



PLANNING COMMITTEE
1 September 2016

REPORT OF HEAD of PLANNING ENGINEERING and TRANSPORTATION

100 Whitehorse Road, Brownhills WS8 7PG

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the carrying out of building operations without the required permission namely installation of a high security bike shed in the front garden of number 100 Whitehorse Road.

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 siting of a high security bike shed on the front driveway of the house immediately adjacent to the footway ("the unauthorised development").

Steps required to remedy the breach:-

1. Remove the bike shed.

Period for compliance:-

One month.

Reason for taking Enforcement Action:-

The development requires planning permission and is out of keeping with the character of the area and has a detrimental impact on highway safety as it blocks inter-visibility between pedestrians and vehicles using the driveways of numbers 100 and 102 Whitehorse Road.

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:

The National Planning Policy Framework including paragraphs 56, 57, 58, and 64, Walsall's Saved Unitary Development Plan policies, in particular GP2, ENV32 and T7.

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

Brownhills

8.0 CONSULTEES

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

12.0 BACKGROUND AND REPORT DETAIL

Following an enforcement complaint about the installation of a bike shed on the front driveway at 100 Whitehorse Road the homeowners submitted an application for a Certificate of Lawfulness for an existing use or development on 25 November 2015. The application was invalid as no fee was included or a location plan with a red line around the site.

A letter was sent on 10 December 2015 to the land owner, who responded by email on 8 January 2016. The landowner stated they had paid the £86 fee and was in the process of getting the 1:1250 scale location plan. The email stated that the bike shed was not fixed to the ground and had no impact on neighbours (who were happy to sign a form for her if needed) and they had film footage of the neighbouring property reversing of their drive without hindrance..

The certificate of lawfulness was reviewed on 11 February 2016 and concluded that the bike shed could not be considered permitted development and as such a certificate could not be issued.

The applicant was informed of this and requested to withdraw the application. Notification of withdrawal was required in writing and on receipt of this, the fee could be returned. The applicant was advised to remove the bike shed as it is considered out of keeping with the character of the area and has a detrimental impact on highway safety as it blocks intervisibility between pedestrians and vehicles using the driveways of numbers 100 and 102 Whitehorse Road.

In March 2016 neighbours advised that the bike shed was still blocking visibility to their driveway.

A visit to the site on 11 March 2016 revealed that the bike shed was positioned directly adjacent the back of the pavement in Whitehorse Road and the driveway of number 100 Whitehorse Road. The shed is over 1.0 metre high, light cream in colour and is considered an incongruous feature in the street scene, out of keeping with the character of the area.

The applicant was contacted on 15 April 2016 asking whether they intended to withdraw the application and if so that they respond within 14 days to confirm their intentions. The land owner was cautioned, that failure to act could result in the matter being reported to Planning Committee at which enforcement action would be recommended to seek removal of the bike store,.

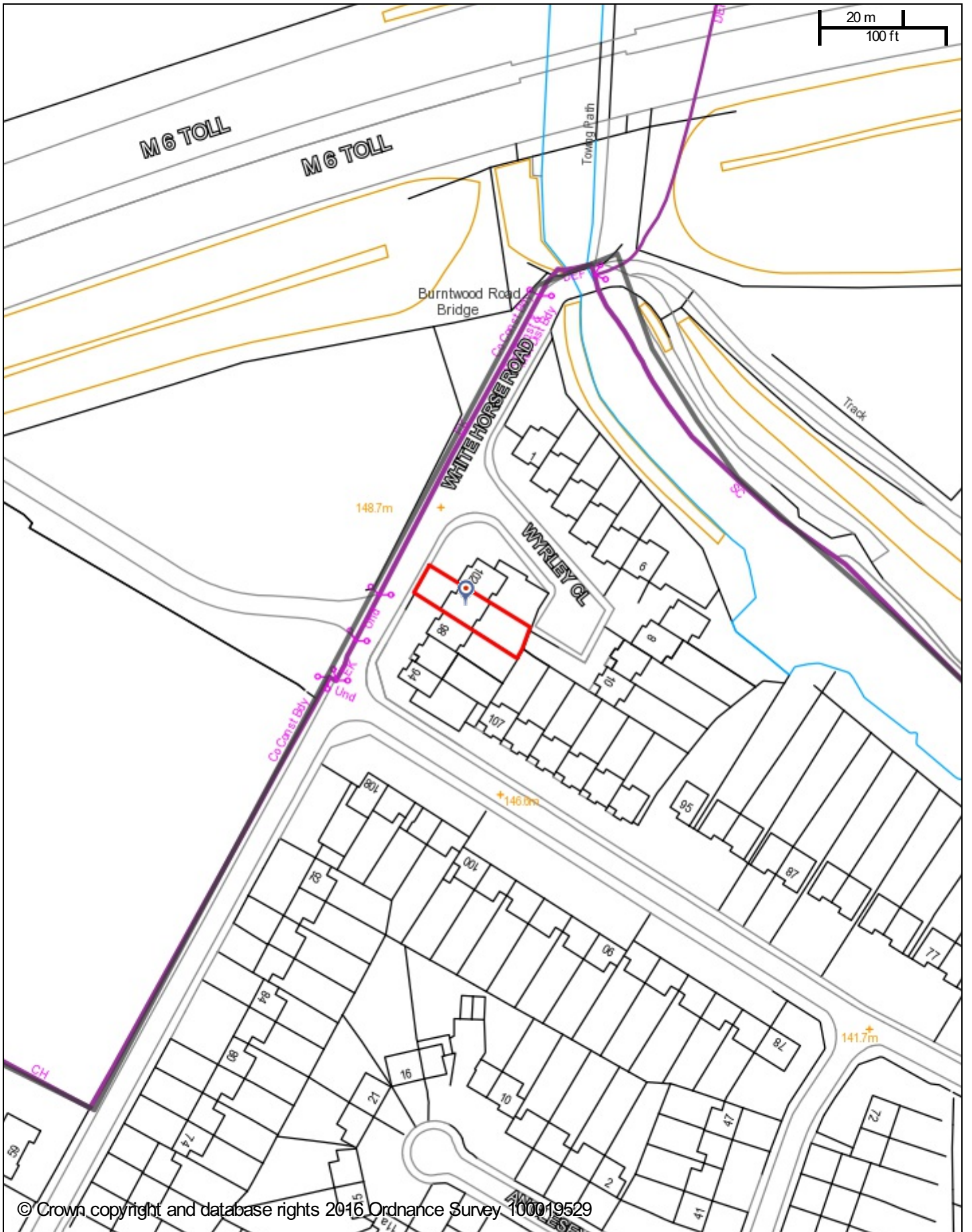
The land owner replied on 25 April 2016 stating that she had written to the Council and not had any response. The land owner was emailed on 12 May advising of why the bike shed was not permitted development. A request for the shed to be removed was made with a 28 day deadline.

An email was received on 20 June 2016 requesting that the applicant's fee is returned immediately; that they had been told by Mr Fox that she could keep the shed and had foregone the opportunity of having a refund from the company they



brought it from and now wants the Council to reimburse her £350 to remove the shed.

The land owner states there are lots of breaches on Whitehorse Road and want to bring in details for planning committee to consider. The breaches the land owner has raised with the Council will be investigated separately and considered whether they constitute planning breaches and if so, whether any of the breaches are expedient to pursue.

Based on the information before officers and considering the breach of planning control and the impacts it brings to the locality, it is considered, that in this instance to be expedient to pursue enforcement action. The planning committee is requested to authorise the pursuance of enforcement action.



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 Walsall Council	100 Whitehorse Road, Brownhills		
	Walsall Metropolitan Borough Council		
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