
Dudley Metropolitan Borough Council

Development Control Committee – 21st March 2006

Report of the Director of the Urban Environment

Site at Corner of Victoria Street and Dudley Road, Brierley Hill

Purpose of Report

- 1 To inform the Committee of the situation regarding previously authorised enforcement action at the site on the corner of Victoria Street and Dudley Road, Brierley Hill.

Background

- 2 The proposed demolition of the car wash and the erection of 18 no. two bedroom flats with new access to the highway was presented to the Development Control Committee on 6th July 2004 (P04/0467). Members resolved to approve the planning permission subject to conditions and the applicant entering into an Agreement under section 106 of the Town and Country Planning Act 1990 (As Amended).
- 3 The details of the section 106 Agreement were agreed with the Council and this agreement was subsequently signed. The decision notice was subsequently issued for approval.
- 4 In June 2005 the Council became aware that the development at the site had been commenced prior to the signing of the section 106 agreement and therefore prior to the granting of planning permission. The developers were subsequently contacted on 24th June 2005 and informed that the development was unauthorised and that all work on the site should be ceased with immediate effect. To clarify this, the developer was also written to on 27th June 2005 and was advised to cease developing the site due to the unauthorised development.
- 5 Due to the continuation of the development and the failure to comply with the conditions it was deemed appropriate to seek authority to take enforcement action from the Development Control Committee. This authority was duly given at the 5th September 2005 committee meeting.

- 6 The outstanding conditions relating to contamination required comprehensive written site investigation strategy which would identify any contaminants and permit the risk based assessment of the development site. A similar investigation strategy was also required to identify any methane & carbon dioxide. In each case where contamination or methane and/or carbon dioxide was found, a scheme of remediation was required to be agreed with the Council and duly implemented.
- 7 Members will be aware of the standard covering report in the agenda where enforcement action is being sought as a result of non-compliance with a condition it may be possible for the action to be taken in one of two ways. Either the service of a Breach of Condition Notice (Section 187a); or an Enforcement Notice (Section 172 of the Act). Breach of Condition Notices are generally best used when an ongoing condition is being breached, such as hours of operation or parking conditions. Although there is no right of appeal against this notice, the maximum penalty for such a breach is £1,000.
- 8 When the condition in breach is fundamental to the acceptability of the scheme, such as contamination, it is more appropriate to serve an Enforcement Notice on the basis that the whole scheme is unauthorised. Although this can be appealed against, the measures required may include full demolition of the scheme and the penalty for not complying with this requirement can reach £20,000. Therefore in this case it was considered that the service of an Enforcement Notice was the appropriate course of action.
- 9 The authority to take enforcement action is one of the means to securing compliance which is ultimately the aim of the service. In most instances this will result in the service of an enforcement notice and the pursuit of formal action; in some cases, however, the gaining of authority is an indication to the person who would be subject to the action, that the Council is serious and prepared to take all necessary measures to secure compliance.
- 10 The decision made by the Committee in this case was widely reported and the developer was informed. As a result, the developer urgently provided details and undertook work in order to comply with the outstanding conditions. Something which had not previously been done. A number of the outstanding issues were resolved whilst an enforcement notice was being prepared. As such the authority to take action had had the desired effect of forcing the developer into complying with the planning approval.
- 11 Due to the actions of the developer, it was considered that it would be inappropriate to serve the enforcement notice at that time. The service of any notice would have been the subject of an appeal and it could be considered that the Council had acted unreasonably in taking formal action at a time when the issues were being resolved. It was of course possible for enforcement action to be still taken in the event that the conditions were not fully complied with.

- 12 In January 2006, following extensive discussions between the developer and officers of the Council, it was confirmed that the requirements of the outstanding conditions, particularly those relating to land contamination, had been met. As such there was no longer a breach and the reasons for taking enforcement action were no longer appropriate. The actions which were taken are summarised as:
- Removal of below ground fuel storage tanks;
 - Removal of concrete upon which the below ground fuel storage tanks sat and underlying material was sampled by consultants for fuel contamination and contaminated material removed;
 - A site investigation was undertaken to assess the extent of contamination on site;
 - Vapour monitoring was undertaken to demonstrate that fuel vapours were not entering dwellings;
 - Further site investigation was undertaken to provide further information on the extent of contamination in parts of the site not previously investigated. This investigation involved the analysis of soil samples for metal and organic (fuel) contaminants;
 - Uncontaminated topsoil was imported into landscaping/amenity areas as a protective measure;
 - A 2000 gauge damp proof membrane was installed as a precautionary measure to prevent ingress of any carbon dioxide and/or methane;
 - Following the removal of the remaining concrete hard standing in the car park area, further testing was undertaken. This investigation involved checking the ground to ensure that no other tanks or underground structures had been left in the ground and testing for organic (fuel) contamination.
- 13 Subsequently the developer was contacted and informed that the outstanding conditions had been complied with and duly discharged. At that time the developer was also informed that there were other conditions of relevance on the approved planning application which would need to be complied with at a later date. In addition to this, a strong warning was given to the developer that the action taken in this case had been inappropriate and that if a similar action was taken in the future, that the Council would pursue enforcement action without further notice.
- 14 As compliance had been achieved the pursuit of enforcement action was no longer possible, however the aim of the enforcement process had been duly accomplished.

Finance

- 15 There are no direct financial consequences for the Council arising from the proposal, however the Committee should be aware that the complainant may potentially make a complaint to the Ombudsman, which may result in costs being awarded against the Council if it is found that maladministration has occurred resulting in harm to the neighbouring occupiers.

Law

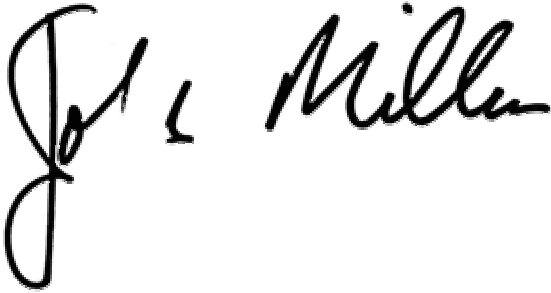
- 16 The planning process is governed under the Town and Country Planning Act 1990 (As amended).

Equality Impact

- 17 The proposal contained within this report takes into account the Council's equal opportunities policies and assist with the Council Plan's objective of achieving a fairer society for all including children and young people.

Recommendation

- 18 That the Committee notes the enforcement action taken.

A handwritten signature in black ink, appearing to read 'John Millar'. The signature is written in a cursive style with a large initial 'J'.

John Millar
Director of the Urban Environment

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Background Papers

None