

WARDS AFFECTED:
BRIERLEY HILL

DEVELOPMENT CONTROL COMMITTEE 2nd February 2009

JOINT REPORT OF THE DIRECTOR OF LAW AND PROPERTY AND THE
DIRECTOR OF THE URBAN ENVIRONMENT

ENFORCEMENT

LOCATION 11 Anchor Hill, Brierley Hill,

REF A/078/03/01

BACKGROUND

- 1 The purpose of this report relates to the resolution of the Development Control Committee of the Committee Meeting held on 22nd September 2008 in respect of the determination of the retrospective planning application P08/0597 concerning the erection of the new three bedroom bungalow at 11 Anchor Hill, Brierley Hill,
- 2 Members may recall a retrospective planning application P08/0597 was refused planning permission, with a second recommendation to consider the expediency of taking enforcement action, pending the receipt of further information.
- 3 Since the Committee Meeting, the Council has issued a Planning Contravention Notice dated 9th October 2008 against the registered owner of the property to ascertain further information about the building and its use. The Notice required the recipient to submit specific information to the Council within a twenty one day period. The Council received the Notice completed dated 7th December 2008, following the owner being advised prosecution proceedings would be taken, if the Notice was not complied with. The Notice has now been complied with and information has been provided regarding the building and its use.
- 4 The owner of the property has confirmed that the construction of the building commenced in 2003 and was completed in 2004. It was confirmed that the building was built for residential accommodation and an office. It was also detailed the building was occupied in 2004. The owner has also cited the intention to resubmit a new planning application to overcome the reasons for refusal under P08/0597, and if the application is refused, an appeal will be lodged against the planning refusal.
- 5 The planning records have been checked which revealed no planning appeal has been lodged against the refusal of the planning application P08/0597. A new planning application P08/1853 has however been

submitted relating to the erection of 1 No. 3 bedroom bungalow with associated access (resubmission of refused application P08/0597) (Retrospective).

- 6 The Council's Building Control records have also been checked which revealed no building regulations have been submitted relating to the erection of the building. Building Control Officers have since undertaken investigations regarding the property, and have established no formal action can be taken due to the building having been in place for over one year.
- 7 The Council's Revenue Department records has also been checked which detailed that the owners of the land were liable for paying Council tax in a caravan at the address between the period of 27th April 2003 to 21st January 2007. The owners have since paid Council tax at the address since 1st February 2007.
- 8 The provisions of Planning Policy Guidance Note 18: 'Enforcing Planning Control' and Section 171B of the Town and Country Planning Act 1990 (as amended) have been reviewed, which refers no enforcement action can be taken after the period of four years, where a change of use of a building to a single family dwelling house has taken place. It is also cited that no enforcement action can be taken against a building that has been substantially completed, after a period of four years.
- 9 Information provided by the owner/applicant has confirmed the building was completed in the year 2004 and the building has also been occupied for a period of four years. Based upon this information, there may be a legal position that the building and its residential use is lawful and may now be immune from formal enforcement action. This clearly, is a material consideration for recommending enforcement action in relation to this case.
- 10 A further material consideration for enforcement action is whether there is any potential harm to human health, with the building being built on a former industrial land. As members may recall, no information was submitted with the planning application P08/0597 to demonstrate what measures had been carried out to provide a suitable living environment, when considering the former use of the land, and also adjacent industrial premises to this site. Consultation has been sought from the Council's Environmental Protection Service to review whether the current residential use of the building is acceptable with regard to any potential land soil contamination or land gasses within the site. The consultation has confirmed that there is potential for contamination to be present; however there is no evidence that proves contamination is actually causing any unacceptable risk to human health or the wide environment.

RECOMMENDATION

- 12 The material considerations of the case have been assessed, particularly with regard to the legal position of the prospect of the building and its residential use having immunity from formal enforcement action, due to the time period that the building has been in place and the period of time the building has been used for residential purposes.
- 13 In accordance with the provisions of Planning Policy Guidance Note 18: 'Enforcing Planning Control', it is not considered expedient to take enforcement action against the building and its residential use.