



Walsall Council

PLANNING COMMITTEE.

Date: 1st April 2021.

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

Address: 9 PAGODA CLOSE, STREETLY, WALSALL.

Reference no. E19/0429.

1.0 PURPOSE OF REPORT

1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against:

- Unauthorised operational development in the form of a plastic clad brick built garden structure and concrete base at the rear of 9 Pagoda Close, Streetly, Sutton Coldfield, outlined in red on the attached plan.

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 the required planning permission, and within the last 4 years, unauthorised operational development has taken place in the form of an outbuilding erected within the rear garden of 9 Pagoda Close, Streetly, Walsall, outlined in green on the attached plan.

Thereby now referred to as “the unauthorised development”.

3.2 Steps required to remedy the breach:

- i. Permanently remove from the land the unauthorised development (garden building) outlined in green on the attached plan; or
- ii. Alter the unauthorised development to include appropriate ground gas protection/mitigation measures in a form to be agreed with the Local Planning Authority; and
- iii. Dispose of any waste materials generated from the above works to a suitable facility licensed to accept these items.

3.3 Period for compliance:

To undertake the works set out in paragraph 3.2, parts (i)-(iii) within **3 months** from when the notice takes effect.

3.4 Reasons for taking Enforcement Action.

- 3.41 It appears to the Council that the above breach of Planning control has occurred within the last 4 years.
- 3.42 No evidence has been provided, which demonstrates that the appropriate ground gas protection/mitigation measures have been incorporated within the unauthorised development, the absence of which gives rise to the potential for the ingress of harmful ground gases to the detriment of human health.
- 3.43 The development is contrary to the aims and objectives of NPPF 15, and saved policies GP2, ENV10 and ENV14 of the Walsall Unitary Development Plan policies.

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*".

Key provisions of the NPPF relevant in this case:

- NPPF 15 – Ground Conditions and Pollution.

5.2 Local Policy

Black Country Core Strategy

- None applicable

'Saved Policies' Unitary Development Plan

- GP2: Environmental Protection
- ENV10: Pollution.
- ENV14. Development of derelict and previously developed sites.

Policies are available to view online:

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

6.0 LEGAL IMPLICATIONS

- 6.1 Pursuant to section 171A (1a) of the Town and Country Planning Act 1990 (as amended) the carrying out of development without the required planning permission.
- 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.
- 6.3 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.
- 6.4 Officers consider that the breach of planning control occurring at this site is development commenced without the benefit of planning permission within the last year in connection with the unauthorised uses which is within the 4 years period, within which unauthorised material changes of use may be enforced against. Whilst the operational development in terms of the garden structure and fencing has occurred without the benefit of Planning Permission within the last 4 years, within which unauthorised operational development at residential premises may be enforced against.
- 6.5 Section 191 (2)
Lawfulness is defined in section 191(2) of the 1990 Act. In summary, lawful development is development against which no enforcement action may be taken

and where no enforcement notice is in force, or, for which planning permission is not required.

- 6.6 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.

- 6.7 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.

- 6.8 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

- 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 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 protect the environment and remedy the adverse environmental impacts.

9.0 WARD(S) AFFECTED

Streetly

10.0 CONSULTEES

None.

11.0 CONTACT OFFICERS

Rich Stokes - Enforcement Officer.

12.0 BACKGROUND PAPERS

Enforcement file E20/0429 not published.

Planning Application 21/0044 – pending.

Planning Permission 02/0069/FL/E2 – Permitted Development Rights withdrawn.

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 Number 9 Pagoda Close is located at the end of a cul de sac, situated upon a former landfill site, which has been subjected to extensive remedial and engineering works to make it suitable for residential use. In achieving this situation, a comprehensive ground gas management system was installed across the whole of the development site and additional ground gas ingress prevention measures were incorporated into the foundations of buildings.
- 13.3 In order to prevent damage to the protection measures and, as a result, potential harm to residents, permitted development rights for certain works were removed from the entire residential estate under planning permission 02/0069/FL/E2, including that for Class E development, that being 'outbuildings'.
- 13.4 The rear garden at number 9 was tiered by the original developers of the site, the upper level being some 2.3 metres higher than the ground level upon which the main dwelling house is built.
- 13.5 On 22nd July 2019 a Case Officer visited 9 Pagoda Close, to find a garden building had been erected on the upper level of the rear garden. The Officer took measurements and created digital images of the site.
- 13.6 The garden structure measures approximately 5.2 metres long, 3.2 metres wide, and 2.37 metres high. The walls consist of concrete blocks, laid upon a concrete floor slab and subsequently clad with imitation wood/PVC type boards. The roof is corrugated plastic. Domestic items are stored within.

- 13.4 On 12th January 2021, communication with the occupier as part of this investigation resulted in retrospective Planning Application 21/0044 being submitted.
- 13.5 During the determination of this planning application the enforcement case continued, owing to the imminent limitation of proceedings or 'four year rule' time limit ending in June 2021.
- 13.6 The planning application is currently under assessment by the Local Planning Authority (LPA). Additional information and clarification has been sought to address concerns raised regarding the failure by the applicant to substantiate with reliable evidence that the existing garden building has been constructed with the correct ground gas protection measures in place to prevent methane gas ingress. The planning application remains to be determined at this time.
- 13.7 Therefore, at the present time, the LPA considers that the development presents a detrimental impact on the human health and living conditions of the current or future occupants of the house, owing to the potential for methane gas ingress together with pollution of the local environment.
- 13.8 Whilst enforcement cases are often held in abeyance to await the outcome of planning decisions and appeal decisions, this unauthorised development could potentially become immune from action prior to such a decision being made. Therefore, the LPA is seeking authorisation in this instance to serve a notice thus preserving the right to exercise its enforcement powers, in the event that the appeal is either not determined or dismissed before the period of immunity is invoked.
- 13.9 This development is contrary to NPPF policy 15, saved Unitary Development Plan policies GP2, ENV10 and ENV14.

