



## **PLANNING COMMITTEE**

**Date: 15<sup>th</sup> July 2021**

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

**Address: 53 Charlemont Road, Walsall, WS5 3NQ**  
**Reference no. E20/0160**

#### **1.0 PURPOSE OF REPORT**

- 1.1 To advise Members of ongoing issues and to request authority to pursue planning enforcement action against the following unauthorised departure from planning permission granted under 17/0501 (and amended by 18/0463)
- a) Without planning permission, the erection of a brick wall and pillars on the front boundary
  - b) Without planning permission, the laying of a hard surfaced driveway and parking area.
  - c) Without planning permission the formation of a centralised access along the front boundary
  - d) Without planning permission the alteration of ground levels on the site frontage

#### *Background*

1.2 The site comprises a detached replacement dwelling, situated within a street scene comprising of detached and semi-detached houses of varied size, mixed design and differing facing materials.

Prior to the construction of the replacement dwellinghouse under application 18/0463, the frontage at No.53 Charlemont Road was characterised by a high hedge adjacent to the public footpath, with a selection of protected trees behind, and a singular access to the north east corner of the site.

The frontages along Charlemont Road are typically dominated by open frontages, dwarf walls and boundary hedges.

The approved layout under 18/0463 consists of two vehicle access points, one at each end of the 30m road frontage. The existing roadside hedge and picket fence along the front boundary was intended to remain and approved as such (2.2m high according to details of 18/0463). Inside the boundary, the greater part of front curtilage was to be lawn, though formerly protected trees have been removed with approval.

The development has not been implemented in accordance with approved plans. Instead, it appears that ground levels have been altered to construct a brick wall and pillars, either side of a new centralised access point along the road frontage. To the rear, most, if not all the front curtilage has been hard surfaced. The ground slopes down from left to right in the streetscene, though the wall has been constructed horizontally. Consequently, the wall is considerably higher in the lower (northwest) corner.

A planning application was recently submitted under ref 21/0498, intended to regularise the unauthorised departure from approved plans. The application included some soft landscaping and a proposal to install black metal railings between the brick pillars on top of the wall. The application was withdrawn prior to consideration by Planning Committee of 21<sup>st</sup> June, on account of being recommended for refusal at the time. The Council's Conservation Officer commented on this application, noting that No 42 and 44 Charlemont Road are considered non-designated heritage assets on account of their historical and architectural interest.

The brick wall structure appears now complete, though gates and railings have not yet been installed. Stone effect cappings on the pillars and wall have been added. No soft landscaping has been planted on the road frontage.

The brick pillars range from 1.8m – 3.1m high above existing ground levels.

The face of the wall ranges between 0.8m and 2.0m high on the frontage.

## 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

- a) Without planning permission, the erection of a brick wall and pillars on the front boundary of the site approved for development under 18/0463.
- b) Without planning permission, the laying of a hard surfaced driveway and parking area.
- c) Without planning permission the formation of a centralised access along the front boundary.
- d) Without planning permission the alteration of ground levels on the site frontage.

### 3.2 Steps required to remedy the breach:

In respect of (a) above:

Demolish the boundary wall and pillars on the frontage facing Charlemont Road, and where enclosing the new access and driveway. Entirely remove all associated materials from site.

In respect of (b) above, authority is sought to further investigate the area of hardstanding and include the removal of any appropriate area once drainage implications have been fully understood.

In respect of (c) above, authority is sought to take appropriate enforcement action against the new central access arrangements, after further consultation with the Local Highway Authority and an assessment of possible highways harm has been completed.

In respect of (d) above, authority is sought to further investigate the land level changes and include the reinstatement of any appropriate area to the original levels once drainage implications have been fully understood.

### 3.3 Period for compliance:

**3 months from when the notice takes effect** - to undertake the works as set out in paragraph 3.2

### 3.4 The reasons for taking enforcement action:

In respect of the boundary wall (a), the development is considered a dominant and incongruous addition to the streetscene which is currently characterised either by largely open plan front gardens and generally low level front enclosures of either dwarf type brick walls or hedges. The wall and pillars together form a hard boundary feature, which together with access arrangement are visually prominent and intrusive, causing harm to the character of the site itself and wider area, and to the significance of the nearby non-designated heritage assets. For these reasons the boundary wall is considered contrary to the guidelines of the NPPF and the requirements of ENV2 and ENV3 of the Black Country Core Strategy (2011) and saved policies 3.6, GP2 and ENV32 of the Walsall Unitary Development Plan (2005), and is also not consistent with DW3 and DW9 of the Designing Walsall Supplementary Planning Document.

A. Ives - Head of Planning and Building Control.

Members are requested to note that the option of reducing the height of the pillars/and or wall has been considered against permitted development rights which may otherwise apply to permit the construction of a similar wall up to a maximum of 2m high without express planning permission, albeit it at a slightly increased distance of 0.3m away from the back of the footpath (the current unauthorised boundary wall is measured at 1.7m away from the back of footpath).

Permitted development rights provide scope for a wall not exceeding 2m in height where it is not adjacent to a highway. In this instance, it is considered that a large part of the harm caused by the wall and pillars arises from the broad massing and expanse of the lower part of the structure across the frontage, not merely its excessive height. The unauthorised wall is in any case considered to be located adjacent to the highway failing to provide at least a 2m set-back from the back of footpath and is not therefore permitted development.

To that end, a limited height reduction would unlikely restore sufficient visual amenity in the streetscene. Further, because the ground level is sloping the wall and pillar cappings have been constructed horizontally, the requirements of an enforcement notice seeking part removal of the wall and pillars would likely be unworkable. For these reasons it is considered that demolition to ground level achieves is a simpler solution whilst still being proportionate to the harm.

In respect of hard standing (b), central access (c), and land levels (d), it is considered that the combination of a change in land levels, creation of a large expanse of hard surfacing and central access arrangement has the potential to result in unacceptable surface water run-off onto adjacent land and public highway, unacceptable highways safety impacts and an unacceptable overall appearance contrary to the guidelines of the NPPF and the requirements of ENV2 and ENV3 of the Black Country Core Strategy (2011) and saved policies 3.6, GP2, ENV32 and T13 of the Walsall Unitary Development Plan (2005), and is also not consistent with DW3 and DW9 of the Designing Walsall Supplementary Planning Document. Members are requested to provide officers with the opportunity to further investigate the specific harm arising from each of these elements prior to their inclusion within any final enforcement notice as set out above.

#### **4.0 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. Planning applications may also be submitted that require an application fee.

#### **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](http://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*".

All the core planning principles have been reviewed and those relevant in this case are:

- Always require high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- Find ways to enhance and improve places in which people live their lives
- 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 12 – Achieving well-designed places
- NPPF 4 – Decision making

58. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

## 5.2 Local Policy

Black Country Core Strategy

- ENV2 Historic Character and Local Distinctiveness
- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2: Environmental Protection
- ENV32: Design and Development Proposals
- T13: Parking Provision for Cars, Cycles and Taxis

Designing Walsall SPD

Policies are available to view online:

[http://cms.walsall.gov.uk/planning\\_policy](http://cms.walsall.gov.uk/planning_policy)

- DW3: Character
- DW9: High Quality Public Realm

## 6.0 LEGAL IMPLICATIONS

- 6.1 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.
- 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. 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.
- 6.3 The local planning authority considers the breach of planning control that has occurred at this site commenced within the last 4 years.
- 6.4 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.
- 6.5 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.
- 6.6 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 and its use 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**

The enforcement action will improve the visual amenities of the environment and protect the amenities of the surrounding neighbours.

## **9.0 WARD(S) AFFECTED**

9.1 Park Hall

## **10.0 CONSULTEES**

10.1 None

## **11.0 CONTACT OFFICERS**

11.1 Ryan Harris - Enforcement Officer

11.2 Frank Whitley – Senior Planning Enforcement Officer

## **12.0 BACKGROUND PAPERS**

12.1 Enforcement file E20/0160 not published.

**PLANNING COMMITTEE**

**DATE: 15<sup>th</sup> July 2021**

**13.0 BACKGROUND AND REPORT DETAIL**

13.1 A plan showing the location of the site considered in breach of planning control is attached to this report.

13.2 Number 53 Charlemont Road is a detached house. Front access is afforded via Charlemont Road. The property also has a garage which is accessible via Charlemont Road which joins the highway.

13.3 In September 2020, the Council received a complaint that the owner of a residential property at 53 Charlemont Road had begun to develop the boundary treatment different to that stated on the approved plan.

13.4 On 9<sup>th</sup> September 2020, the Local Planning Authority visited 53 Charlemont Road taking digital images of the site, including the land surrounding.

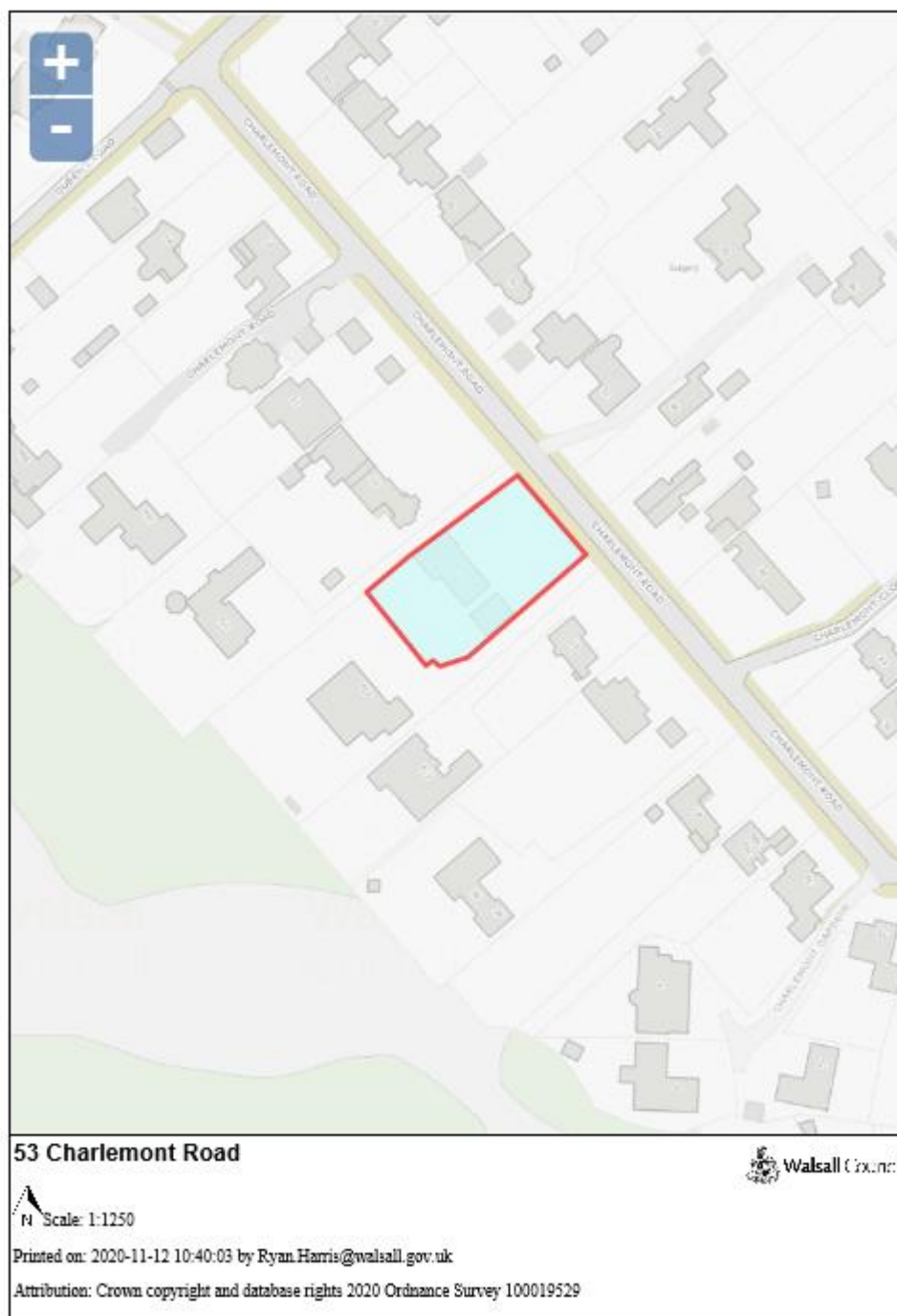
13.5 On reviewing images it became apparent that the owner has built a boundary wall in place of the agreed picket fencing stated on the agreed planning permission.

13.6 On 10<sup>th</sup> September 2020, the Local Planning Authority wrote to the owner explaining the works were unauthorised and setting out actions required to remedy the breach including a reduction in height or the submission of a retrospective planning application for consideration.

13.7 On 15<sup>th</sup> January 2021, the Local Planning Authority wrote to the owner again to advise that further works in the creation of a single central access was a direct breach of the previous planning permission and set out remedial actions including advice that a planning application for the retention of the boundary wall was not likely to be successful given the harm arising to the character of the area.



- 13.8 On 31st March 2021 a third application was submitted (reference 21/0498) which sought to retain the unauthorised boundary wall and the inclusion of further railings on top and a sliding vehicle gate. This application was withdrawn at the request of the applicant on 21st June 2021.
- 13.9 Enforcement action should be commensurate with the breach of planning control to which it relates. It will normally be inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity. This is often referred to as the **expediency** test.
- 13.10 When assessing whether to instigate enforcement action the committee are advised that the following needs to be considered:
- i. the proposed action must be in the public interest
  - ii. the breach must be sufficiently harmful to justify taking action
  - iii. the proposed action must be reasonable and commensurate with the breach in planning control to which it relates
  - iv. the action undertaken should be cost effective
  - v. whether or not the development is in accordance with planning policies.
- 13.11 The wall and pillars together form a hard boundary feature, which together with access arrangement are visually prominent and intrusive, causing harm to the character of the site itself and wider area, and to the significance of the nearby non-designated heritage assets. For these reasons the boundary wall is considered contrary to the guidelines of the NPPF and the requirements of ENV2 and ENV3 of the Black Country Core Strategy (2011) and saved policies 3.6, GP2 and ENV32 of the Walsall Unitary Development Plan (2005), and is also not consistent with DW3 and DW9 of the Designing Walsall Supplementary Planning Document.
- 13.12 The hard standing, central access, and land levels in combination create a large expanse of hard surfacing and central access arrangement has the potential to result in unacceptable surface water run-off onto adjacent land and public highway, unacceptable highways safety impacts and an unacceptable overall appearance contrary to the guidelines of the NPPF and the requirements of ENV2 and ENV3 of the Black Country Core Strategy (2011) and saved policies 3.6, GP2, ENV32 and T13 of the Walsall Unitary Development Plan (2005), and is also not consistent with DW3 and DW9 of the Designing Walsall Supplementary Planning Document. Subject to further investigation as set out in the report, it is considered to be expedient to take enforcement action.
- 13.13 Therefore, the recommended enforcement action is considered expedient as the breaches are sufficiently harmful. The action is reasonable and commensurate with the breaches, cost effective and in accordance with planning policies.



A. Ives - Head of Planning and Building Control.