



Planning Committee
7th July 2016

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION

4 Nursery View Close, Streetly, Walsall WS9 0YZ

1.0 PURPOSE OF REPORT

- 1.1 To request authority to take planning enforcement action in respect of a material change of use of land at 4 Nursery View Close, Streetly, Walsall WS9 0YZ from full residential use to part residential and part business use.

2.0 RECOMMENDATION

- 2.1 That authority is granted for the Head of Planning, Engineering and Transportation to issue an Enforcement Notice (material change of use) under the Town and Country Planning Act 1990 (as amended) requiring 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 that accurate and up to date notices are served to all interested parties.

Details of the Enforcement Notice

The Breach of Planning Control

Without the required planning permission, the making of a material change of use of land at 4 Nursery View Close, Streetly, Walsall WS9 0YZ from full residential use to part residential and part business use.

Steps required to remedy the breach

1. Permanently cease using land at 4 Nursery View Close, Streetly, Walsall WS9 0YZ for the parking of commercial vehicles associated with the Fish Distribution business and the magazine/comics selling business.

2. Permanently cease using land at 4 Nursery View Close, Streetly, Walsall WS9 0YZ for the storage and transfer of materials, goods and equipment associated with the Fish Distribution business and the magazine/comics selling business.

Period for compliance

Three months from the effective date of the Notice (the effective date of the Notice is 28 days after the Notice is served).

Reasons for taking Enforcement Action

1. The use of the land for purposes associated with the Fish Distribution business and the magazine/comic selling business including three commercial vehicles coming and going to the property and the manoeuvring and parking of commercial vehicles in a narrow cul-de-sac, results in noise, odour and disturbance that unacceptably reduces the level of amenity available to the surrounding occupiers of residential properties that impacts upon their enjoyment of their properties.

This use is therefore contrary to the aims and objectives of the National Planning Policy Framework and policies TRAN1 and TRAN2 of the Black Country Core Strategy and saved policies GP1, GP2, 3.6, 3.7, ENV10, ENV32 and ENV40 of Walsall's Unitary Development Plan.

2. The recent and frequent unauthorised disposal of approximately 30 litres of fish-contaminated melt-waters from refrigerated Fish vans via a roadside gully is considered unacceptable in terms of the environmental impact and has the potential to cause pollution

This is therefore contrary to the aims and objectives of the National Planning Policy Framework and policy ENV 10 of Walsall's Unitary Development Plan.

3.0 FINANCIAL IMPLICATIONS

A successful 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 by serving the Enforcement Notice.

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:

- Contribute to conserving and enhancing the natural environment and reducing pollution

Key provisions of the NPPF relevant in this case:

- ***NPPF 11 - Conserving and enhancing the natural environment***

Local Policy

Black Country Core Strategy

- TRAN1: Priorities for the Development of the Transport Network
- TRAN2: Managing Transport Impacts of New Development

Unitary Development Plan

- GP2: Environmental Protection
- Sections 3.6 and 3.7: Environmental improvement
- ENV10: Pollution
- ENV32b: Design and Development Proposals
- ENV40: Conservation, Protection and Use of Water Resources
- JP8: Bad neighbour industrial uses

Policies are available to view online at:-

http://cms.walsall.gov.uk/planning_policy

5.0 LEGAL IMPLICATIONS

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. 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(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.

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 use of the land overrules the owner's rights in respect of the above articles.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Streetly Ward

9.0 CONSULTEES

None

10.0 CONTACT OFFICER

Steve Evans: 01922 652607, Planning Enforcement Officer, Development Management; Email: steve.evans@walsall.gov.uk

11.0 BACKGROUND PAPERS

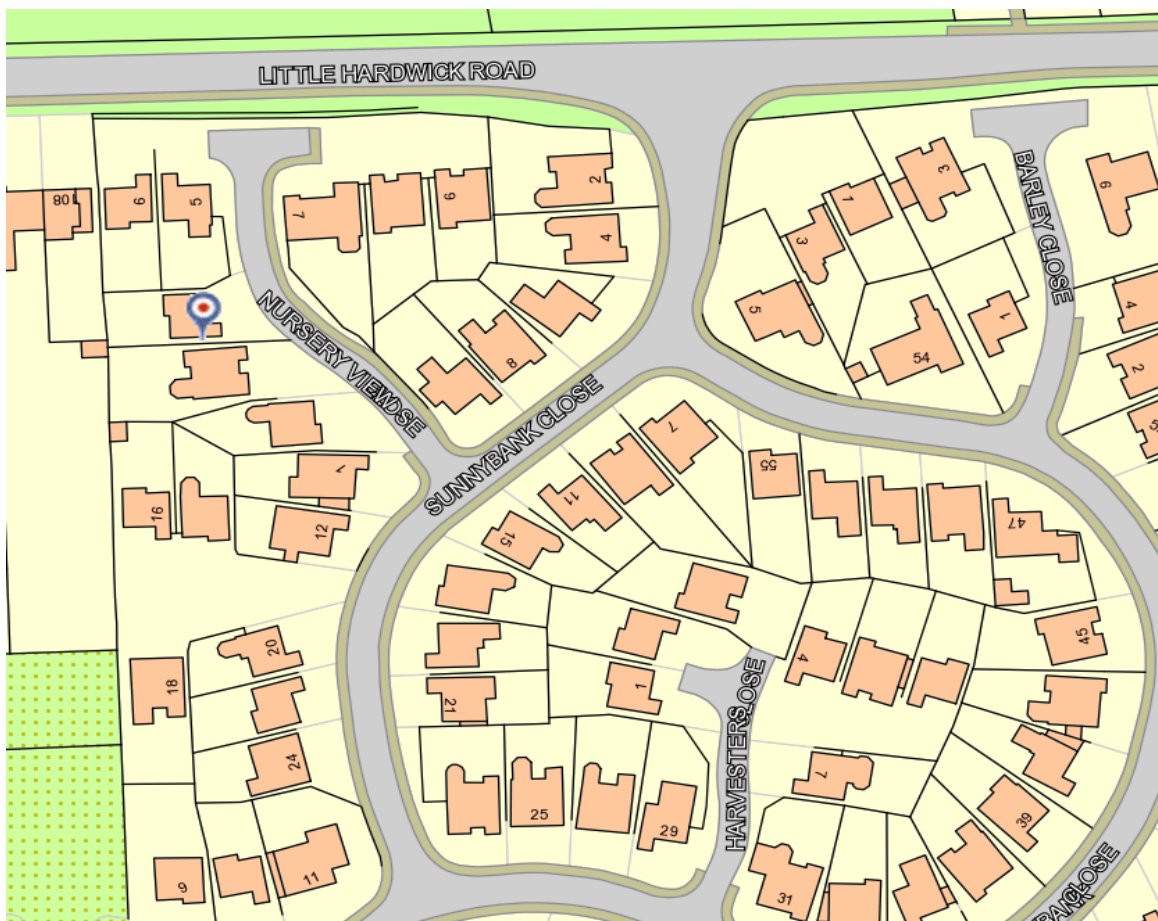
Enforcement file not published: Case reference E13/0080

Shawn Fleet: Group Manager – Planning, Development Management

Planning Committee - 7th July 2016

BACKGROUND AND REPORT DETAIL

- 12.1 The site is situated in a residential cul-de-sac. The road is narrow measuring only 5.15 metres approximately outside the frontage of the property and parking in the general vicinity of the property is limited. The two owners of the property reside there with their children. The owners use part of the property frontage to park up to three commercial vehicles used in connection with a Fish Distribution business and a magazine/comic selling business. In addition, the eldest child and their partner also live at the property and they are also involved in the Fish Distribution business, including parking a commercial vehicle at the property used in connection with the Fish Distribution business. The vehicles used in connection with the Fish Distribution business are refrigerated.
- 12.2 No evidence to date has been gathered in regarding the sale of fish directly from the property and as such the property is not deemed by the Council's revenues Officer to qualify for business rates. From a planning perspective, the impact on the local amenity is primarily from the noise, odour and disturbance caused by vehicle movements late at night/early in the morning and the occasional parking and manoeuvring of commercial vehicles on the highway within a narrow cul-de-sac in an otherwise quiet and peaceful residential area.
- 12.3 Numerous photographs and reports of noise, disturbance and smells has been provided by complainants and collected by officers. A location plan showing the residential area is shown below:-



12.4 Officers were first made aware of the allegations in 2013 when the owners started the fresh fish distribution business. Reports were received and significant amounts of evidence were provided alleging numerous concerns including:-

- the parking and manoeuvring of 5 or 6 vehicles vans on the premises and the highway at all times of the day and night
- employees coming and going throughout the day for fish collections and deliveries and dropping off their daily takings
- The amenity looking unsightly with paraphernalia connected to the business cluttered around the property; for example, buckets and bowls stacked by the front door used to collect excess foul smelling fish-waste/liquid draining from the refrigerated vehicles
- Potential to attract vermin
- Smells and odours
- This could attract vermin and make a real health hazard.
- Noise from the refrigeration units in the vehicles which are in constant
- Engine noise from vehicles connected to the business
- Cars and motor bikes of employees of the business driving to 'work' leaving their own vehicles either on the kerbside all day or on the front lawn
- Cars parked on a front lawn of a property are unsightly
- Storage of large ice-packs in the rear garden
- An occasional skip used to take rubbish from the business away
- Storage of industrial-sized clothes horses in the rear garden

12.5 Investigations were undertaken and steps were taken by the owner to reduce the number of vehicles at the property that were connected to the business. However, further complaints were received in 2016 with significant evidence provided to substantiate the alleged breaches of planning control.

12.6 A site visit was undertaken to the property on 31st May 2016 and the case officer was advised by the owners that:-

- The main businesses are located in Birmingham Wholesale Fish Market, Lichfield, Bromsgrove, Nuneaton and Church Stretton, mainly market stalls, where the fish is sold
- 3 vans used primarily for their businesses; two of these are refrigerated for the fish business and one van is used in connection with a comic/magazine selling business at local car boots
- 1 refrigerated van only for the fish business is parked on the drive and the other 2 vans are now parked at a local farm due to the problems caused recently between the neighbours
- Mr. Owen works 11 pm to 7 am so there is the potential for late night and early morning disturbances to neighbours through engines starting/van doors banging
- Small amounts of unsold fish are kept on the Fish van overnight and then transferred from one van to another for resale the next day
- Up to 15 litres a week of smelly liquids from the refrigerated van is collected in bowls and disposed of down a road gully drain. When there were 3 refrigerated vans this amounted to 45 litres a week of liquid disposed of by this method. Mr and Mrs Owen informed me that they add "Zoflora" disinfectant to the liquid

before disposing of it down the drain so it wouldn't smell as much and reduce the pollution impact

- Four fish knives, 2 sets of industrial weighing scales, 2x aprons, 3x tea towels, 2x dish cloths are transferred from the van to the house for cleaning 4x a week
- Storage in the house of materials connected to the business use is minimal – 2x 45 litre plastic tubs and a four-box pedestal storage system only
- Soiled materials from the fish business are washed at home daily – 5x half-loads a week are washed at home
- Mr. Owen stated he could not fully relocate his business to the local farm as it does not open 24/7 and as he works anti-social hours he needs access to his van at all times of the day and night. He also stated that storing 2 vehicles at the farm was costing him £60 a week.

12.7 Following the site visit, the owner contacted officers on 4th June 2016 and advised that he had stopped disposing of the smelly liquids down the drain. Instead, once the collecting bowls had been filled with smelly liquid from the refrigerated van he sealed the container and took it to the Wholesale Fish Market in Birmingham for disposal there.

12.8 The officers concluded that, on the whole, the impacts to the amenity from the reduced business use had decreased to a point where it was deemed that a material change of use had not occurred. However, based on previous investigations, it was decided to keep the case open to monitor the business due to its intermittent nature and the potential for significant effects on the amenity of the local area.

12.9 On 4th June 2016 a report was received stating that the owner had reverted to storing two refrigerated vans at the residence. Subsequently, further reports were received on 6th and 7th June 2016 and significant evidence has been provided to show that the owner has reverted back to his previous levels of business activity at the property.

12.10 For the reasons explained earlier in the report it is considered that the continued business use of the property by more than one vehicle connected to the businesses is causing an impact on the local amenity. Information has recently been requested from the owner to confirm the current level of use but he has not responded.

12.11 The Business Employment Growth Officer for Walsall MBC has recently contacted the owner and attempts will continue to be made to advise the owner of the need to relocate his business to a more suitable site. In the intervening period, authorisation from the Planning Committee for formal enforcement action is being sought whilst further monitoring of the site continues.

Steve Evans
Planning Enforcement Officer

27th June 2016