF 12 - Achieving well-designed places
- NPPF 13 – Protecting Green Belt land

5.2 Local Policy

Black Country Core Strategy

- ENV1 Nature Conservation
- ENV3 Design Quality

Unitary Development Plan saved policies

- GP2 Environmental Protection
- ENV2: Control of Development in the Green Belt
- ENV5 Stabling and riding of Horses and Ponies
- ENV10 Pollution
- ENV32 Design and Development Proposals
- 3.2 to 3.4 The Countryside and Green Belt
- https://go.walsall.gov.uk/language/en-us/planning_and_building_control/planning_policy/unitary_development_plan

Walsall Site Allocations Document (SAD)

- GB1: Green Belt Boundary and Control of Development in the Green Belt
- EN1 Natural Environment Protection, Management and Enhancement

Policies are available to view online:

https://go.walsall.gov.uk/planning/planning_policy

6.0 LEGAL IMPLICATIONS

- 6.1 Pursuant to section 171A (a) of the Town and Country Planning Act 1990 (as amended) the carrying out of development without the required planning permission or failing to comply with a condition or limitation subject to which planning permission has been granted constitutes a breach of planning control.
- 6.2 Section 171B adds that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. In respect of any other breach (such as change of use or breach of condition) no enforcement action may be taken after the end of the period of ten years from the date of the breach except where the breach of planning control consists of a change of use of any building to use as a single dwelling house, in which case a four-year period applies.
- 6.3 The local planning authority considers the breach of planning control that has occurred at this site commenced within the last 10 years.
- 6.4 Section 172 of the Town and Country Planning Act 1990 (as amended) provides that the local planning authority may issue an Enforcement Notice where it appears to them:
- (a) that there has been a breach of planning control; and
 - (b) that it is expedient to issue the notice, having regard to the development plan and to any other material considerations.
- 6.5 The breach of planning control is set out in this report. Members must decide whether it is expedient for the enforcement notice to be issued, taking into account the contents of this report.
- 6.6 Non-compliance with an Enforcement Notice constitutes an offence. In the event of non-compliance, the Council may instigate legal proceedings. Pursuant to section 178 of the Town and Country Planning Act 1990 (as amended):
- “Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may –
- (a) Enter the land and take the steps; and
 - (b) Recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.”

7.0 EQUAL OPPORTUNITY IMPLICATIONS

7.1 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.

7.2 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 ENVIRONMENTAL IMPACT

Enforcement action will improve the visual amenities of the environment, protect the environment and remedy the adverse environmental impacts.

9.0 WARD(S) AFFECTED

Aldridge

10.0 CONSULTEES

None.

11.0 CONTACT OFFICERS

Richard Stokes – Planning Enforcement Officer
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Arshad Mahmood – Senior Planning Enforcement Officer
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12.0 BACKGROUND PAPERS

Planning Ref: BC62331P
Enforcement file E18/0407 not published.

13.0 BACKGROUND AND REPORT DETAIL

Background

- 13.1 A plan showing the location of the site considered in breach of planning control is attached to this report.
- 13.2 The land subject of this report is a field west of Back Lane. The southern edge of the land is flanked by Hobs Hole Lane. It is designated green belt land.
- 13.3 Back lane is a narrow single track road, linking Hobs Hole Lane and the A452 Chester Road. It is largely 'unsurfaced'. It is flanked with trees and hedgerows and frequented by those seeking access to a nearby farm and the adjacent land, which is largely in use for agriculture and the keeping of horses.
- 13.4 On 11th November 2000, the LPA granted permission for a change of use of the land from *agricultural* to the *keeping of horses* (Planning Ref: BC62331P). The permission included the erection of a timber stable building in the north eastern corner of the land. Condition 4 of the permission reads *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or succeeding Orders, no horse boxes, caravans, vehicles or other structures shall be permanently parked on the site and no horse jumps shall be positioned on the site without the prior approval of a planning application.*
- 13.5 On 21st November 2018, the LPA received a complaint that the land was being used for vehicle storage, repair and breaking.
- 13.6 As such, the case officer visited and found a stable in the north eastern corner of the site, together with several horses and associated equestrian equipment. However, the area immediately surrounding the stable building was littered with items including scrap vehicles, trailers, a caravan, engines, vehicle transmissions and running gear, together with associated automotive equipment and other waste reminiscent of a scrap yard. Engine oil deposits were/are visible on the ground.
- 13.7 Following an initial letter to the owner in November 2018, the owner carried out minimal tidying of the site. However, he continued to carry out vehicle dismantling.
- 13.8 The owner failed to respond to several telephone messages in 2019, until in February 2020 where the occupier stated he had received a new hip and lost his phone.
- 13.9 In June 2021, the case officer visited the land and found it still appeared to be a scrap/dismantling/storage yard and remained largely unaltered. He emailed the owner, highlighting the authorised Planning use and instructed the matter would be brought to the attention of Walsall Planning Committee.

- 13.10 In November 2021, the case officer met the owner leaving the site in a vehicle. The site was still in breach of Planning control as it remained largely unaltered. He stated 'life in general' and a 'bad back' have impeded his progress in clearing the site. Following the visit, the case officer wrote to the owner advising that the matter would be brought to the attention of Walsall Planning Committee.
- 13.11 During a site visit in July 2022, the case officer noted that in addition to the continued unauthorised use, an area of the land adjacent to the south of the structure, measuring approx. 14 x 5 metres had been recently hard surfaced. At its edge, 2 x posts (former telegraph poles) had been installed in the ground.
- 13.12 Enforcement action should be commensurate with the breach of planning control to which it relates. It will normally be inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity. This is often referred to as the **expediency test**.
- 13.14 When assessing whether to instigate enforcement action the committee are advised that the following needs to be considered:
- i. the proposed action must be in the public interest
 - ii. the breach must be sufficiently harmful to justify taking action
 - iii. the proposed action must be reasonable and commensurate with the breach in planning control to which it relates
 - iv. the action undertaken should be cost effective
 - v. whether or not the development is in accordance with planning policies.
- 13.15 The unauthorised uses of the Land for storage, including scrap, vehicles, trailers and vehicle parts, are inappropriate and, when combined with the equipment and other paraphernalia associated with each of these uses, results in harm to the visual appearance and the openness of the Green Belt. Such uses would also be subject to mitigation measures (UDP ENV32 and JP8) to prevent adverse environmental impacts and such mitigation would itself result in further harm to the Green Belt. This is contrary to the fundamental aim of the Green Belt which is to prevent urban sprawl by keeping land permanently open. The unauthorised uses are therefore inappropriate in the Green Belt and no very special circumstances have been provided to justify support for this inappropriate development in the Green Belt. The continued use of the Land for the unauthorised uses also erodes the availability of agricultural land. Accordingly, the change of use is contrary to Policies ENV1 and ENV3 of the Black Country Core Strategy, saved policies GP2, ENV5, ENV6, ENV 7, ENV32 and JP8 of the Walsall Unitary Development Plan, policy GB1 of the Walsall Site Allocation Document and paragraphs 147-151 of the National Planning Policy Framework.
- 13.16 Therefore, the recommended enforcement action is considered expedient as the breaches are sufficiently harmful. The action is reasonable and commensurate with the breaches, cost effective and in accordance with planning policies.



Land west of Back Lane/junction Hobs Hole Lane, Aldridge, Walsall.



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Printed on: 2022-08-19 14:49:32 by Richard.Stokes@walsall.gov.uk

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