



**PLANNING COMMITTEE**  
**1 September 2016**

**REPORT OF HEAD of PLANNING ENGINEERING and TRANSPORTATION**

**39 Shire Ridge, Walsall Wood, Walsall WS9 9RA**

**1.0 PURPOSE OF REPORT**

To request authority to take planning enforcement action in respect of carrying out of building operations without the required permission namely the change of ground levels within the garden and erection of a boundary wall and fence panels.

**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 the required planning permission the erection of a boundary wall and fence panels ("the unauthorised development").

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

1. Reduce the height of the boundary wall and fence panels to a maximum of 2 metres high in line with planning permission 14/0273/FL
2. Reduce the land levels back to the original levels and remove all spoil to a licenced facility.

**Period for compliance:-**

Two months.

**Reason for taking Enforcement Action:-**

The operational development requires planning permission and the works in their current form do not provide a satisfactory appearance of development. In addition an appeal for retention of the boundary wall and fence panels was dismissed on 17 December 2015 by the Planning Inspectorate.

The development fails to have a positive impact on the character of the area and is contrary to the aims and objectives of the National Planning Policy Framework including paragraphs 56, 57, 58, and 64, Walsall's Saved Unitary Development Plan policies, in particular GP2, ENV32 and the Supplementary Planning Document "Designing Walsall".

**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)**

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:

- Seek to secure high quality design and good standards of amenity for all existing and future occupants
- Take account of the different roles and character of different areas

**Key provisions** of the NPPF relevant in this case:

7: Requiring Good Design

58. Developments should function well and add to the overall quality of the area.

60. It is proper to seek to promote or reinforce local distinctiveness.

64. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

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.

### **The Development Plan**

Planning law requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions but recognises that what it terms 'Local Plan' policies should not be considered out-of-date simply because they were adopted prior to the publication of the framework.

### **The Black Country Core Strategy (BCCS)**

[http://www.walsall.gov.uk/index/environment/planning/local\\_development\\_framework/ldf\\_core\\_strategy.htm](http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm)

This was adopted under the current Local Development Framework system, and the NPPF says that for 12 months from the publication of the national framework "*decision-takers may continue to give full weight to relevant policies*. However, it is more than 12 months since the NPPF was published in March 2012. Now (as with the saved policies of Walsall's UDP) the NPPF advises that "*... due weight should be given to relevant policies ... according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*." To consider the conformity of the BCCS with the NPPF the four Black Country councils have completed a 'Compatibility Self-Assessment Checklist' (published by the Planning Advisory Service) and have discussed the results with a Planning Inspector. Whilst there is no formal mechanism to certify that the BCCS is consistent with the NPPF the discussions led officers to the conclusion that the exercise identified no issues that would conflict with the NPPF or require a review of the BCCS in terms of conformity.

This checklist has been published on the BCCS and Council websites. Cabinet on 24<sup>th</sup> July 2013 resolved to endorse the assessment undertaken by officers from the four local authorities and agreed that the Black Country Core Strategy is consistent with the National Planning Policy Framework, so that the Core Strategy policies should be given full weight in planning decisions.

The relevant policies are:

ENV3: Development proposals across the Black Country will deliver a successful urban renaissance through high quality design that stimulates economic, social and environmental benefits. Implementation of the principles of "By Design" to ensure the provision of a high quality networks of streets, buildings and spaces.

It is considered in this case that the relevant provisions of the BCCS can be given full weight.

### **Walsall's Unitary Development Plan (UDP)**

[www.walsall.gov.uk/index/environment/planning/unitary\\_development\\_plan.htm](http://www.walsall.gov.uk/index/environment/planning/unitary_development_plan.htm)

Policies that have been saved and not replaced by the BCCS remain part of the development plan. However, in such cases the NPPF says "*due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*".

The relevant policies are:

GP2: Environmental Protection

The Council will expect all developments to make a positive contribution to the quality of the environment and will not permit development which would have an unacceptable adverse impact on the environment. Considerations to be taken into account in the assessment of development proposals include:

I. Visual appearance.

ENV32: Poorly designed development which fails to properly take account of the context or surroundings will not be permitted

It is considered in this case that the relevant provisions of Walsall's saved UDP policies are consistent with the NPPF

### **Supplementary Planning Documents (SPD)**

On the basis that relevant UDP policies are consistent with NPPF, the related SPD(s) will also be consistent provided they are applied in a manner consistent with NPPF policy. The relevant SPD's are:

#### **Designing Walsall (SPD) (Feb 2008)**

Aims to achieve high quality development that reflects the borough's local distinctiveness and character, through eight key design principles and ten policies. The following are the relevant policies;

DW3: Character - all new development must be designed to respect and enhance local identity

Appendix D: Numerical Guidelines for Residential Development

## **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 except where the breach of planning control consists of a change of use of any building to use as a single dwellinghouse, in which case a four year period applies.

It appears to officers that the breach of planning control occurring at this site commenced 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 WARD(S) AFFECTED**

Aldridge North and Walsall Wood

## **8.0 CONSULTTEES**

None.

## **9.0 CONTACT OFFICER**

Jenny Townsend – 01922 652610  
Development Management

10.0 **BACKGROUND PAPERS**  
Enforcement file not published

**Steve Pretty**  
**Head of Planning, Engineering and Transportation**

**Planning Committee**  
**1 September 2016**

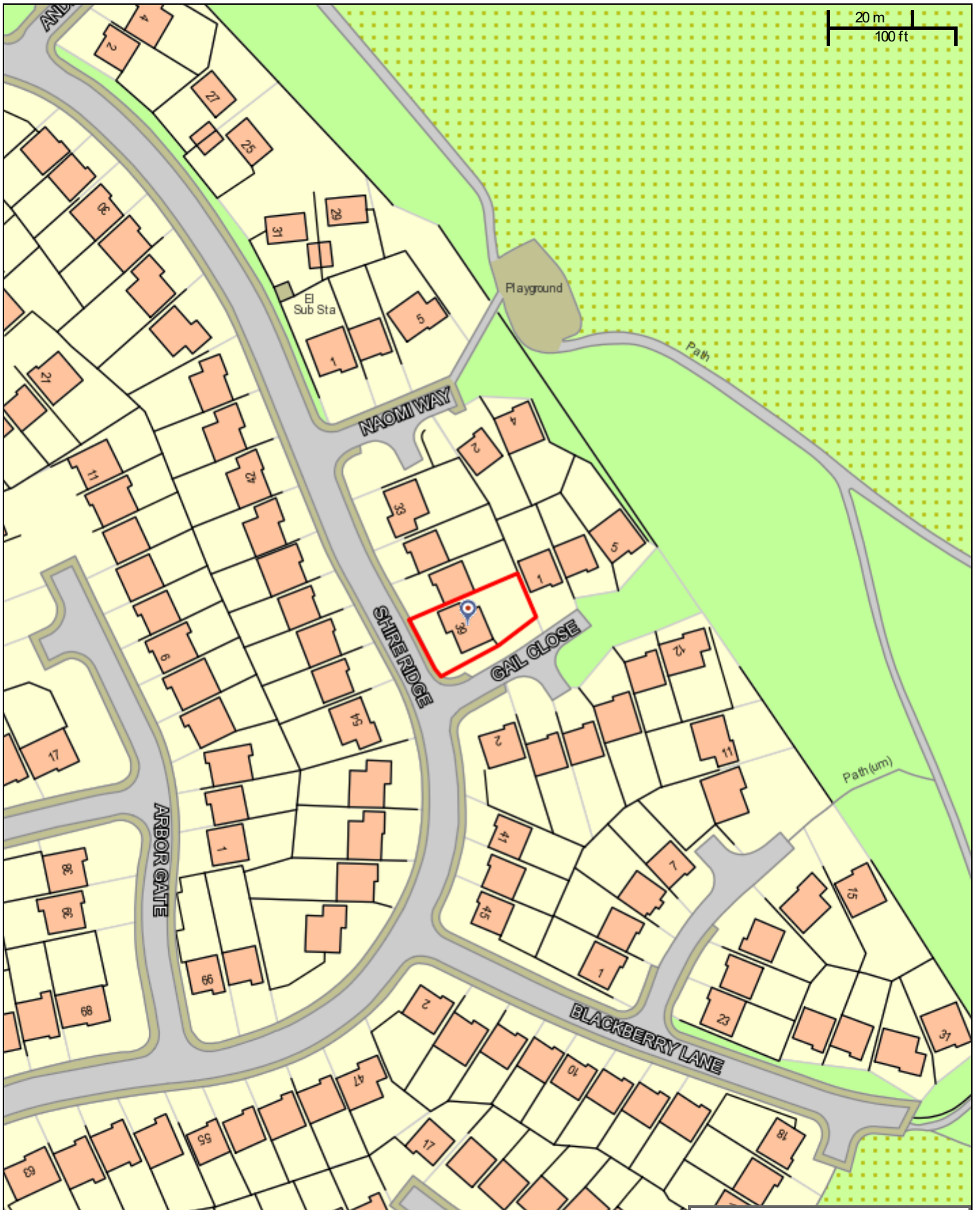
**12.0 BACKGROUND AND REPORT DETAIL**

12.1 Planning permission 14/0273/FL was granted for erection of a wall/fence with brick piers and brick wall and fence panels between to a maximum height of 2 metres from ground level. The boundary structure was approved alongside the highway verge in Gail Close. However the wall as built is now a maximum of 2.8m high. The front, most of the rear and part of the side sections of the wall/fence has been built in accordance with the previous approval but the wall of the rear section fronting onto Gail Close is double the height of the previous approval.

12.2 The wall/fence has been built higher due to the changes made to the ground levels and the need to use it partly as a retaining structure and provide privacy screening to the upper garden level so that the applicant can use the decked area and lawn. The height of the previously approved wall/fence would have only partly screened this area so that people in the garden would be visible from the street. This situation has only arisen because a rear single storey extension has been erected on half of the patio area and the upper level of the garden has been built up and levelled out to provide a seating area and lawn. Previously the patio was across the full width of the house and the garden had small tiers with the top part sloped up to the fence next to number 1 Gail Close.

12.3 Following the Council's refusal of the application, the applicants appealed to the Planning Inspectorate. This appeal was dismissed on 17 December 2015. The Inspector concluded that the development adversely affects the character and appearance of the area and is contrary to policies GP2 and ENV32 of the Walsall Unitary Development Plan, which seek to achieve good design having regards to, amongst other things, context, location and position, height and materials. In making their decision, the Inspector had regard to the height of the upper level of the rear garden but concluded that the level of privacy that the wall provides to this part of the garden does not justify the harm .... to the character and appearance of the area.

12.4 For the above reasons the erection of the higher wall/fence and made ground is considered detrimental to the character and appearance of the area and enforcement action is recommended to reduce the height to that approved under permission 14/0273/FL.



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Walsall Borough Boundary



**39 Shire Ridge, Brownhills**

Walsall Metropolitan Borough Council

Scale: 1:1250

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