



## PLANNING COMMITTEE

28<sup>th</sup> April, 2016

### REPORT OF HEAD of PLANNING, ENGINEERING and TRANSPORTATION

#### 231, Stafford Street, WALSALL

#### 1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the retrospective installation of an Automated Teller Machine (ATM) (cash dispensing machine) and associated illuminated fascia surround within the shop frontage at 231 Stafford Street, Walsall.

#### 2.0 RECOMMENDATION

- 2.1 **That authority is granted for the Head of Planning, Engineering and Transportation to issue 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 the Head of Planning, Engineering and Transportation to institute 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 planning control.
- 2.3 **To authorise the Head of Planning, Engineering and Transportation, 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:-**

Without obtaining the required planning permission, carried out the installation of an ATM within the shop frontage ("the unauthorised development").

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

- (a) **Remove the ATM and associated equipment, fixtures and fittings including the illuminated surround fascia;**
- (b) **To re-instate the shop frontage;**

**Period for compliance:-**

Two months.

**Reason for taking Enforcement Action:-**

- (a) The above breach of planning control has occurred within the last 10 years;
- (b) The installation of the ATM with associated illuminated fascia surround has been REFUSED planning permission on the grounds of:
- detrimental to the personal safety of those who use (customers and maintenance operatives) and replenish (staff and security officers) the facility (ATM)
  - lack of a high quality and robust system of security in place to protect its users.
  - result in indiscriminate parking either on the double yellow parking restrictions on Stafford Street or on the relatively wide pavement outside the site,

The continued unauthorised use of the ATM fails to provide for a safe and secure environment for those using and servicing the ATM. This is contrary to the NPPF which identifies that crime and disorder and the fear of crime are material planning considerations, Black Country Core Strategy policy CSP4: Place Making and ENV3: Design Quality and Unitary Development Plan policies GP2 and S15. Furthermore, the installation of the ATM is detrimental to the free flow of traffic on the public highway and free passage of pedestrians on the public footway contrary to highway safety, UDP Policy GP2 and S15.

**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) [www.gov.co.uk](http://www.gov.co.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:

- Find ways to enhance and improve places in which people live their lives
- Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings

- 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 - Ensuring the vitality of town centres***
- ***NPPF 7 - Requiring good design***

On **planning conditions** the NPPF says:

Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

On **decision-taking** the NPPF sets out the view that local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development and look for solutions rather than problems and work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

### **Local Policy**

#### **Black Country Core Strategy**

- CSP4: Place Making
- CEN2: Hierarchy of Centres
- CEN6: Meeting Local Needs for Shopping and Services
- ENV3: Design Quality

**Unitary Development Plan** [http://cms.walsall.gov.uk/annotated\\_2011\\_udp\\_-\\_february\\_2011.pdf](http://cms.walsall.gov.uk/annotated_2011_udp_-_february_2011.pdf)

- GP2: Environmental Protection
- ENV32: Design and Development Proposals
- ENV35: Appearance of Commercial Buildings
- S1: Definition of Town Centre Uses
- S15: Banking and Cashpoint Facilities

### **Supplementary Planning Document**

#### **Designing Walsall**

- DW3 Character
- DW10 Well Designed Sustainable Buildings

#### **Shop Front SPD**

- SF8: Shop front security

Policies are available to view online: [http://cms.walsall.gov.uk/planning\\_policy](http://cms.walsall.gov.uk/planning_policy)

### **Section 17 of the Crime and Disorder Act 1998**

- Requires all local authorities to exercise their functions with due regard to their likely effect on crime and disorder and to do all they reasonably can to prevent crime and disorder.
  
- Local authorities should consider crime prevention when exercising their responsibilities under the Town and Country Planning legislation.

Accepting that Section 17 of Crime Disorder Act 1998 is not a material consideration as detailed in The Planning Inspectorate Note (PINS Note 717). We also note PINS Note 953 which refers to the subject matter i.e. crime prevention can still be a material consideration.

## **5.0 LEGAL IMPLICATIONS**

Pursuant to section 171A(a) of the Town and Country Planning Act 1990 (as amended) the carrying out 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. 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.

The breach of planning control occurred at this site within the last ten years.

Section 172 of the Town and Country Planning Act 1990 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.

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.

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.

## 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 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**

St Matthews

## 9.0 **CONSULTEES**

None.

## 10.0 **CONTACT OFFICER**

Karon Hulse - Tel: 01922 652614  
Development Management

## 11.0 **BACKGROUND PAPERS**

Enforcement file not published

**Steve Pretty**

**Head of Planning, Engineering and Transportation**

**Planning Committee**

**28<sup>th</sup> April, 2016**

## 12.0 **BACKGROUND AND REPORT DETAIL**

The agent acting for the operator of the premises was advised in October, 2015 that planning permission for the use of the premises as a mini supermarket and the installation of an ATM planning permission was required. The applicant was advised that both the local police and the Council had reservations regarding the location of the ATM on the outside of the shop unit and consideration should be given to moving the ATM inside the shop.

A retrospective planning application (15/1712) for the change of use to the shop was invited for consideration and has subsequently been approved having been considered acceptable in this location.

A valid planning application for the retrospective installation of the ATM (15/1550) was submitted (valid on 23<sup>rd</sup> October, 2015). It was accompanied by a separate application (15/1528) for advert consent for the illuminated fascia surround around the ATM.

Both of these applications have been refused for the following reasons:

*Installation of ATM (15/1550) - Refused 18<sup>th</sup> March, 2016*

1. The retrospective installation of the ATM is detrimental to the personal safety of those who use the facility and replenish it, by virtue of it being in an area of high crime rates and the lack of a high quality and robust system of security in place to protect its users. As such the continued retention of the ATM fails to provide for a safe and secure environment for those using and servicing the ATM contrary to the NPPF which identifies that crime and disorder and the fear of crime are material planning considerations, Black Country Core Strategy policy CSP4: Place Making and ENV3: Design Quality and Unitary Development Plan policies GP2 and S15.
2. The installation of an ATM at this locality is likely to result in indiscriminate parking either on the double yellow parking restrictions on Stafford Street or on the relatively wide pavement outside the site, to the detriment free flow of traffic on the public highway, to the free passage of pedestrians on the public footway and contrary to highway safety, UDP Policy GP2 and S15.

*Illuminated fascia surround (15/1528) – Refused 22<sup>nd</sup> March, 2016*

The location of the ATM with its illuminated surround and signage will encourage parking at this locality which will result in indiscriminate parking either on the double yellow parking restrictions on Stafford Street or on the relatively wide pavement outside the site, to the detriment free flow of traffic on the public highway, to the detriment of the free passage of pedestrians on the public footway and contrary to highway safety, UDP Policy GP2 and S15.

A letter has been sent to the owner and the agents explaining the position and confirming that an enforcement report would be going to the next available planning committee.