

DEVELOPMENT CONTROL COMMITTEE

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

ENFORCEMENT ACTION

PURPOSE OF REPORT

1. To consider whether enforcement action should be authorised in respect of the case(s) referred to in the Appendix to this report.

BACKGROUND

2. Section 172(1) of the Town and Country Planning Act 1990, provides that, where it appears to a Local Planning Authority that there has been a breach of planning control then the Authority may issue an Enforcement Notice requiring the breach to be remedied. However, before making this decision, the Authority must consider that enforcement action is expedient having regard to the provisions of the development plan and to any other material consideration.
3. A breach of planning control is as follows:
 - (a) Where development has been carried out without the grant of planning permission or;
 - (b) If any condition or limitation subject to which planning permission was granted has not been complied with
 - (c) A material change of use of land has taken place.
4. For certain types of breach of planning control an Enforcement Notice only be issued within four years from the date of the breach. The four year rule relates to:
 - (a) The carrying out without planning permission of building, engineering, mining or other operations in, on over or under land.
 - (b) Change of use to use as a dwelling house.
5. In the case of any other breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
6. Under Section 187A of the Town and Country Planning Act 1990, the Council may issue a breach of condition notice against which there is no right of appeal. Failure to comply with the notice results in a summary offence. This power should only be exercised where the planning condition is clear and precise. There are two statutory defences to a prosecution namely:

- (a) The defendant took all reasonable steps to secure compliance with the condition.
 - (b) The defendant no longer has control of the land to which the enforcement notice relates.
7. The Enforcement Notice must be served on the owner and occupiers of the land and any person having an interest in the land which, in the opinion of the Authority, will be materially affected by the Notice. In addition, the notice must be served at least 28 days before the date on which it comes into effect.

The notice must:

- (a) Specify the breach of planning control
 - (b) The steps required to remedy the breach or any steps which are to be taken either to make the development comply with the planning permission previously granted or remove or alleviate any injury to amenity caused by the development.
 - (c) Specify the period for compliance.
 - (d) The reasons why the Authority consider it expedient to issue an Enforcement Notice.
8. Any person served with an Enforcement Notice other than a breach of condition notice may appeal against it to the Secretary of State for the Environment at any time before the Notice comes into effect. Pending the outcome of any such appeal the Enforcement Notice will be of no effect.
9. Circular 10197, Planning Policy Guidance 18 from the Department of the Environment, Transport and the Regions makes it clear that enforcement action should only be taken when it is clearly justified on planning grounds and there is no suitable alternative means of remedying a clear breach of planning control. In other words, an Enforce Notice should only be issued as a last resort. If the Authority consider it unlikely that they would grant planning permission for a development they should warn the developer or his agent that they may be compelled to issue an Enforcement Notice unless the breach of planning control is remedied.

FINANCE

10. There are no direct financial consequences arising from this report although the Committee may wish to bear in mind that, on any subsequent appeal to the Secretary of State for the Environment, an award of costs may be made against the Council if it is found that Enforcement Action was unreasonable, vexatious or frivolous.

LAW

11. The relevant statutory provisions and Planning Policy Guidance from the Department of the Environment, Transport and Regions have been referred to in paragraph 2,6 and 9 of this report.

EQUALITY IMPACT

- 12. The proposals take into account the Council's Equality and Diversity Policy.

RECOMMENDATION

- 13. It is recommended that enforcement action should be authorised in respect of the case(s) referred to in the Appendix to this report.

John Pye

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DIRECTOR OF LAW AND PROPERTY

John L Miller

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DIRECTOR OF THE URBAN ENVIRONMENT

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AGENDA ITEM NO.

**WARDS AFFECTED:
COSELEY EAST**

DEVELOPMENT CONTROL COMMITTEE 5 FEBRUARY 2007

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

ENFORCEMENT

LOCATION 10 SALCOMBE GROVE, COSELEY

REF S/003/01/02

BACKGROUND

- 1 The report relates to the current use of a semi-detached dwelling house known as 10 Salcombe Grove, Coseley, Dudley.
- 2 The Department originally received a complaint in September 2006 relating to the use of the dwelling house for the storage of skips and the parking of a commercial vehicle. The original complaint enquiry was closed following assurances from the owner that the activities would cease. Monitoring of the site also confirmed that the storage element appeared to have ceased at the time of the inspections.
- 3 Following further concerns about the use of the property, a further site inspection was carried on 1st December 2006. During this inspection, a commercial vehicle used for transporting skips was seen parked on the pavement outside the property. The owner indicated that the vehicle had broken down and intended to be towed away later that day.
- 4 During that inspection, it was also noted a large trailer section was stored on the front garden of the dwelling house. This trailer contained spoil debris. The owner indicated that the trailer contained soil to be used for landscaping the garden. The owner indicated that the trailer section would be removed by the 4th December 2006.
- 5 A revisit on the 4th December 2006 revealed that the commercial vehicle had been removed from the pavement area. However the trailer section remained stored on the land.
- 6 A Planning Contravention Notice (PCN) was served on the owner on 7th December 2006 alleging the material change of use of the dwelling house for the storage of a commercial skip transporting vehicle and

trailer section. The notice required the owner of the dwelling house to return the completed notice to the Council by 28th December 2006.

- 7 On 8th January 2007, as the PCN had not been returned, a further site inspection was undertaken. At the time of the inspection, a commercial vehicle used for transporting skips was seen parked stationary on the frontage of the dwelling house. A further parked commercial vehicle was parked on the highway adjacent to the dwelling house with a container unit positioned on the rear of the vehicle.
- 8 Based on the assessment of the storage and the parking of a commercial vehicle at the premises, it has been appraised that the vehicle would not be considered to be ancillary to the residential use of the dwelling house. It is further considered that the parking of a commercial vehicle used predominantly for an industrial /transporting use has resulted in a change to the street scene within a primarily residential area. On this basis, it has been determined that the residential property has undergone a material change of use to a mixed use and is considered to detrimentally impact on the amenity of the immediate residential area.
- 9 In respect of the detrimental impact resulting from the parking of a commercial vehicle at the dwelling house, it is considered that it would be expedient for the Council to take enforcement action to remedy this planning breach.

BREACH OF PLANNING CONTROL

- 10 Without planning permission, the change of use of the premises from a single family dwelling house to part residential use and part use for the parking of a commercial vehicle

WHAT IS REQUIRED TO BE DONE

- 11
 - i) Discontinue the use of the land for the purpose of storing/parking of a commercial vehicle and trailer/skips used for commercial purposes
 - ii) Remove the commercial vehicle from the land and any trailer or skip brought thereon in connection with the said use

TIME FOR COMPLIANCE

- 12 i)-ii) 4 months beginning with the day on which the Notice is served.

REASONS FOR ENFORCEMENT

- 13 The storage of a trailer /skip and the parking of a commercial skip transporting vehicle used in connection with a business use, at the frontage of the dwelling house, adversely affects the amenity, by

reason of noise, disturbance and unsatisfactory outlook, of which the residents of the surrounding properties in Salcombe Grove can reasonably expect to continue to enjoy. As such the storage of the trailers/skips/and parking of the commercial vehicle is contrary to Policy DD4- Development in Residential Area of the Dudley Adopted UDP (2005).





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10 Salcombe Grove, Coseley

Enforcement Report to Planning Committee

Dudley
METROPOLITAN COUNCIL

DEPUTY CHIEF OF THE URBAN ENVIRONMENT

Director of the Urban Environment

John Hillier

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