



PLANNING COMMITTEE – 12TH APRIL 2012

SUBJECT: ENFORCEMENT REPORT EN/11/076 – WITHOUT PLANNING PERMISSION, THE UNAUTHORISED ERECTION OF A VENTILATION STACK AT UNITS 4, 5 & 6 FARIVIEW GARAGE, PENGAM ROAD, PENGAM

REPORT BY: CHIEF EXECUTIVE

1. SITE AND DEVELOPMENT

- 1.1 The Local Authority received a complaint from a member of the public via the Council's Public Protection Division, regarding a ventilation stack erected on the premises of Carflex at Units 4, 5 & 6, Fairview Garage, Pengam Road, Pengam.
- 1.2 The ventilation stack constitutes development that requires prior planning permission, and in its absence the ventilation stack is unauthorised. For that reason correspondence was sent to the proprietors of the premises at Unit 4, Fairview Garage advising them that it would be necessary to submit a retrospective planning application seeking permission to retain the unauthorised ventilation stack and remedy the breach of planning control.
- 1.3 Notwithstanding the above advice, a retrospective application to retain the unauthorised ventilation stack was not forthcoming. Accordingly, the Local Member, was advised that Officers were minded to progress the case by way of 'under enforcement' which would allow the retention of the stack, but impose conditions to control noise and hours of operation. Whilst the Local Member was in agreement that enforcement action should be taken, he did not agree with the proposed form of action, but instead considered that an enforcement notice should be served requiring the removal of the stack. In view of this, and given that the complainant has requested that he be given an opportunity to present his argument, this report presents the case to the Planning Committee for a decision on the expediency and style of enforcement action.

2. POLICY AND ANALYSIS

- 2.1 In considering the expediency of enforcement action regard must be had to the provisions of the development plan, so far as material to the application (in this instance any future retrospective application), and to any other material considerations, as prescribed by Section 70(2) of the Town & Country Planning Act 1990. Of relevance in this consideration are Policies CW2 (Amenity) of the Local Development Plan, and the guidance contained in paragraph 4.10.9 (visual appearance, design and scale of development) of Planning Policy Wales. These policies and guidance should be read in conjunction with the guidance contained in Technical Advice Note 9: Enforcement of Planning Control.
- 2.2 The ventilation stack is located in the southwest corner of the premises, and projects out at right angles from the plane of the roof. The ventilation stack is of a tubular form and metallic finish. It is considered that the scale, design and location of the development is acceptable, and as such would conform to the guidance contained in paragraph 4.10.9 of Planning Policy

Wales. Its visual impact is considered to be acceptable bearing in mind the industrial nature of the host building and the adjoining buildings within the commercial complex, including the electricity pylon.

- 2.3 The ventilation stack, which serves a paint-spraying booth, has the potential to generate noise and odours to the detriment of the residential amenity of the properties at Woodland Place and Bramblewood Court, and contrary to Policy CW2 of the Local Development Plan. However, following discussions with Officers of the Council's Public Protection Division, it was concluded that these potentially injurious elements could be mitigated through the imposition of conditions through the planning enforcement process, and through the utilisation of the powers available at the disposal of Officers of the Public Protection Division.
- 2.4 For the reasons outlined above, the unauthorised ventilation stack is considered to be acceptable in planning terms and as such it is considered that it would not be expedient to require its removal. However, in order to mitigate the potentially detrimental elements of the development it will be necessary to serve an Enforcement Notice prescribing conditions in respect of the hours of operation and noise levels emitted. These conditions, which would form the requirements of an enforcement notice, would read as follows:-
- (a) The level of noise from the ventilation stack shall not exceed Laeq of 50dba at any time, when measured and calculated at a distance of 1 metre from any elevation of any noise sensitive properties on Bramblewood Court or Woodland Place, Pengam.
 - (b) The ventilation stack shall not be operated between the hours of 6.00 p.m. and 8.00 a.m Monday to Friday and 1.00 p.m. and 9.00 a.m on a Saturday, and not at all on a Sunday.
- 2.5 The approach is known as under enforcing, as the Enforcement Notice is utilised as a means of imposing conditions that would have been attached in determining any retrospective application. Furthermore, if the notice is complied with planning permission is deemed to be granted for the development that has not been enforced against. This approach would also conform to the guidance contained in Technical Advice Note 9: Enforcement of Planning Control which states that the intention [of enforcement action] should be to remedy the effects of the breach of planning control, not to punish the person(s) carrying out the breach. Nor should enforcement action be taken simply to regularise development of which permission had not been sought, but which is otherwise acceptable.
- 2.6 Odour has not been included as a requirement of the notice for which authorisation is sought as odour by its very nature is subjective. Accordingly, it would not be possible for an enforcement notice to specify with reasonable certainty what is required of the recipient. In the absence of this clarity, the notice would not satisfy the nullity test (i.e. the notice must tell the recipient fairly what he has done wrong and what he must do to remedy it). However, the Council's Public Protection Division would be able to exercise control over the development in the event that odours became a statutory nuisance.

3. RECOMMENDATION

- 3.1 That authorisation is granted to serve an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 to requiring those persons with an interest in the land to secure compliance with the requirements of the conditions specified in the notice, which would read as follows:-
- (a) The level of noise from the ventilation stack shall not exceed Laeq of 50dba at any time, when measured and calculated at a distance of 1 metre from any elevation of any noise sensitive properties on Bramblewood Court, or Woodland Place, Pengam.
 - (b) The ventilation stack shall not be operated between the hours of 6.00 p.m. and 8.00 a.m. Monday to Friday and 1.00 p.m. and 9.00 a.m. on a Saturday and not at all on a Sunday.

3.2 In the event of non-compliance with the requirements of the notice, authorisation is also sought to take such legal proceedings as may be required in order to remedy the breach of planning control.