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ITEM NO: 1.

To: DEVELOPMENT CONTROL  
COMMITTEE

Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

**REASON FOR BRINGING TO COMMITTEE: Major Application**

**Application Number:** 09/0753/RM  
**Application Type:** Reserved Matters

**Case Officer:** Alison Deakin  
**Telephone Number:** 01922  
652487

**Applicant:** Bovis Homes Ltd  
**Proposal:** Residential Development  
141 dwellings and associated works -  
Phase 3 of on-going development.

**Agent:** Mr David Laight  
**Location:** ST MARGARETS  
HOSPITAL, QUESLETT  
ROAD, WALSALL, B43 7EZ

**Ward:** Pheasey Park Farm

**Expired:** 14/09/2009

**Recommendation Summary:** Grant Subject to conditions



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### **Application and Site Details**

The application is for erection of 141 dwellings as phase 3 of the residential development of the former St. Margaret's Hospital site off Queslett Road, now known as Nether Hall Park. Outline permission was granted on appeal in 2004 followed by reserved matters applications for the first two phases of residential development. Phase three is the final phase of development at the site. It is located at the northern end of the site around the outer edge of the existing residential properties in Nether Hall Avenue and Horseshoe Crescent.

The accommodation comprises 2 X 2 bed apartments, 105 X three bed houses, 21 X 4 bed houses, 11 X 5 bed houses and 2 X 6 bed houses. There is a mixture of detached, semi-detached and terraced housing 2-3 storeys high.

The developer advises that the proposals are designed in line with the approved Masterplan and Design Brief principles.

The proposals also include for provision of 26 affordable housing units bringing the total number of affordable housing units across the site to 80 which equates to 18% of the entire scheme (445 dwellings). This level of affordable housing was agreed by the Council in 2009.

St. Margaret's Hospital grounds, along with Great Barr Hall and Estate, whilst providing a unique development opportunity, remain one of the most sensitive sites within the Borough. The site lies within the Green Belt and Beacon Regional Park, forms part of the Great Barr Conservation Area, includes 2 Sites of Importance for Nature Conservation (the lakes and the Duckery), 6 Sites of Local Importance for Nature Conservation, and 3 areas of Ancient Woodland (the Duckery, High Wood and Gilberts Wood). Great Barr Hall is a Grade II\* listed building, whilst its remaining estate is a Grade II listed Park of Special Historic Interest.

The proposed dwellings arranged around Horseshoe Crescent are terraced and semi-detached houses with garage blocks between them that are set back from the highway. Two new cul-de-sacs of larger detached houses are located on the west side where there is a significant difference in levels hence gabion structures are proposed within the rear gardens. A new cul-de-sac is located on the north-east side with terraced houses and an apartment that are arranged around an open space where it is proposed to retain existing trees and create an improved footpath link (and emergency access) to Park Farm Road and existing housing areas. The final new cul-de-sac is located in the south-west part of the site and includes detached and semi-detached houses. The end of this road is presently gated as it provides access to a former special needs school building and the remaining hospital buildings. These two sites are in separate ownership.

## **Relevant Planning History**

02/2417/OL/E2 – Outline application to redevelop the former St Margaret's Hospital for residential development, alterations to existing access at Queslett Road including repositioning of gate posts and associated development. Application accompanied by an Environmental Statement and Master Plan providing up to a maximum of 445 dwellings and Design Statement – Granted on Appeal 13/09/04. A Section 229A Agreement (equivalent to a Section 106 Agreement) was completed to secure provision of Education, Transport Contributions and Facilities, Highway Works, Affordable Housing Primary Care and Community Facilities, Landscaped Areas and Public Open Space and works of restoration to the Lodge. Variations to this agreement have subsequently been approved in relation to provision of affordable housing including tenure and amount which has been reduced to 18% in total throughout the site.

05/0395/RM/H1 – Reserved matters application 152 apartments/houses, garages and associated works (Phase 1) – Granted subject to conditions 21/09/04.

06/1974/RM/E8 - 146 Apartments and Houses - Reserved Matters to Outline Permission 02/2417/OL/E2 (Phase 2) – Granted subject to conditions 01/02/07.

**Relevant Planning Policy Summary** (Note the full text version of the UDP is available from the First Stop Shop in the Civic Centre, and on the Planning Services Website [www.walsall.gov.uk/planning](http://www.walsall.gov.uk/planning)).

## **Unitary Development Plan (UDP)**

GP1: Supports the sustainable location of development.

2.2, 3.6, 3.7, & GP2: seek to make a positive contribution to the quality of the environment, whilst protecting people and ensuring adequate and safe access is provided.

GP3: Planning obligations will be used to secure any on or off-site mitigating measures made necessary by a development.

GP4: local area regeneration by helping to bring forward derelict, vacant or underused land and buildings for new uses.

3.16, GP7, ENV32, H10 and 3.116: seeks the design of residential developments to create high quality living environments, well integrated with surrounding land uses and local character. Poorly designed development which fails to properly take account of the context or surroundings will not be permitted. Designing out crime' through design, layout, landscaping and boundary treatments is encouraged.

3.21 & ENV1: Defines the purpose of the Green Belt.

ENV2: Allows limited infilling or redevelopment of major existing developed sites in accordance with policy ENV4.

ENV3: Identifies more detailed considerations for proposals in the Green Belt.

ENV4: allows for infilling or redevelopment of major developed sites in the Green Belt provided proposals have no greater impact than the existing development on the openness and purpose of the Green Belt.

ENV8: New development on Great Barr Hall and Estate and St. Margaret's Hospital other than that which is normally appropriate in the Green Belt will be limited to the replacement footprint of existing buildings. All proposals must provide for preservation, enhancement and improvement of the character of buildings of architectural or historic interest, and management of the historic landscape and SINC's, and preservation and enhancement of Great Barr Conservation Area.

ENV14: The Council will encourage the reclamation and development of derelict and previously developed land.

ENV18: Seeks to protect, manage and enhance existing woodlands, trees and hedgerows.

ENV21: Development which would destroy, damage or adversely affect a Site of Local Importance for Nature Conservation will not be permitted unless it can be demonstrated that there are reasons for the proposal to outweigh its level of nature conservation value.

ENV23: Proposals must take account of opportunities for nature conservation.

ENV24: New development should maintain the integrity of wildlife corridors.

ENV25: Proposals for development which affect archaeological sites will normally need to be accompanied by an evaluation of the archaeological resource.

ENV29: Development should preserve or enhance the character and appearance of a Conservation Area. In the event the Council grants permission for demolition of a Conservation Area property possessing architectural or historic interest the Council will require a building recording scheme.

ENV30: Protects the Borough's registered parks and gardens from the effects of inappropriate built development.

3.117 & ENV33: deals with landscape design and opportunities to create and enhance environmental quality.

ENV34: Requires the provision of public art to enhance the quality and individuality of existing buildings, spaces or new development especially in public spaces, public buildings, important and prominent locations.

ENV40: Adequate foul and surface water drainage infrastructure should be provided.

6.3 & H3: Encourage the provision of additional housing through the re-use of previously developed land provided a satisfactory residential environment can be achieved.

H4: On sites suitable for provision of an element of affordable housing the Council will normally negotiate with developers for 25% of total dwellings to be affordable homes.

H9: Housing densities in the range of 30 -50 dwellings per hectare are likely to be suitable on most sites.

7.1: Seeks to promote an efficient highway network;

T7: All development should satisfy the car parking standards set out in Policy

T13. All parking provision should be well designed and sensitively integrated into the townscape or landscape, respecting the character of the local area, and with appropriate use of materials and landscape treatment.

T13: car parking standards

1, 2 & 3 bedroom houses – 2 spaces per unit

4 bedroom houses and above - 3 spaces per unit

Flats with individual parking – 2 spaces per unit

LC1: seeks to retain and enhance existing urban open spaces and readdress any deficiencies in the provision or accessibility of these. Residential developments will be required to make financial or other contributions, which will enable the provision of new, or the improvement of existing urban open spaces.

8.1 & 8.2: The Council will seek to safeguard, improve and expand facilities for entertainment and culture; urban open space; greenways; canals and waterways; sport and recreation and education, health and community activities and encourages increased and improved provision of entertainment and cultural facilities in town, district and local centres.

8.8 & 8.9: Residential development will only be permitted where adequate school capacity exists or can be provided. Where residential developments necessitate the provision of new or improved educational facilities or other forms of social and community infrastructure the Council will require developers to make a financial contribution to the costs of providing facilities. On housing sites of 1 hectare (or 30 dwellings) or more accessible community healthcare facilities should be provided to serve the development. The Council may require a contribution from developers towards such provision.

## **Supplementary Planning Document (SPD)**

### **Designing Walsall SPD**

DW1-Sustainability – new development must show that its design maximises energy efficiency in terms of layout, orientation and sustainable use of resources;

DW2- Safe and Welcoming places- all development must contribute towards creating places that feel safe, secure and welcoming for everyone;

DW3 – Character -design to respect and enhance local identity;

DW4- Continuity -attractive spaces within new development should be defined or enclosed by buildings, structures or landscape;

DW5 Ease of movement- Create places that are easily connected, safe to move through;

DW6 – Legibility - new development should contribute to creating a place that has a clear identity;

DW9 – High Quality public realm - new development must seek to ensure it creates places with attractive environmental quality;

DBW 10 – new development should make a positive contribution to creating a sustainable environment.

Annexe E: Numerical Guidelines for Residential Development ... identifies privacy and aspect distances between dwellings including 24m separation between habitable windows for two storeys and above, 13m separation between habitable room windows and blank walls exceeding 3 metres in height, 45° code, garden dimensions of 12m in length and 68m<sup>2</sup> for housing

and 20m<sup>2</sup> per dwelling where communal provision is made, set backs to avoid terracing and provision of boundary walls. Although failure to comply with these guidelines may not by itself be a reason for refusal of an application, it will be a factor to be used in determining whether a proposal would be compatible with the wider character of the area or the existing dwelling or the amenity of neighbours.

### **Conserving Walsall's Natural Environment SPD**

NE1 and NE4: all relevant applications to be supported by an adequate impact assessment.

N8, N9 & N10 deal with the need to fully assess, protect and secure compensatory planting for trees.

Further protection is proposed for statutorily protected animals, plants etc.

### **Affordable Housing SPD**

Guides delivery of affordable housing to appropriate locations in the Borough and provides for balanced, mixed communities.

### **Urban Open Space SPD**

Identifies the requisite local standards and contributions that developers will be required to make towards provision and improvement of open spaces.

### **Healthcare SPD**

Developers of new residential sites will be required to make contributions to help meet new healthcare requirements. Within larger developments land may be required for the provision of healthcare facilities or alternatively financial contributions may be required to support the needs of new development.

### **Education SPD**

Sets out the contributions that developers will be required to make towards the provision and improvement of local education facilities.

### **Regional Spatial Strategy for the West Midlands RSS**

Promotes sustainable regeneration of previously developed land, promoting a high quality environment and sustainable development capable of being accessed by a variety of transport modes.

### **National Policy**

PPS1: Promotes sustainable development and good design.

PPG2: Seeks to protect against inappropriate development that is harmful to the Green Belt. Limited infilling or redevelopment of major developed sites that meets the criteria C3 & C4 in Annex C of PPG2 is not inappropriate development

PPS 3: Encourages reuse of previously-developed land for housing. Paragraph 10 indicates that housing policy objectives provide the context for planning for housing through development plans and planning decisions. Some of the specific outcomes that the planning system should deliver are well-designed housing built to a high standard and in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure.

PPS9: Seeks to promote sustainable development, conserve, enhance and restore the diversity of England's wildlife and geology and contribute to rural renewal and urban renaissance.

PPG13: Promotes sustainable patterns of development which reduce the need to travel, especially by car.

PPG15: Provides advice on protection of historic buildings, conservation areas and other elements of the historic environment and should reconcile the need for economic growth with the need to protect the natural and historic environment.

PPS25: Aims to ensure that flood risk is taken into account to avoid inappropriate development in areas at risk from flooding.

## **Consultations**

**Transportation** – No objections subject to provision and maintenance of visibility splays, surfacing accesses and driveways. There are 304 car parking spaces proposed which equates to 215% overall and is considered an acceptable average provision across the site.

**Pollution Control (Scientific Team)** – No objections.

**Pollution Control (Contaminated Land)** – No objections in principle. However, further testing of the ground around plots 373-377 is required together with remediation methodology.

**Environmental Health** – No objections.

**Landscape** – No objections.

**Arboricultural Officer** – No objections. The revised layout has addressed concerns regarding the proximity of houses and garages to existing trees, particularly on the south-east side of the site. The additional tree planting at the rear of plots 312-315 and 320-325 are also of sufficient height at maturity to soften the view from outside the site by breaking up the roof line of new dwellings. The proposals are therefore acceptable subject to tree protection measures being implemented prior to construction works.

**Ecology** – No objections.

**Conservation Officer** – No objections. The proposal is within the Great Barr Conservation Area and in the Great Barr Hall Registered Park & Garden which is listed Grade II. This phase of the build at St Margaret's is the most

crucial in that it is within the most sensitive section of the park, adjacent the lake, which is the most unspoilt section. The 3D plan demonstrates how the housing will relate to the boundary of the remaining parkland in an improved way. The fencing type (rustic ranch) has now been prescribed for the lakeside character area which best reflects the open and more rural character of this section of the development site. The proposed 3 storey housing has also been reduced to 2.5 storeys that fit better into the sensitive location. The only outstanding concern is the extent of block paving which is disappointing but not sufficient to recommend refusal of the proposals.

**Black Country Archaeologist** – No objections. However, as the proposed development lies within an area of archaeological interest the developer should commission an archaeological watching brief during the groundworks for the development.

**Walsall Children's Services** – No objections in principle. The level of surplus places in local secondary schools is below 10% and therefore a contribution towards secondary school provision is required. Based on current prices, this would be a contribution of £367,016.00.

**Housing Strategy** – No objections. There is a need for affordable housing throughout the site as a whole and 20% was agreed as part of the original outline permission. However, a Deed of Variation to the S106 Agreement has been agreed by Committee to reduce this requirement to 18% but with provision of more appropriate affordable housing tenure.

**Drainage** – No objections subject to approval by the Environment Agency and Severn Trent.

**Environment Agency** – No objections subject to implementation of the agreed drainage strategy which demonstrates that the drainage scheme will be resilient to the impacts of climate change.

**English Heritage** – No objections in principle given that outline permission for residential development in this location has already been approved. However, given the elevation of the properties on the embankment above the lake details of landscaping to include new tree planting and retained trees may help screen the presence of the dwellings.

**Natural England** – No objections subject to recommendations in the Brookes Ecological Report in relation to trees and woodland being put in place. The report states that no protected species are affected by the development.

**Highways Agency** – No objections.

**Centro** – No objections in principle. As the proposed development falls outside of the minimum standards of public transport accessibility, it is important that the commitment to the provision of a bus service through the development, as proposed in the

Transport Assessment accompanying the Outline application, is maintained long-term. The original proposal to divert the number 34 bus service, with a 12-minute frequency Monday to Saturday and half hourly on Sundays would bring the development up to standard. Bus stops/shelters should be located to maximise the patronage of the bus service and operation of the bus service from the early stages of construction of the development would be helpful to promote the availability of public transport to the residents. A Residential Travel Plan is required to promote sustainable travel to and from the development.

**Police Architectural Liaison Officer** – No objections. Secured by Design accreditation should be considered as there have already been instances of crime on this site which demonstrates that security levels should be addressed at the earliest possible stage. All garden fences, not just the perimeter of the site, should be 1.8m high with 0.3m trellis on top. Plot 319 has only a 900mm high brick wall to define the rear garden which is unacceptable as it offers little if any security.

**Fire Service** – No objection provided that access roads for emergency access have a minimum carrying capacity of 15 tonnes and provision of fire hydrants not more than 300 metres apart.

**Severn Trent Water** – No objections.

**National Grid** – No objections.

### **Public Participation Responses**

One representation received from an occupier on the existing Nether Hall development supporting the proposal is summarised as follows:

- Completion of all building and removal of the developers from site would finally give residents and the local community a chance to enjoy the restoration of the woodland.

All letters of representation are available for inspection upon publication of this committee report.

### **Determining Issues**

- Principle of Development
- Relationship with Green Belt, Historic Park & Conservation Area
- Layout and Design
- Access and Parking
- Relationship with surrounding occupiers
- Trees, Landscaping & Ecology
- Flood Risk
- S106 requirements

## **Observations**

### **Principle of Development**

The outline permission 02/2417/OL/E2 established the principle of residential development of the former hospital site for up to 445 dwellings. Reserved matters for the first two phases of residential development have been approved for erection of 152 dwellings and 146 dwellings respectively, bringing the existing total to 298 dwellings, of which 207 dwellings have been built so far.

The phase three proposal for erection of 141 dwellings brings the total to 439 units which falls within the permitted 445 units granted at outline stage. The principle of residential development at this density is therefore in accordance with the Master Plan for the whole site and is acceptable.

### **Relationship with Green Belt, Historic Park & Conservation Area**

The approved Masterplan identified the extent and location of new development throughout the site. The proposals for phase 3 do not encroach beyond the identified built development area on the Masterplan or exceed the permitted number of units and therefore fall within the level of built development allowed. The development does not adversely affect the character and openness of the Green Belt to any greater extent. The proposed housing on the west side of the site overlooks the parkland and lake and given the levels would be visible from within the Historic Park. However, the proposed native shrub planting and tree planting should effectively screen these dwellings from view so as to protect the historic landscape and appearance of the Great Barr Conservation Area.

### **Layout and Design**

The proposed layout of phase 3 wraps around the edge of the existing approved development at Nether Hall Park. The proposed housing on the west side is arranged in more spacious plots and comprises larger houses that offer the opportunity to retain and enhance existing planting adjacent the boundary with the lake and historic parkland. The proposed housing around Horseshoe Crescent fronts the highway creating a clear definition between public and private spaces and enhances the street scene by providing activity and surveillance. Housing in the new cul-de-sac to the north-east corner is arranged so that it focuses around an open square where existing trees are to be retained and will provide surveillance to the improved pedestrian link to Park Farm Road. Proposed housing fronting the new access on the south-east side is more closely arranged yet maintains privacy for residents and seeks to maintain the existing trees around the perimeter of the site. This highway continues up to the boundary of the site maintaining access to the as yet undeveloped former Queslett Centre and the remaining hospital buildings.

The layout of the housing on phase 3 is restricted by the presence of established trees around the perimeter of the site and the differences in levels. This has resulted in 4 dwellings on the western cul-de-sac being between 1.5 to 2m closer to one another than the normal separation

requirement. However, it is proposed to include additional planting on the garden boundaries to interrupt views and provide additional screening to maintain privacy between dwellings. On the south-eastern cul-de-sac there are dwellings staggered at an angle to each other to achieve a greater separation from the surrounding tree belt and prevent immediately facing elevations. Whilst the normal standard has not been applied here the layout maintains privacy because the properties are staggered at an angle to each other (approximately 6 of the properties are set at an angle that falls below the normal standard). It is therefore considered on balance that the relationship between properties is acceptable and there will be no harmful effect upon residential amenities by reason of overlooking.

There are approximately 50 plots where the rear gardens of properties do not achieve 12m length or 68 sq m area, more so on the northern and eastern side of the development. However, the layout maintains separation standards between dwellings in most instances (except between plots 314/315 and 320-322 where there is a shortfall of 1.5m at most). Dwellings on plots 383-399 are closer but the dwellings are angled and facing across a street. On balance it is considered that these shortfalls will not harm privacy for future occupiers. There are also additional amenity benefits to be gained from living in close proximity to the historic parkland. Plots 440-442 are three storey properties with garages at ground floor. In order to provide additional amenity space for occupiers and improved surveillance of the street there are balconies above the driveway covered by wooden pergolas.

### **Access and Parking**

The level of parking provision equates to 215% throughout the phase 3 development and is considered acceptable by the Transportation officer as only 22 of the plots have an under provision of parking (mainly four and five bedroom properties) yet all units have at least 2 spaces per dwelling which is the Council's maximum standard. With respect to the concerns raised by Centro in respect of the sustainability of the site no change in the total number of dwellings is proposed since the outline permission. The legal agreement completed as part of the outline permission provides for the funding of a bus service and the provision of travel cards and conditions of the outline permission also require the provision of cycle and pedestrian routes. This ensures that residents have the opportunity to use an alternative means of travel other than the private car.

Parking is provided either within garages, within individual plots or within parking courts. An average of two spaces per dwelling is provided which accords with policy for 3 bed houses. The larger 5/6 bed houses have four car parking spaces per dwelling which also accords with policy for this type of housing. As mentioned only the larger houses have a shortfall of parking but they do at least have two spaces per dwelling.

### **Relationship with surrounding occupiers**

The only existing housing outside the development area lies to the north-east at Crail Grove and Park Farm Road. There is over 30m separation between

the nearest dwellings in Park Farm Road and plots 424-427. The gable wall of the apartments on plots 434-435 is 19m distant from the nearest dwelling at 19 Crail Grove hence it exceeds the 13m separation standard and causes no concern in terms of loss of privacy or overshadowing. There are no other instances where proposed dwellings have a close relationship to surrounding occupiers.

### **Trees, Landscaping & Ecology**

The proposed dwellings are located around the edges of the existing housing closest to the boundary with the existing areas of woodland. Revised proposals have been submitted to reposition those dwellings that were less compatible with the existing trees due to their proximity and therefore likely to be heavily shaded. The buildings have been moved further away from retained trees to reduce the likelihood of requests for pruning or removal once the dwellings are occupied. Additional planting has been included to the rear of plots 312-315 and 320-325 to include native tree species of a sufficient height at maturity to soften the views from the historic parkland and screen the housing to an extent. Only 9 of the 141 plots would qualify for tree works under the Council's Tree Works Management Policy which the developer has adopted and will be carried out to BS:5837 standard. The arboricultural officer, ecologist and landscape officer are satisfied the proposals will not adversely affect existing trees or adjacent Site of Local Importance for Nature Conservation.

### **Flood Risk**

A Flood Risk Assessment and additional drainage details have been supplied. The Environment Agency are satisfied that implementation of the mitigation measures identified in the Drainage Strategy is adequate to prevent the risk of flooding and ensure satisfactory storage and disposal of surface water from the site. It also demonstrates that phase 3 will meet the requirements of PPS25.

### **S106 requirements**

A planning obligation was completed for the outline planning permission dated 31<sup>st</sup> March 2004. This included provision of contributions towards education, integrated transport, highway improvement works and primary care and provision of an aggregate of 20% affordable housing units. Managed open space areas within the site were also included.

As the financial contributions have already been made there is no further need for additional contributions for the Reserved Matters application despite the request from Walsall Children's Services for a contribution towards local secondary school provision.

In terms of the affordable housing requirement the developers confirm that 26 of the proposed units on phase 3 will be affordable housing units bringing the total number of affordable housing units across the site to 80 which equates to 18% of the entire scheme (445 dwellings). A variation to the original planning obligation allowing for this reduction from 20% to 18% affordable housing provision across the site was agreed by Committee on 3<sup>rd</sup> December 2009.

### **Summary of Reasons for Granting Planning Permission**

The principle of the number of units and location of the development for phase 3 is already established by the outline planning permission and approved Master Plan. The built development does not encroach beyond the areas identified on the Masterplan and additional tree planting will screen the more visible dwellings from views from the historic parkland and have no adverse effect upon the landscape or Great Barr Conservation Area.

Reduced garden dimensions and separation distances within the layout, which in some cases is restricted by the presence of trees and differences in levels, still maintain acceptable levels of amenity, privacy and daylight. The separation between proposed dwellings and established housing in Crail Grove and Park Farm Road achieves the Council guidelines on overlooking or loss of privacy or overshadowing. The layout affords protection to retained trees by providing greater separation. Planting is included to screen the dwellings on the west side from views from the historic parkland. The proposals have no adverse effects upon landscaping or ecological matters.

Acceptable levels of parking for at least 2 vehicles per dwelling is provided throughout phase 3 and is located close to dwellings.

The Environment Agency is satisfied that the drainage strategy for phase 3 will prevent flood risk.

Adequate provision to address the demand on local services e.g. education and the need to provide affordable housing has been secured under planning obligations agreed under the outline planning permission.

For the above reasons the proposals are considered to comply with policies 2.2, 3.6, 3.7, GP1, GP2, GP3, GP4, GP7, 3.16, 3.21, ENV2, ENV3, ENV4, ENV8, ENV14, ENV18, ENV21, ENV23, ENV24, ENV25, ENV29, ENV30, ENV32, ENV33, ENV34, ENV40, 6.3, H3, H4, H9, H10, 3.116, 3.117, 7.1, T7, T13, C1, 8.1, 8.2, 8.8, and 8.9 of Walsall Unitary Development Plan, Supplementary Planning Documents: Designing Walsall and Conserving Walsall's Natural Environment and the Regional Spatial Strategy for the West Midlands (RSS).

## **Recommendation: Grant Subject to conditions**

1. The development must be begun no later than 3 years after the date of this decision.

*Reason:* Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. This development shall not be carried out other than in conformity with the following approved plans and documents except in so far as may otherwise be required by conditions: -

- Site Location Plan (STMG/02/107 Rev A) received 22/09/09
- Planning Layout (STMG/02/300 Rev H) received 04/12/09
- Adoptable Highway Plan (STMG-05/109 Rev A) received 12/01/2010
- Material Layout Phase 3 (MARG3/02-400 Rev B) received 04/12/09
- Storey heights/movement (STMG/02/310 Rev B) received 04/12/09
- Roof Plans (MARG3/02/RP) received 15/06/09
- Engineering Layout (Marg-5-102 Rev B) received 04/12/09
- Engineering Layout (Marg-5-103 Rev B) received 04/12/09
- Engineering Layout (Marg-5-104 Rev B) received 04/12/09
- Engineering Layout (Marg-5-105 Rev B) received 04/12/09
- Engineering Layout (Marg-5-106 Rev B)
- Engineering Layout (Marg-5-107 Rev B)
- Engineering Layout (Marg-5-108 Rev B)
- Site Cross Sections (Stmg-05-202)
- Site Cross Sections (Stmg-05-203)
- Site Cross Sections Stmg-05-223 Rev A) received 22/09/09
- Plots 386, 387, 392, 393 gardens (STMG/02/116) received 22/09/09
- Character areas (STMG/02/340) received 04/06/09
- House Type A (STMG/02/A357 VT1 Rev A) received 22/09/09
- House Type B (Marg3/02/S351 BR Rev A) received 22/09/09
- House Type C (Marg3/02/AF03VT BR) received 04/06/09
- House Type D (Marg3/02/A305 BR WB A) received 22/09/09
- House Type E (Marg3/02/A326 BR/RE) received 04/06/09
- House Type F (Marg3/02/A338/1BR) received 04/06/09
- House Type G (Marg3/02/A344 BR WB) received 04/06/09
- House Type H (Marg3/02/SW3017 BR) received 04/06/09
- House Type I (Marg3/02/A438 BR WB) received 04/06/09
- House Type J (Marg3/02/A464 BR) received 04/06/09
- House Type K (Marg3/02/A457 BR RE) received 04/06/09
- House Type L (Marg3/02/A431 BR RE) received 04/06/09
- House Type M (Marg3/02/436 BR RE) received 04/06/09
- House Type N (Marg3/02/A551 BR) received 04/06/09
- House Type O (Marg3/02/C606) received 04/06/09
- House Type O (Marg3/02/A528 vt) received 04/06/09
- House Type P (Marg3/02/A5008/1BR) received 04/06/09
- House Type P (Marg3/02/A5008/2BR) received 04/06/09
- House Type R (Marg3/02/Type R BR) received 22/09/09
- House Type S (Marg3/02/A337 BR) received 22/09/09

- House Type T (A336-PA-02) received 04/12/09
- House Type T Elevations (336-PA-01) received 04/12/09
- Tandem Garage Roof Configurations (STMG/02/AST2) received 04/06/09
- AGD2 Garage Drawing Fully Hipped (STMG/02/AD2-FH) received 04/06/09
- AGD2 Garage Drawing (STMG/02/AGD2) received 04/06/09
- AGS2 Single Garage (STMG/02/SG) received 04/06/09
- Tandem Garage AGT2 (STMG/02/AGT2 Rev A) received 04/06/09
- Landscape Proposals Phase 3A & 3B Sheet 1 of 3 (MARG-03-131 Rev C) received 04/12/09
- Landscape Proposals Phase 3A & 3B Sheet 2 of 3 (MARG-03-131 Rev C) received 04/12/09
- Landscape Proposals Phase 3A & 3B Sheet 3 of 3 (MARG-03-131 Rev C) received 04/12/09
- Landscape Proposals Phase 3A & 3B Schedules & Specifications (MARG-03-132 Rev C) received 04/12/09
- Street Scene 1/3A Lakeside received 22/09/09
- Street Scene 2/3A Lakeside received 22/09/09
- Street Scene 3/3A Lakeside received 22/09/09
- Street Scene 1/5A Woodland Edge received 22/09/09
- Street Scene 2/5A Woodland Edge received 22/09/09
- Street Scene 3/5A Horseshoe received 22/09/09
- Street Scene 4/5A Horseshoe received 22/09/09
- Street Scene 5/5A Woodland Edge received 22/09/09
- Phase 3 plots 305-316 Visual Impact (StMarg-03-134) received 22/09/09
- Parking Schedule received 04/12/09
- Brick Wall & Fencing received 04/06/09
- Metal Fencing (Ex 110) received 04/06/09
- Arboricultural Survey prepared by JA Limited (8957/TP) received 04/06/09
- Tree Retention/Removal Plan (Stmg-03-133 Rev A) received 12/11/09

*Reason:* To ensure the development undertaken under this permission shall not be otherwise than in accordance with the terms of the application on the basis of which planning permission is granted (except in so far as other conditions may require).

3. The development hereby permitted shall only be carried out in accordance with the approved detail (Phase 3 Drainage Strategy, Bovis Homes, Drg No MARG-5-800, 29/10/09) and the following mitigation measures detailed therewith: -

- (i) Appropriate soakaway assessments carried out under Building Research Establishment (BRE) Digest 365 and where shown on plan Phase 3 Drainage Strategy, Bovis Homes, Drg No MARG-5-800, 29/10/09.
- (ii) A drainage strategy including sustainable (SuDS) components as described on Phase 3 Drainage Strategy, Bovis Homes, Drg No MARG-5-

800, 29/10/09 and including details how the scheme shall be maintained and managed after completion.

*Reason:* To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and prevent increased risk of flooding, to protect water quality, improve habitat and amenity and ensure future maintenance of such.

4. No development shall commence on site until details of a landscaping scheme, including spatial arrangement of proposed soft landscaping, species, numbers and size of all shrubs and trees, topsoil depths and specifications and staking details of proposed trees as well as any necessary phasing of implementation, are submitted to and approved by the Local Planning Authority. The scheme shall be completed in accordance with the approved details before the development is occupied, unless otherwise agreed in writing with the local planning authority, and retained as such. All planted areas shall be maintained for a period of 5 years from the full completion of the scheme. Within this period any tree(s), shrubs or plant which die, becomes seriously diseased, damaged or is removed shall be replaced with a tree, shrub or plant of the same or greater size and same species as that originally required to be planted.

*Reason:* In order to safeguard the visual amenity and natural environment of the area.

5. The approved tree protection measures detailed in plan STMG/03/133 dated 28 May 2009 shall be fully implemented prior to the commencement of any works on site and shall be retained until the completion of the development. The land so enclosed shall be kept clear of all contractors' materials and machinery at all times, as laid out in British Standard 5837:2005

*Reason:* To safeguard the trees included in the Tree Preservation Order on the site.

6. No digging of trenches or changes in ground level shall be undertaken within the canopy of any tree to be retained on the site without the written approval of the Local Planning Authority.

*Reason:* To safeguard the trees included in the Tree Preservation Order on the site.

7. No development shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological observation and recording during development in accordance with a brief written by the council's archaeologist, and a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.

*Reason:* to ensure that archaeological remains and historic structures are observed and recorded during development

8. No development shall commence on site until the additional testing and delineation of the area around the former boiler house, to include the area around plots 373-377, as recommended in the report by Joynes Pike Associates and remediation methodology has been submitted to and agreed in writing by the Local Planning Authority and then implemented in accordance with the agreed methodology unless the Local Planning Authority otherwise agrees in writing.

*Reason:* To ensure the health and safety of future residents.

9. No more than 25 dwellings shall be built on the application site, unless the applicant has made appropriate on-site provision towards affordable housing in accordance with policies GP3 and H4 of the Unitary Development Plan and the Affordable Housing Supplementary Planning Document unless otherwise agreed in writing by the Local Planning Authority. The affordable housing shall be retained thereafter.

*Reason:* To ensure that affordable housing needs are met in accordance with policies GP3 and H4 of the Unitary Development Plan and SPD: Affordable Housing.

10. The development shall be completed in accordance with the approved details of materials shown on "Material Layout Phase 3 (MARG3/02-400 Rev B) received 04/12/09" and shall be retained as such unless the Local Planning Authority agrees in writing to any alternative.

*Reason:* To ensure the facing and roofing materials harmonise with those in the surrounding vicinity.

11. All visibility splays shall be kept clear of planting and structures exceeding 600mm in height above ground level and shall thereafter be retained for this purpose.

*Reason:* To maintain pedestrian and highway safety.

12. Prior to the first occupation of any dwelling all driveways, accesses and parking areas relating to the dwelling shown on the approved plan shall be fully consolidated, surfaced and drained and shall thereafter be retained for this purpose only.

*Reason:* To ensure the availability of parking and maintain highway safety.

13. Details of the layout and alignment, widths and levels of all proposed adoptable roadwork's shall comply with any plans approved under the planning consent, together with all necessary drainage arrangements and run off calculations, and shall be submitted to Walsall Council for technical approval. No works shall commence until these details have been approved and an agreement under Section 38 of the Highways Act 1980 entered into.

*Reason:* To maintain highway safety.

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To: DEVELOPMENT CONTROL  
COMMITTEE

Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

## REASON FOR BRINGING TO COMMITTEE: Major Application

**Application Number:** 09/1669/FL

**Application Type:** Full application

**Applicant:** David Wilson Homes  
Mercia

**Proposal:** Redesign plots 46-63, 118-  
121, 125-134 and increase 32  
dwellings to 36 (amendment of  
planning permission 06/1118/FL/W2.

**Ward:** Birchills Leamore

**Recommendation Summary:** Grant Permission Subject to Conditions and  
authorised Deed of Variation

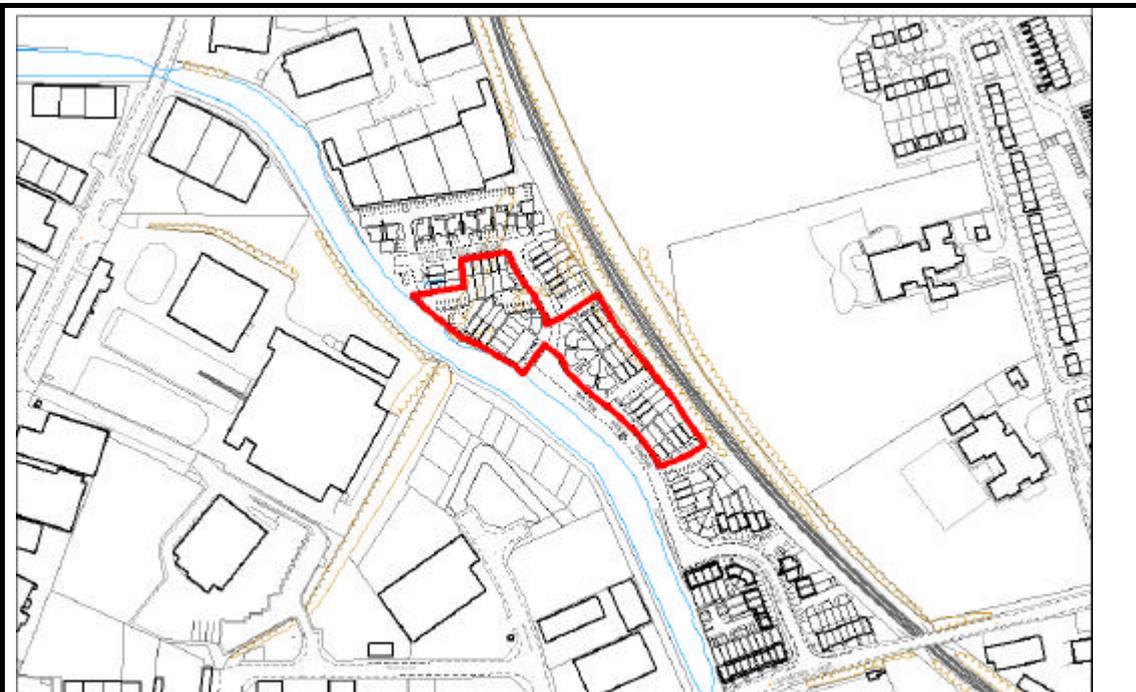
**Case Officer:** Andrew Thompson

**Telephone Number:** 01922 652403

**Agent:** David Wilson Homes  
Mercia

**Location:**  
POPPYFIELDS, LEAMORE  
LANE, WALSALL, WS2 7BY

**Expired:** 25/02/2010



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### **Application and Site Details**

The application is for an amendment to planning permission 06/1118/FL/W2 which approved 134 dwellings on the site to the north of Leamore Lane.

The previous permission approved:

- 55 2-bedroom flats
- 56 3-bedroom houses
- 23 4-bedroom houses

The application also agreed a S106 contribution of

- Affordable Housing - 17 units
- British Waterways- £40,000
- Highways Improvement - £71,000

These contributions have already been paid.

On occupation of the 50<sup>th</sup> dwelling the applicant agreed to pay:

- Education- £250,704.27 (towards secondary school phases)
- Open Space- £259,370

The applicant's supporting statement details that the progress on construction of the development with 50 plots is now complete and a further 19 are under construction and, according to the agent for the application, 39 properties (including the 17 affordable housing units) have been sold.

The purpose of the current application is two-fold:

Firstly, in light of the difficulties of the market, the applicant considers that they are unable to sell 4-bedroom units at a reasonable price. The applicant has also increased the number of dwellings by 4 to 138 dwellings. The mix proposed has been altered to:

- 56 2-bedroom flats (up by one)
- 12 2-bedroom houses (a new feature)
- 61 3-bedroom houses (up by 5)
- 9 4-bedroom houses (down by 14)

Broadly the layout remains unaltered with the same highway layout. The additional units and principal alterations are:

- former plots 51-53 have been turned 90degrees (although Plot 51 remains fronting the principal road through the development) to make plots 51-55 to create two additional units.
- Former plots 58 and 59 have been made smaller and a new FOG (Flat-over-garage) has been added to allow for an additional unit to be created (Plots 60-62 on the submitted plans) – the FOG also creates an entrance to the courtyard
- Former plots 118-121 have been made slightly narrower and an additional unit (plot 135) has been created. The length of the row of

properties has increased from 15.5m to 17m and the gap between plots 120 and 121 has also been removed.

The applicant, in response to the economic viability of the project, also seeks to remove the Education and Open Space contributions (with the other contributions having already been paid for and highway improvements to Leamore Lane already carried out). In this respect an open book exercise has been submitted to the District Valuers Service for assessment.

Following negotiation with officers the applicant has agreed to seek approval to delay the payment of the S106 contribution, rather than seek to remove it at this point in time. The situation will be reassessed on the completion of the last dwelling on site. A DVS assessment has been done now, to assess current viability to establish a baseline for the viability of the development.

### **Relevant Planning History**

#### **Application Site**

06/1118/FL/W2 - Redevelopment of site for new residential development of 134 units and associated works, including access alterations. Granted 11<sup>th</sup> June 2007. The S106 was subsequently amended through a Deed of Variation on 6<sup>th</sup> June 2008.

05/1887/OL/W7 Outline: Residential Development access to be considered all other matters reserved. Void 21/2/06

BC28247P Outline: Industrial Units Development with Associated Parking & Access Road Grant Subject to Conditions 11/9/90

BC23146P Outline: Residential Development. Withdrawn 10/8/89

#### **Opposite Site:**

07/1362/FL/W2 - Erection of 102 dwellings and associated infrastructure including a balancing pond. Resolution to Grant Planning Permission subject to completion of a S106 agreement 11/03/2008.

### **Relevant Planning Policy Summary**

*(Note the full text version of the UDP is available from the First Stop Shop in the Civic Centre, and on the Planning Services Website [www.walsall.gov.uk/planning](http://www.walsall.gov.uk/planning)).*

### **Unitary Development Plan (UDP)**

GP1: Supports the sustainable location of development.

2.2, 3.6, 3.7, & GP2: seek to make a positive contribution to the quality of the environment, whilst protecting people and ensuring adequate and safe access is provided.

GP3: Planning obligations will be used to secure any on or off-site mitigating measures made necessary by a development.

GP4: local area regeneration by helping to bring forward derelict, vacant or underused land and buildings for new uses.

3.16: The Council will consider development in relation to its setting, with reference to the character and quality of the existing local environment, and will require a high quality of built and landscape design.

ENV10 – deals with Pollution effects from developments including ground contamination and noise.

ENV14: The Council will encourage the reclamation and development of derelict and previously developed land.

3.16, GP7, ENV32, H10 and 3.116: seeks the design of residential developments to create high quality living environments, well integrated with surrounding land uses and local character. Poorly designed development which fails to properly take account of the context or surroundings will not be permitted. Designing out crime' through design, layout, landscaping and boundary treatments is encouraged.

3.117 & ENV33: deals with landscape design and opportunities to create and enhance environmental quality.

ENV40: Adequate foul and surface water drainage infrastructure should be provided.

6.3 and H3: encourage the provision of additional housing through the re-use of previously developed land provided a satisfactory residential environment can be achieved.

H9: Housing densities in the range of 30 -50 dwellings per hectare are likely to be suitable on most sites, however higher densities are encouraged in locations close to town and district centres and in locations with good accessibility to a choice of means of transport.

7.1: Seeks to promote an efficient highway network;

T7: All development should satisfy the car parking standards set out in Policy T13. All parking provision should be well designed and sensitively integrated into the townscape or landscape, respecting the character of the local area, and with appropriate use of materials and landscape treatment.

T13: sets maximum car parking standards, account should be taken of the location of development in relation to local facilities and public transport and unless demonstrated

1, 2 & 3 bedroom houses – 2 spaces per unit

Flats with communal parking - 1.5 spaces per unit.

LC1: seeks to retain and enhance existing urban open spaces and readdress any deficiencies in the provision or accessibility of these. Residential developments will be required to make financial or other contributions, which will enable the provision of new, or the improvement of existing urban open spaces.

8.8: Residential developments will only be permitted where adequate school capacity exists or can be provided. Where residential developments necessitate the provision of new or improved educational facilities or other forms of social and community infrastructure the Council will require developers to make a financial contribution to the costs of providing these facilities

## **Supplementary Planning Documents (SPD)**

## **Designing Walsall SPD**

DW1-Sustainability – new development must show that its design maximises energy efficiency in terms of layout, orientation and sustainable use of resources;

DW2- Safe and Welcoming places- all development must contribute towards creating places that feel safe, secure and welcoming for everyone;

DW3 – Character -design to respect and enhance local identity;

DW4- Continuity -attractive spaces within new development should be defined or enclosed by buildings, structures or landscape;

DW5 Ease of movement- create places that are easily connected, safe to move through;

DW6 – Legibility - new development should contribute to creating a place that has a clear identity;

DW9 – High Quality public realm - new development must seek to ensure it creates places with attractive environmental quality;

DBW 10 – new development should make a positive contribution to creating a sustainable environment.

Annexe E: Numerical Guidelines for Residential Development ... identifies privacy and aspect distances between dwellings including 24m separation between habitable windows for two storeys and above, 13m separation between habitable room windows and blank walls exceeding 3 metres in height, 45° code, garden dimensions of 12m in length and 68m<sup>2</sup> for housing and 20m<sup>2</sup> per dwelling where communal provision is made, set backs to avoid terracing and provision of boundary walls. Although failure to comply with these guidelines may not by itself be a reason for refusal of an application, it will be a factor to be used in determining whether a proposal would be compatible with the wider character of the area or the existing dwelling or the amenity of neighbours.

## **Natural Environment SPD**

Policies N8, N9 & N10 deal with the need to fully assess, protect and secure compensatory planting for trees.

Protection is proposed for protected animals, plants etc.

## **Urban Open Space SPD**

Sets out the thresholds and contributions sought towards urban open space from residential developments.

## **Education SPD**

Sets out the thresholds and contributions sought towards education from residential developments.

## **Affordable Housing SPD**

Sets out the thresholds, tenure, mix and type of affordable housing sought from residential developments.

## **Regional Spatial Strategy for the West Midlands (RSS 11)**

The Regional Spatial Strategy has been revised and republished on 15<sup>th</sup> January 2008 to reflect the first Phase of Review with the 2<sup>nd</sup> Phase of Review nearing completion. The Strategy seeks to provide broad regional directives and recognises the role of the regeneration of the Black Country to the overall performance of the West Midlands Region. The next phases of review are underway.

The focus for the Black Country policies are to continue its economic, physical and environmental renewal focused around improved infrastructure and the regeneration of town and city centres (including Walsall) to create modern and sustainable communities.

Overall the strategy promotes sustainable regeneration of previously developed land, promoting a high quality environment and sustainable development capable of being accessed by a variety of transport modes.

A major challenge for the Region is to counter the unsustainable outward movement from the Major Urban Areas of people and jobs (3.4(a)). Relevant policies include:

Policies UR1, UR1b, UR1c and UR3 which seek to regenerate urban areas and in particular the major urban areas. Policies CF1, CF3, CF4 and CF5 seek to encourage housing in sustainable locations.

Policies QE1, QE2, QE3, QE4 and QE5 which seeks to improve the quality of the environment whilst preserving quality and historic buildings and locations. The policies also aim to enhance public spaces and urban green space. Policy CC1, EN1, EN2 seeks to conserve energy and address climate change.

Policies T2, T3, T4, T5 and T7 seek to reduce the need to travel and promote sustainable modes of transport.

There is no need for this application to be considered under the Conformity Protocol.

### **National Policy**

Planning Policy Statement (PPS) 1: Sets out the overarching planning policies on the delivery of sustainable development through the planning system. PPS1 indicates that planning policies should promote high quality inclusive design in the layout of new developments and individual buildings and that design which fails to take the opportunities available for improving the character and quality of an area should not be accepted." Paragraphs 33 to 39 also state the importance of good design. Supplementary document published on the need to address climate change through the planning system.

PPS 3: Encourages reuse of previously-developed land for housing in sustainable locations and takes a sequential approach to location of new

homes. Applications for residential on employment land should be given favourable consideration, subject to criteria. PPS3 also indicates that housing policy objectives provide the context for planning for housing through development plans and planning decisions. This includes high quality housing that is well-designed and built to a high standard; a mix of housing, both market and affordable, particularly in terms of tenure and price, to support a wide variety of households in all areas; a sufficient quantity of housing taking into account need and demand and seeking to improve choice; and housing developments in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure.

PPG13 on transportation seeks to minimise the use of the car by the sustainable location of development.

Circular 05/2005 (Planning Obligations) is of relevance with regard to the appropriate level of planning contributions that will be sought.

### **Consultations**

**Transportation** – No objection

#### **Pollution Control**

**Scientific Team** – No objection

**Contaminated Land Team** – No objection subject to conditions

**Network Rail** – No objection

**Fire Service** – No objection

**Land Drainage** – No objection

**Natural England** – No objection.

**British Waterways** - No objection subject to conditions relating to canalside infrastructure and works.

**Inland Waterways Association** – Object to the rotation of Plots 51-55 with the provision of additional car parking spaces and reduction in trees which will have a negative impact on the reduction of CO2 and will contribute to climate change. Request that David Wilson Homes are required to plant at least the same number of trees as were proposed for this part of the site in the original scheme. Also concerned at the reduction in the size of units.

### **Public Participation Responses**

None

### **Determining Issues**

- Alterations to the mix and layout
- Alteration of the open space and education contribution

### **Observations**

#### **Alterations to the mix and layout**

The proposed layout remains fundamentally unchanged from the approved layout. The additional units relate to the resizing of the units to accommodate more two and three bedroom units and less four bedroom units. As such the proposals raise no new issues in relation to the relationship to the canal or to the railway.

The changes are considered below in detail.

former plots 51-53 turned 90degrees (although Plot 51 remains fronting the principal road through the development) to make plots 51-55 to create two additional units.

The proposals do not show proposed trees in the back gardens of the proposed plots. The comments of the Inland Waterways Association are noted, and the aims of reductions in climate change are a fundamental objective of planning and the development industry. Trees are only a minor part of the aims of reducing climate change. Changing behaviour patterns (i.e. reducing the need to travel by car) plays a much greater role in reducing carbon emissions. In addition, the planting of trees within back gardens does not mean that these trees could be realistically maintained or retained over a long period of time. Overall therefore building a development on a previously developed area of land within reasonable walking distance from local facilities will provide an opportunity for residents to reduce the level of carbon emissions. Officers reasons stated above do not agree with the comments. In this regard therefore the proposals are considered acceptable with a landscaping scheme also conditioned.

Former plots 58 and 59 have been made smaller and a new Flat over a Garage (FOG) has been added to allow for an additional unit to be created (Plots 60-62 on the submitted plans)

There are no objections to this alteration although the creation of the FOG is generally not a positive element. In this case it has been designed to fit the street elevation and the continuity of the built form to the street scene remains and the alterations are considered to be acceptable.

Former plots 118-121 have been made slightly narrower and an additional unit (plot 135) has been created. The length of the row of properties has increased from 15.5m to 17m and the gap between plots 120 and 121 has also been removed.

These alterations are not considered to be significant to the overall aspect. The removal of the gap between plots 120 and 121 would also allow for a

continuous building line fronting the canal. The proposals in this respect are considered to be acceptable.

### **Alteration of the open space and education contribution**

With regard to the contributions the applicant notes in their supporting statement

*Since the signing of the S106 agreement we understand that the availability of secondary school places in the vicinity of the site has changed such that Walsall Council has taken the decision to close Sneyd Community School on 31<sup>st</sup> August 2012 with pupils transferring to the nearby Frank F. Harrison Community School which has surplus places available. Consequently we feel that there is potential to make a case for the removal of the Education Contribution in the sum of £250,704.27 for reasons of demand and viability.*

*With regard to offsite Urban Open Space provision the site is located in an area with significant existing open space and publicly accessible land, most notably the Odell Road Playing Fields behind Irvine Close being less than five minutes walk from the development site. Consequently we feel that there is potential to make a case for the removal of the off-site Public Open Space contribution of £259,370 for reasons of demand and viability.*

Officers note the comments of the applicant with regard to the future closure of Sneyd Community School and the loss of surplus places that this generates. Walsall Children Services note that the surplus for secondary school phases is below the SPD figure of 10%. The comments of the applicant are noted however it is noted that Education Officers still seek a contribution in accordance with the Council's Adopted Supplementary Planning Document.

With regard to Urban Open Space contributions, any contribution would be split between Borough-wide, Local Neighbourhood Partnership and local projects. The Borough-wide being targeted at areas of Green space of strategic importance, for example, the Arboretum. Whilst there are areas of open space in the near vicinity these are identified as of low quality in the Council's Green Space Strategy. As such, investment would not be towards quantitative improvement but towards qualitative improvements of existing provision. As such, Officers consider that the contribution sought is entirely reasonable and relevant to planning.

In terms of the financial assessment the District Valuers Services have been appointed to review the present financial case.

The option of delaying payment of the contribution from the occupation of 50<sup>th</sup> dwelling has been agreed by the applicant. At the completion of the last dwelling should the viability of the scheme not allow for payment of the outstanding contributions the applicant will again approach the Council with

regard to the payments with the current assessment together with the completed sales being used as a barometer of the viability of the development.

As such, Members are asked to agree, separately to the alterations of the planning permission, to defer the payment of the agreed education and urban open space contributions, through a Deed of Variation, from the occupation of the 50<sup>th</sup> dwelling to the completion of the last dwelling of the development.

### **Summary of Reasons for Granting Planning Permission**

The application is for the amendment to planning permission reference 06/1118/FL/W2 and the creation of four additional units. The proposed alterations to the layout are primarily located at plots 51 to 55 with these units being rotated 90 degrees and the creation of two additional units in this location. Overall it is considered that the relationship to the canal is not materially altered and the proposals are considered in accordance with the aims and objectives of the Development Plan.

The level of planning contributions remains unaffected at this time with the applicant agreeing to defer the payment of contributions until the completion of the last dwelling. Assessment of the viability of the development will continue to take place throughout the completion of the development and a viability assessment has been completed at this time to assess the viability of the project. This is in accordance with Development Plan Policy, Adopted Supplementary Planning Documents and Circular 05/2005.

As such having taken into account all public participation and consultation responses, in particular the Inland Waterways Association, the proposed development is considered to comply with the relevant policies of the development plan, in particular policies 2.1, 2.2, GP1, GP2, GP3, GP7, 3.16, ENV18, ENV19, ENV22, ENV23, ENV24, ENV32, 3.1, 8.8, 7.51, T7, T10, T12, H3, H9, H10, 4.1 and LC9 of Walsall's Unitary Development Plan; the adopted Designing Walsall, Natural Environment, Education and Urban Open Space Supplementary Planning Documents; the Regional Spatial Strategy for the West Midlands and Circular 05/2005 and, on balance, having taken into account all material planning considerations, the proposals are acceptable.

### **Recommendation: Grant Permission Subject to Conditions and authorised Deed of Variation**

1. This development must be begun not later than 3 years after the date of this decision.

*Reason:* Pursuant to the requirements of Section 91 of the Town and Country Planning Act, 1990.

2. No development shall be carried out until full details of the proposed boundary treatment of the site have been approved in writing by the Local Planning Authority. The submitted scheme shall include any internal site divisions. The approved scheme shall be implemented before the development is brought into use and shall be thereafter retained.

*Reason:* To ensure the satisfactory appearance of the development.

3. Unless otherwise agreed in writing by the Local Planning Authority, the levels of the site, accessway and floor levels shall be implemented in accordance with the details agreed under application 06/1118/FL/W2.

*Reason:* To ensure the satisfactory appearance of the development, to ensure the satisfactory development of the site and to ensure the satisfactory drainage of the site.

4. Unless otherwise agreed in writing by the Local Planning Authority, the remedial measures as set out in the "Remediation Statement" reference GRM/P3658/REM, shall be implemented in accordance with the agreed timetable.

*Reason:* To safeguard the amenities of the occupants in the area.

5. A validation report confirming the details of the measures implemented together with substantiating information and justification of any changes from the agreed remedial arrangements shall be submitted to and accepted in writing by the Local Planning Authority prior to the development being brought into use.

*Reason:* To ensure the satisfactory development of the site.

6. No development on this shall take place until suitable noise mitigation measures to protect internal areas have been agreed in writing with the local planning authority, and the development shall not be occupied until such measures have been fully implemented.

*Reason:* To ensure the satisfactory development of the site.

7. No development or site clearance works shall be carried out until a detailed landscaping scheme for the site has been approved in writing by the Local Planning Authority. The approved scheme shall be implemented within 12 months of any part of the development being brought into use, or such other period as may be agreed in writing by the Local Planning Authority. Apart from being attractive visually, the proposed planting shall be consistent with providing a good variety of species to encourage biodiversity and maintain the functions of the site as a wildlife corridor.

*Reason:* To ensure the satisfactory appearance of the development.

8. No development shall be commenced until a protocol has been submitted to and approved in writing by the Local Planning Authority to ensure that the immediately surrounding highways are not adversely affected by the accidental deposition of materials from vehicles leaving the site. (This may involve the use of a wheel wash, road sweepers, etc.)

*Reason:* To safeguard the amenity of the area.

9. Unless otherwise agreed in writing by the Local Planning Authority, the development shall be carried out in accordance with the schedule of facing materials to be used in external walls and roofs that has been approved under planning permission 06/1118/FL/W2.

*Reason:* To ensure the satisfactory appearance of the development.

10. No development shall be carried out until details of secure cycle parking facilities have been submitted to and approved in writing by the Local Planning Authority. The areas shall thereafter be retained and used for no other purpose.

*Reason:* To ensure the satisfactory provision of cycle parking facilities.

11. All ground floor windows and doors, and those that can be reached via flat roofs, should be fitted with Secure By Design standard units.

*Reason:* In the interests of crime prevention.

12. Before this development is brought into use, the accessways, vehicle parking and manoeuvring areas shown on the approved plans shall be surfaced in tarmacadam (or alternative impervious hardwearing material to be agreed in writing by the Local Planning Authority). The areas shall thereafter be retained and used for no other purpose. The parking spaces have been clearly marked out.

*Reason:* To ensure the satisfactory provision of off-street parking, appearance and functioning of the development and in the interests of highway safety.

13. Prior to the first dwelling being occupied on the development hereby approved, a Residential Travel Plan developed in partnership with this Council's Travel Wise co-ordinator shall be submitted to, and agreed in writing by the Local Planning Authority. This shall identify a package of proposed measures consistent with the aim of reducing reliance on the car, and should include details on:

- a) Public transport information and ticket details;
- b) Cycle provision, showers and lockers; and
- c) Walking initiatives.

The approved measures shall be developed and implemented during the first six months following the occupation of the premises for the use hereby approved. Following the expiry of this period of time, a review of the Plan shall

be submitted to, and agreed in writing by, the Local Planning Authority. This will identify any refinements and clarifications deemed necessary to the Plan. The approved, revised plan shall thereafter be implemented in conjunction with the use approved under this permission, unless otherwise agreed in writing by the Local Planning Authority.

*Reason:* To ensure the satisfactory functioning of the development

14. Before work commences on site, the following shall be given the opportunity of making external inspections of the brick railway abutment for the purposes of making a record and identifying any artefacts or documentation meriting preservation:

Walsall Local History Centre, Essex Street, Walsall, WS2 7AS (telephone Walsall 721305);

*Reason:* To secure an adequate record of the site's history.

15. No development or site clearance works shall be commenced until a detailed method statement describing the preparation, planting, establishment and management of the canal margins is approved by the Local Planning Authority. This document must refer to the existing vegetation, ground conditions and the use of the proposed plant material must be justified. It must also explain how the diverse assemblage of invertebrates is to be conserved and enhanced. The canal side planting shall then be introduced and managed in accordance with the approved method statement and retained thereafter.

*Reason:* In order that the ecological importance of the site is retained.

16. No development or site clearance works shall be commenced until detailed mitigation proposals are approved by the Local Planning Authority to describe how water vole populations along the canal boundary are to be maintained and enhanced in the long term and to ensure that this species is not harmed or its habitat degraded. All methods to be used to mitigate impacts shall be submitted to and approved in writing by the Local Planning Authority prior to any works which could affect this species.

*Reason:* In order that to ensure that populations of a protected species are conserved.

17. No development or site clearance works shall be commenced until detailed monitoring proposals are submitted and approved in writing by the Local Planning Authority to assess the effectiveness of the ecological mitigation works required under Conditions 16 and 17. Where measures have failed or are ineffective proposals for remedial works shall be submitted and, once the document has been approved, then implemented.

*Reason:* In order that the ecological importance of the site is retained.

18. All planted and grassed areas and associated protective fencing will be maintained for a period of 5 years from the full completion of the scheme approved under condition 5. Within this period:
- (a) grassed areas will be maintained in a tidy condition by regular cutting and any areas that fail to establish will be reinstated;
  - (b) planted areas will be maintained in a tidy condition by regular weeding;
  - (c) any tree, shrub or plant which dies, becomes seriously diseased, damaged or is removed will be replaced with a tree, shrub or plant of the same or greater size and the same species as that originally required to be planted;
  - (d) any damage to protective fences will be made good.

*Reason* : To ensure the success of the landscaping and planting scheme, and the establishment of the plants.

19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or succeeding orders, no gates, fences, walls or other means of enclosure, except those included on the approved plans, shall be moved or erected without the prior approval of a planning application relating to that work. The means of enclosure shown on the approved plans shall not be removed or moved without the prior approval of a planning application.

*Reason*: To ensure the satisfactory appearance of the development.

20 A) Subject to the provisions of part (B) of this condition, the signalised/access / junction arrangements indicated on drawing 46439TBMD-009 dated June 06 shall be implemented and completed, along with the speed reducing scheme referred to in condition 15 prior to any part of this development being brought into use.

B) If an access to serve residential development of the land on the south side of Leamore Lane is commenced prior to commencement of the development of this site then development on this site shall not commence until revised proposals for the access to this site, reflecting the final version of the road junction previously identified in the Transport Assessment have been submitted to and approved in writing by the Local Planning Authority and that amended scheme for junction / access arrangements shall be implemented and completed, along with the speed reducing scheme referred to in condition 15, prior to any part of this development being brought into use.

21. The extent of the water vole/landscape buffer zone alongside the canal shall remain as shown on drawing H2107/01 version G. The profile and construction of the buffer strip shall be as described in paragraphs 3.39 – 3.41 and shown on Figure 3 of the Supplementary Ecological Information dated March 2007.

*Reason*: In the interests of nature conservation.

22. The water vole mitigation scheme shall accord with the scheme outlined in the Supplementary Ecological Information. The timing of the various elements of the mitigation scheme shall be agreed in writing by the Local Planning Authority depending on the initiation date, the presence of lactating females etc.

*Reason:* In the interests of nature conservation.

23. Prior to the commencement of any construction on site, a detailed planting scheme for the water vole/landscape buffer zone alongside the canal shall be submitted to and approved in writing by the Local Planning Authority.

*Reason:* In the interests of nature conservation.

24. Prior to the commencement of the building phase of the development, details of the four 'indicative amphibian habitats shown on Drawing H2107/01 version G shall be submitted to and agreed in writing by the Local Planning Authority. The details shall include a timescale for the 'installation' of the habitats which shall be at a point prior to the completion of the development.

*Reason:* In the interests of nature conservation.

25. Prior to the commencement of ground works a capture and translocation programme for amphibians shall be undertaken and details submitted to the Local Planning Authority

*Reason:* In the interests of nature conservation.

26. Prior to the commencement of the building phase of the development details of the design of roadway/kerbs etc in the area of the 'amphibian habitats' where the access road is between it and the buffer strip and of the provision of an amphibian 'underpass' linking the amphibian habitat to the buffer strip shall be submitted to and approved in writing by the Local Authority.

*Reason:* In the interests of nature conservation.

27. Before completion of the development details of the long-term management of the buffer strip shall be submitted to and approved in writing by the Local Planning Authority.

*Reason:* In the interests of nature conservation.

#### NOTES FOR APPLICANT:

- A. This planning permission does alter the legal protection given to various species of wildlife recorded from this site. You should ensure that protected species legislation is not contravened in implementing this permission.

- B. Network Rail has been consulted on this application and your attention is drawn to the attached reply.
- C. British Waterways have been consulted on this application and your attention is drawn to the attached reply.
- D. The Council's TravelWise adviser at the time of this decision is Louisa Stebbings, who can be contacted on (01922) 652561, Centro's TravelWise Officer, Anne Shenton, can also provide advice on public transport initiatives she can be contacted on (0121) 214 7409
- E. Should any amendments to the layout on plan no. H2107/01 Revision G be required, there should be no reduction in either the overall extent of the buffer strip or the proportion (ie length) that is at least 5m wide.
- F. It is noted that the Supplementary Ecological Information already provides considerable detail of the planting scheme for the water vole/landscape buffer zone because it is an integral part of the water vole mitigation strategy, but there is also a need to ensure that it incorporates some mitigation for the loss of invertebrate habitats.
- G. With regard to suitable noise mitigation measures to protect internal and/or external residential areas, reference should be made to guidance and criteria contained in British Standard BS 8233, 1999 and World Health Organisation Guidelines for Community Noise 2000 and the following are relevant:
- a).internal noise levels within bedrooms of residential development shall not exceed a Continuous Equivalent Noise Level,  $L_{Aeq(5 \text{ minutes})}$ , of 35 dB together with a maximum instantaneous level of 45 dB)  $L_{AFmax}$ , between the hours 23.00 to 07.00;
- b).internal noise levels within living rooms of residential development shall not exceed a Continuous Equivalent Noise Level,  $L_{Aeq(1 \text{ hour})}$ , of 45 dB between the hours 07.00 to 19.00; and
- c). internal noise levels within living rooms of residential development shall not exceed a Continuous Equivalent Noise Level,  $L_{Aeq(1 \text{ hour})}$ , of 40 dB between the hours 19.00 to 23.00.

Sound level measuring instrumentation shall conform to either 'Type 1' of British Standards BS EN 60651: 1994 'Specification for sound level meters' and/or BS EN 60804: 1994 'Specification for integrating-averaging sound level meters' and/or Class 2 of BS EN 61672: 2003 'Electroacoustics- Sound Level Meters - Part 1: Specifications (or any superseding standards as applicable) which shall have been verified in accordance with British Standard BS 7580 ' Specification for the verification of sound level meters' Part 1: 1996 'Comprehensive procedure' within a preceding 2 year period.

Current guidance, procedures, recommendations and information to assist in the completion of a suitable noise survey may be found in Planning Policy Guidance Note PPG 24 'Planning and Noise'. 1994; Minerals Policy Statement 2: Controlling and Mitigating the Environmental Effects of Minerals Extraction in England. 2005; British Standard BS 7445: 2003 "Description and Measurement of Environmental Noise"; British Standard BS 7445-1: 2003 - Description and measurement of environmental noise - Part 1: Guide to Quantities and Procedures; British Standard BS 7445-2: 1991 - Description and measurement of environmental noise - Part 1: Guide to the acquisition of data pertinent to land use; British Standard BS 7445-3: 1991 - Description and measurement of environmental noise - Part 3: Guide to application to noise limits; British Standard BS 4142: 1997 - Method for Rating industrial noise affecting mixed residential and industrial areas; Calculation of Road Traffic Noise, 1988; Calculation of Railway Noise, 1995. (This is not an exhaustive list)

Noise surveys should adequately establish the spatial variation of noise across a proposed development site using one or more measurement and/or calculation points, and may also need to take account of changes in noise levels on account of height above ground floor level. Additionally, a noise survey may have to take into consideration changes in a noise climate between normal weekdays and weekends, and require continued monitoring over a 24 hour period or longer. Secondary 'spot check' surveys will be required by the local planning authority in some instances to corroborate a continuous single noise survey.

Submitted noise measurement data must include details of all instrumentation used (microphones, sound level meters, data loggers, acoustic calibrators) inclusive of verification checks pursuant to British Standard BS 7580 Part 1: 1997 Specification for The verification of sound level meters Part 1 Comprehensive procedure conducted within the previous 12 month period, and recordings of prevailing climatic conditions on site of the course of noise measurements incorporating air temperature, wind speeds and direction as a minimum.

- H. Validation reports will need to contain details of the “as installed” remediation or mitigation works agreed with the Local Planning Authority. For example photographs of earth works, capping systems, ground gas membranes, and structure details should be provided. Copies of laboratory analysis reports for imported “clean cover” materials, manufacturer’s specification sheets for any materials or systems employed together with certification of their successful installation should also be submitted. Where appropriate records and results of any post remediation ground gas testing should be included in validation reports. This note is not prescriptive and any validation report must be relevant to specific remedial measures agreed with the Local Planning Authority.
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To: DEVELOPMENT CONTROL  
COMMITTEE

Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

**REASON FOR BRINGING TO COMMITTEE: Major application**

**Application Number:** 08/0163/OL  
**Application Type:** Outline Application

**Case Officer:** Andrew Thompson  
**Telephone Number:** 01922  
652403

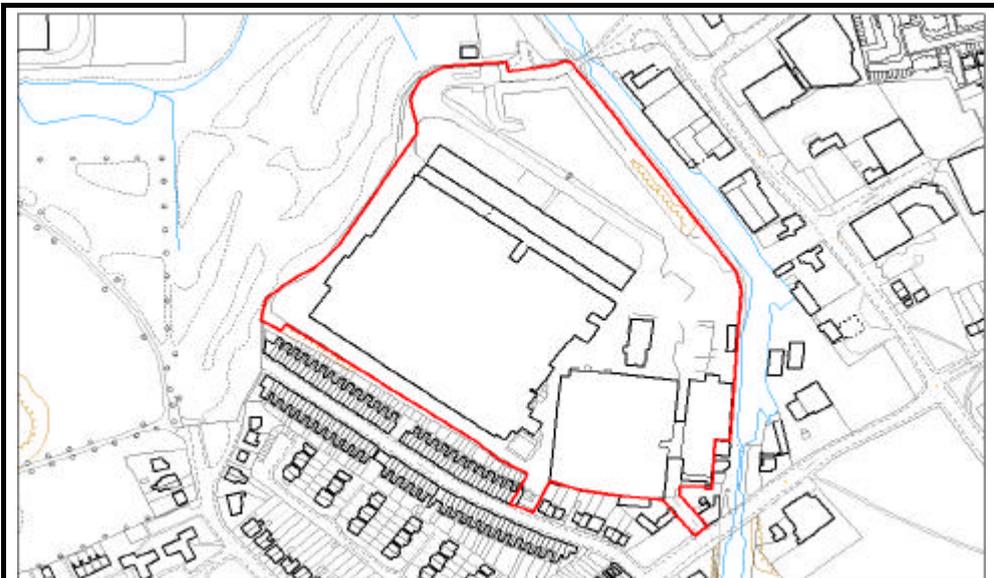
**Applicant:** Caparo Industries PLC  
**Proposal:** Outline Application for  
residential development of up to 310  
dwellings (access and scale to be  
considered)

**Agent:** John Williams  
**Location:** LAND AT FORMER  
CAPARO WORKS, BETWEEN  
THE WYRLEY AND ESSINGTON  
CANAL, MINER STREET, GREEN  
STREET AND OLD BIRCHILLS,  
OLD BIRCHILLS, WALSALL

**Ward:** Birchills Leamore

**Expired:** 08/05/2008

**Recommendation Summary:** Grant Permission Subject to Conditions and a  
Planning Obligation



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**Current Status**

Members deferred the decision on this application on 7<sup>th</sup> January 2010 to renegotiate the S106 contributions.

Following discussion with the applicant the proposed level of contribution is as follows:

- Equivalent of 14% Affordable Housing towards shared equity housing.
- Education Contribution in full, though capped at a maximum £965,000. (The developers feel they need a degree of certainty about this figure “ ... to complete our contract negotiations with the potential purchasers.” They recognise that the precise figure will be calculated when the precise content of the scheme has been designed, but see the need for a maximum figure. Should the amount of Contribution sought by Education be lower than £965,000, any surplus from this figure will be directed towards other service areas (e.g. Urban Open Space, Healthcare and Public Art).
- £170,000 primarily directed towards the junction improvement of Green Lane/Hospital Street/Old Birchills in the first instance with any remaining contribution to be provided towards Urban Open Space.

This application was reported to Committee on 1<sup>st</sup> April and 18<sup>th</sup> November 2008 and it was resolved to approve the application subject to conditions, a S106 Agreement and referral to the Government Office of the West Midlands (the report of 18<sup>th</sup> November 2008 is below). The Government Office resolved not to call in the application on 23<sup>rd</sup> December 2008.

However, the application remains undetermined as since that time the applicant has been considering the scope and amount of contributions sought by the S106 agreement despite the fact that the application does not define the number of dwellings within the permission and the applicant is not proposing to develop the scheme (only secure the permission).

Notwithstanding the above, the applicant chose to test the viability of the land through the District Valuers Service submitting two mixes of schemes of 259 and 301 dwellings for assessment. The District Valuers Service concluded that the existing use value should be £4,850,000.

The applicant has considered the viability of the scheme and considers the S106 costs to be prohibitive to the sale of the land for residential development. The opening passage defies the main content of the proposed s106 agreement. They also seek:-

1. A revised planning condition 1 requiring the submission of the Reserved Matters within 6 months of the date of the outline planning approval and the commencement of works within six months of the date of the Reserved Matters Approval.
2. removal of the suggested condition relating to Code for Sustainable Homes.

With regard to the offer, Officers have the following comments.

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### Revised Planning Condition 1

With regard to the short timescale, the applicant has suggested this requirement to address the changing viability of land and to ensure that the District Valuers report completed in August 2009 remains relevant to the Reserved Matters submission.

The applicant has been advised that the expectation is for a continued commitment to high quality design and that the eventual developer should engage in pre-application discussion as soon as possible. Officers have also advised that the Reserved Matters submission should reflect the aspirations and objectives of a high quality, sustainable development in Birchills.

Any change to this timescale (including an extension of time application) will require the reassessment of the viability by the District Valuers Service. As such the change in the condition will secure early delivery of the site, or ensure that if there is a delay an appropriate fresh decision can be made at that time.

### Revised S106 Offer

The revised S106 offer is to deliver a land price of £5,705,000 which is £855,000 higher than the value progressed by the District Valuers Service. Officers note this discrepancy and note that the increase in land value can be accounted for primarily through the securing of outline planning permission.

Based on the submitted indicative layout the total contributions sought were:  
Walsall Children Services – Serco - £965,591.20 towards both primary and secondary school phases.

Healthcare - £312,435.90

Open Space - £569,913

In addition British Waterways, Centro and Highway Improvements to the Green Lane/Hospital Street/Old Birchills were sought through S106 contributions. Public art locations are also shown on the indicative layout.

The contribution of £170,000 will be directed to the junction improvement of Green Lane/Hospital Street/Old Birchills. Whilst the amount of contribution exceeds the estimate to carry out the junction improvement Officers consider that the whole amount be directed to this junction improvement in the first instance to allow for overspend or increased expenditure in the cost of works.

Should any surplus contribution be left over from the junction improvement, Officers recommend that this amount should be directed towards Walsall Children Services – Serco in the first instance.

Walsall Children Services - Serco hold the view that the education contribution is still sought in full. If this is not forthcoming, the cost of providing school places will fall to the Council and there is very considerable pressure on the limited capital resources. All available resources to March 2011 are committed or earmarked. It is expected that capital allocations from

the DCSF will be reduced from April 2011 when the next 3-year funding period commences. This will make it more difficult for existing high priority schemes to be taken forward and, if funds have to be diverted to make provision for places needed solely as a result of this development, this would inevitably mean that some of the Council's high priority schemes would have to be cancelled or deferred. Given the revised basis for the agreement, this is now deliverable.#

It is noted that as part of the development there were improvements proposed as part of the indicative application proposals to include areas of open space and public art on-site and incorporate features (for example access to the canal) as part of the design of the scheme. As there is no formal submission to consider and no details form part of the permission, Officers will need to assess any changes and perceived on site provision as part of the quality of the Reserved Matters submission.

On balance, taking into account the above, it is considered that the currently proposed S106 offer is acceptable.

Removal of the planning condition relating to the Code for Sustainable Homes Planning policy requires an applicant to demonstrate the sustainability credentials for each development. The Reserved Matters submission will have to demonstrate the level of sustainability proposed.

Development industry standards have been steadily increasing towards energy efficiency, with many aspects of the Code for Sustainable Homes Level 3 already part of the existing Building Regulations regime. Affordable Homes already have to be built to this standard. The full adoption of Level 3 in private ownership homes is anticipated to become a requirement in April 2010.

It is likely therefore that the construction of the development will have to meet Code Level 3 as a minimum as the statutory requirement to meet this level will be in place prior to the scheme being finalised.

Overall, whilst Officers do not object to the removal of the condition, the standard for a sustainable and aspirational development will be a fundamental requirement to address at Reserved Matters stage.

The remainder of this report is unchanged from the November 2008 committee, though I have crossed out the section 106 information and the code 3 sustainability information, as no longer relevant.

The policy base continues to evolve beyond that in the report, but there are no changes of significance for this decision.

### **Status at 18<sup>th</sup> November 2008**

The application was deferred from committee on 1<sup>st</sup> April 2008 to agree the scope of the education and highway contributions. Following a series of negotiations and submissions by the applicant, it has now been agreed that the developer contributes towards the improvement of Green Lane/Old Birchills and Hospital Street in a proportional manner and that the level of education contribution be delayed until the reserved matters submission when the precise mix and number of dwellings is known.

The application site has also now been cleared as the former factory buildings were unsafe and a target for anti-social behaviour.

### **Application and Site Details**

The application site comprises the land formerly occupied by Caparo Industries and Barton Aluminium and is bordered by Miner Street to the southwest, the Wyrley and Essington Canal to the east and northeast and Reedswood Park and Golf Course to the north and northwest. To the southeast of the site is located a public house and the former lock museum and Top Lock Cottage.

The site is accessed principally from Green Street. Also located on Green Street are MGW which is a small car repairs employer. The Caparo Industries southern car park (fronting onto Old Birchills) is not included in the application site. Rayboulds Bridge is the principal access point for Barton Aluminium. This is an adopted public highway and is currently used as a two way access point for Barton Aluminium, the Golf Course and Caparo Industries existing northern car park.

The site (when it was the former factory) has a pedestrian entrance from Miner Street. Miner Street is a terrace of Victorian houses with a strong design character and built form. On the opposite side of the canal are further employment uses including Metafin Ltd and a boatyard.

The application site is designated as Core Employment Land within the Unitary Development Plan (UDP). Much of the canal, which bends around the site, is designated as a Conservation Area with the locks being listed. In addition the former lock museum, Top Lock Cottage and Rayboulds Bridge are also Grade II Listed buildings. In addition a small portion of the south eastern corner of the site is designated as a Limestone Consideration Zone.

The application is in outline with scale and access to be considered, with layout, landscaping and external appearance not to be considered at this stage. The application proposes a development of up to 310 dwellings on the application site of 6.67hectares, which equates to a density of 46.4dph.

The illustrative material submitted show 10% 1 bed flats, 30% 2 bed flats, and the rest as a mix of 1 to 6 bed houses (60%). In addition the application is supported by an illustrative landscape scheme which shows next to Top Lock Cottage and fronting the canal (within the Limestone Consideration Zone) as a landscaped area and 'Urban Park'.

The principal access from Green Street, emergency access across Rayboulds Bridge, an improved pedestrian link to Miner Street, and a pedestrian link down the embankment to the canal are included in the application proposals.

In addition the proposals show an illustrative landscaping scheme which includes the improvement of the embankment to the canal, a landscaped area around Top Lock Cottage and the former lock museum.

The application is supported by the following information:

- Planning Policy Statement;
- Design and Access Statement;
- Ground investigation reports;
- A Transport Assessment;
- Noise and air quality assessments;
- A cultural heritage assessment;
- An ecological assessment;
- A flood risk assessment;
- A report on pre-application consultation carried out by the applicant;
- A revised screening opinion;
- A sustainability report – in relation to the Code for Sustainable Homes; and
- Indicative plans for a scheme based on 301 dwellings

Council policy seeks community involvement and the application records that the scheme has been presented to the Council's Development Team twice, Midlands Architecture for the Designed Environment (M.A.D.E.) and their design review process and in addition to the Walsall Regeneration Company's Regeneration Framework Committee and the local Project Reference Group for the Birchills area. In addition a more formal pre-application community event was held in 2007.

### **Relevant Planning History**

#### **Application site**

06/0397/ND/W7 – Screening Opinion for an Environmental Impact Assessment for the demolition of existing buildings and erection of 300 residential dwellings. EIA not required – March 2006

#### **Top Lock Cottage**

07/1381/FL/W6 – Change of use from residential use to educational use.  
Granted – September 2007

### **Relevant Planning Policy Summary (*Note the full text version of the UDP is available from Planning Services Reception and on Planning Services Website*)**

Considering the size, scale and variety of the application site a significant proportion of National, Regional and Local Planning Policy is relevant. It is not possible to achieve concise and full evaluation of each policy and therefore below is a summary of the main issues and points raised by Policy. Further detail can be found in the specific Policy references.

## **Adopted UDP**

The overall aim of the UDP is to regenerate and change the direction of Walsall Town Centre into a vibrant and economically successful town centre. The policies encourage offices in appropriate locations.

The Adopted UDP allocated land within the application site, under policy JP5 as Core Employment Land. The need to secure appropriately designed solutions, high quality environments, preserving and enhancing the historic environment, and ensure that the developments are comprehensive in manner. The need to consider appropriate measures for flooding, highway improvement, and car parking are also considered.

Policies GP1, GP2, GP3, GP7, T7, T12 T13, ENV10, ENV14, ENV18, ENV21, ENV23, ENV24, ENV26, ENV27, ENV28, ENV29, ENV32, ENV33, ENV34, ENV39, ENV40, JP5, H1, H3, H4, H9, H10, T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11 and T13 of Walsall Unitary Development Plan (March 2005). These address regeneration, design, environment, employment and transportation issues.

**Black Country Joint Core Strategy** – The Core Strategy has completed its Preferred Options consultation, further consultation is anticipated in Spring 2009. The site is designated within the Strategy as part of Regeneration Corridor 7 (RC7) for strategic housing.

**Supplementary Planning Documents (SPDs)** are also relevant are Designing Walsall SPD, Healthcare SPD, Affordable Housing SPD, Urban Open Space SPD and Education SPD.

## **Regional Spatial Strategy**

The Regional Spatial Strategy has been revised and republished on 15<sup>th</sup> January 2008 to reflect the first Phase of Review. The Strategy seeks to provide broad regional directives and recognises the role of the regeneration of the Black Country to the overall performance of the West Midlands Region.

The focus for the Black Country policies are to continue its economic, physical and environmental renewal focused around improved infrastructure and the regeneration of town and city centres (including Walsall) to create modern and sustainable communities.

- a) to reverse out-migration accommodating within the Black Country all of the generated household growth from 2011 and meeting at least the levels of housing provision identified in Policy CF3 table 1;
- b) to raise income levels raising demand and household incomes (average earnings, GDP per head and reducing unemployment) to the UK average by 2033;

c) to create an inclusive and cohesive society within the Black Country removing barriers to opportunity and changing the socio economic mix by increasing the proportion of social grades A and B to match the national profile by 2033 or earlier; and

d) to transform the Black Country environment by protecting and enhancing the sub-region's environmental and heritage assets and biodiversity and implementing the Black Country as Urban Park concept.

Overall the strategy promotes sustainable regeneration of previously developed land, promoting a high quality environment and sustainable development capable of being accessed by a variety of transport modes.

A major challenge for the Region is to counter the unsustainable outward movement from the Major Urban Areas of people and jobs (3.4(a)). Relevant policies include:

Policies UR1, UR1b, UR1c and UR3 which seek to regenerate urban areas and in particular the major urban areas. Policies CF1, CF3, CF4 and CF5 seek to encourage housing in sustainable locations.

Policies QE1, QE2, QE3, QE4 and QE5 which seeks to improve the quality of the environment whilst preserving quality and historic buildings and locations. The policies also aim to enhance public spaces and urban green space. Policy CC1, EN1, EN2 seeks to conserve energy and address climate change.

Policies T2, T3, T4, T5 and T7 seek to reduce the need to travel and promote sustainable modes of transport.

There is no need for this application to be considered under the Conformity Protocol.

### **National Planning Policy**

Planning Policy Statement (PPS) 1: Sets out the overarching planning policies on the delivery of sustainable development through the planning system. PPS1 indicates that planning policies should promote high quality inclusive design in the layout of new developments and individual buildings and that design which fails to take the opportunities available for improving the character and quality of an area should not be accepted." Paragraphs 33 to 39 also state the importance of good design.

PPS3 encourages reuse of previously-developed land for housing in sustainable locations and takes a sequential approach to location of new homes. Applications for residential on employment land should be given favourable consideration, subject to criteria.

PPS3 also indicates that housing policy objectives provide the context for planning for housing through development plans and planning decisions. This includes high quality housing that is well-designed and built to a high standard; a mix of housing, both market and affordable, particularly in terms of tenure and price, to support a wide variety of households in all areas; a sufficient quantity of housing taking into account need and demand and seeking to improve choice; and housing developments in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure.

In considering high quality design, PPS3 (paragraph 16) guides that proposed development should be well integrated with, and complement, the neighbouring buildings and the local area more generally in terms of scale, density, layout and access and creates a distinctive character that relates well to the surroundings and supports a sense of local pride and civic identity.

Planning Policy Guidance Note (PPG) 13, promotes development accessible transport locations, reducing the need to travel by car and promoting walking, cycling and public transport. This is supported by Manual for Streets (published May 2007) which promotes a flexible approach to design and materials that build a high quality environment

PPS23 (Planning and Pollution Control) and PPS 24 (Planning and Noise) also apply seeking to appreciate and conserve the historic environment and deliver development which does not raise issues in terms of polluted environments.

Circulars 07/99 (Departures) and 05/2005 (Planning Obligations) are of relevance the latter with regard to the appropriate level of planning contributions that will be sought. The former requires the referral of this application to the Government Office for the West Midlands (GOWM).

### **Consultations**

**Transportation** – No objection. It is noted that from a Transportation perspective no agreement or otherwise in respect of the indicative residential layout should be inferred or assumed. Grontmij drawing number P461600/06/001 rev 2, received on 28<sup>th</sup> March and the arrangements shown on the drawing are acceptable in principle, subject to safety audit and detail design. The visibility improvements required for the Caparo scheme should be implemented effectively as phase one of the larger scheme and must not prejudice access arrangements to the Sydenham playing fields site and should be implemented prior to commencement of construction on the site. The developer will be required to contribute proportionally to the cost of additional off-site highway improvements that may be necessary to mitigate against the impacts of this and other identified residential developments in the area. This requirement should be included in a section 106 agreement.

**Pollution Control (Scientific Team)** – Objects on the grounds that further information on air quality is required.

**Pollution Control (Contaminated Land Team)** – No objection subject to conditions.

**Environment Agency** – No objection subject to conditions

**Walsall Regeneration Company** – Fully support the application

**Fire Service** – No objection subject to details.

**Education** - We base our contribution requests on whether there are sufficient surplus places in local primary and secondary schools. If the level of surplus places is below 10% for either phase, we ask for a contribution. In this case the level of surplus places is below 10% in both the primary and secondary sectors. We would therefore look for a contribution towards provision for both phases. Based on current prices, we would look for a contribution of £965,591.20.

**Conservation** – No objection subject to more information at detailed stage. This site is adjacent to four listed buildings and a Conservation Area, although it does not contain any designated historic sites. There are two principle matters relating to the adjacent listed structures which require clarification.

The first is the proposed use of Rayboulds Bridge. While this falls outside the red line I am presuming that there will be some level of access over it, into the site. If so details should be provided to show what level of traffic will be allowed over it and if this would be greater than the current level of traffic. The bridge should be used for pedestrian and cycle access only and if required, for emergency vehicle access.

The second is the setting of the two listed buildings adjacent to the canal, the Former Boatmans Rest and the Toll House. There is a limestone mine consideration zone around these in which no development is proposed. The indicative landscape details suggest that these buildings will be essentially screened from the site by trees planted in the proposed Urban Park. This is a lost opportunity to enhance the setting of these buildings, either with carefully designed new development or with landscaping. Furthermore the proposed layout does not appear to give any surveillance of the buildings which could leave them vulnerable.

**Open Space** – Seek £701 per bedroom of the development in accordance with the adopted SPD which based on the indicative scheme will be £569,913. On site works will need to be taken into consideration

**Healthcare** – Seek £384.30 per bedroom of the development in accordance with the adopted SPD which based on the indicative layout will be £312,435.90

**Housing Strategy** – seek the equivalent of 25% shared equity. This would be in accordance with the current Adopted Supplementary Planning Document (SPD) but also allow for social rent to be provided on site in accordance with the emerging SPD and housing needs study. The mix should include all types of units but no one bedroom flats should be offered for affordable housing.

**British Waterways** – No objection but would like to be consulted in the Reserved Matters submission and would like to progress a Section 106 contribution towards the canal towpath and improvement to the access point on the bridge.

**Inland Waterways Association** – No objection to the layout or scale of development based on landscaping to the proposed scheme being brought forward by the reserved matters submission. Object to the proposed steps to the canal and the impact on the wall on the boundary of the site.

**Drainage** – No objection subject to no surface water to be discharged into the canal from this site.

**National Grid** – no objection – risk is negligible.

**Centro** – No objection in principle subject to the provision of a Green Travel Plan. The applicant should be encouraged to aid the delivery of the 5W Metro scheme.

**Natural Environment Team** – No objection however the Ecological Appraisal accompanying the application is dated 18<sup>th</sup> April 2005. It can be regarded therefore as out of date. Elements of the appraisal should be repeated, particularly the protected species assessments which should include survey work, particularly for badgers and bats. The desk top study should be repeated, as should the Phase 1 Habitat Survey. Landscaping proposals may need to be revised in the light of this further survey work.

**Birmingham & Black Country Wildlife Trust** - the Ecological Appraisal accompanying the application is dated 18<sup>th</sup> April 2005. It can be regarded therefore as out of date. Elements of the appraisal should be repeated, particularly the protected species assessments which should include survey work, particularly for badgers and bats. The desk top study should be repeated, as should the Phase 1 Habitat Survey. Landscaping proposals may need to be revised in the light of this further survey work.

*An additional condition is proposed requiring a further updated Ecological Survey to be submitted as part of the Reserved Matters and the recommendations of the study be carried forward into the scheme design.*

## **Representations**

Birchills PRG

- The number of proposed apartments/flats. Walsall already has a high number of apartments and flats and there are concerns that the market may become oversaturated and stagnant if any more are developed in this area.
- The proposed improvements to the canal as part of works on the site. It is understood that the towpath will be improved, but proposals for the waterway itself are unclear. Any improvements to the waterway itself should be undertaken in consultation with local fishermen as they are frequent users of the waterway.
- We request that we are presented with an outline plan of British Waterways' intentions for this and the surrounding waterways. It is suggested that British Waterways form part of the steering group in the future.
- The nearby Metafin site. We would want to see steps taken to ensure that the Metafin site and the residential development can coexist and therefore avoid the unexpected closure of industry through air and noise concerns.
- The relationship between the Caparo site and the Reedswood site. It is felt that this needs to be investigated further in terms of accessibility. One possible option could be to omit layout from the outline planning application, therefore including it as a part of the reserved matters application.
- Raybould's Bridge. It is requested that the results of a more thorough investigation into the possibility of using Raybould's Bridge as a point of access, and the potential for improvements to the bridge, are presented at the next PRG meeting.
- The security of Reedswood Park. Having an open park contravenes the general notion of securing open spaces to prevent against vandalism, anti-social behaviour, etc. Therefore we would like to see security measures investigated in further detail, for example the introduction of a CCTV system.
- Open Space S106 contribution, and the exact distribution of this money. We would very strongly advocate that these monies are put into our community pot to be managed by the Birchills PRG for community-led improvements to the open space in the area. We would also like to see a similar approach through the Birchills PRG to S106 contributions in respect of education and health developments, as discussed at length with appropriate senior Council officers.
- Policing of the Caparo site once it is developed. There is widespread feeling that there are not enough police available to this area at the moment and additional residential development in this area will stretch police resources further. We would therefore like to know what plans the police authority has to police the site should it be redeveloped for residential use.

All letters of representation are available for inspection upon publication of this committee report.

## **Determining Issues**

- Planning Policy context
- The proposed layout (as submitted showing 301 units)
- The proposed scale of development
- Access and transportation issues
- Relationship to neighbouring uses
- Comments received to the application
- Relationship to the canal
- Future reserved matters
- Section 106 Agreement

## **Observations**

### **Planning Policy context**

The site is designated as Core Employment within the Adopted Unitary Development Plan, however also plays a pivotal role in the development of the Walsall Regeneration Company's "Canalside Communities" concept which aims to improve and regeneration areas next to canal with a focus on high quality design and sustainability.

The site has been investigated for regeneration since December 2004, the emphasis of the site has been the ongoing relationship to residential properties on Miner Street, relationships to listed properties and structures, the canalside conservation area and the poor state of repair in relation to the existing properties on the site.

In addition the strategic position in relation to the town centre, open space and public transport has also been considered.

The Council is now required to carry out and publish in its Annual Monitoring Report an annual review of its housing land supply to ensure a five-year supply of deliverable sites. Walsall has more than enough land to satisfy this requirement and is likely to have a five-year supply until 2016. In approving the Walsall Local Development Scheme, GOWM has accepted this position. Consequently, Walsall has no need for more housing land in the short term.

Planning Policy Statement 3: Housing (PPS 3) came fully into force on 1 April 2007 says in paragraph 60. that to "ensure that there is a continuous five year supply of deliverable sites available for housing, Local Planning Authorities should monitor the supply of deliverable sites on an annual basis, linked to the Annual Monitoring Report review process, ...".

At April 2007 Walsall has more than enough land available to meet the 5-year supply requirement in PPS 3, even when measured against the most ambitious option being considered for the RSS Phase Two Revision. However the issue, in this case, is more complex.

In purely numeric terms Walsall has no need for more land for house building in the short term. Walsall is therefore in a strong position to resist unwanted

residential developments and to encourage high quality development that creates or enhances a distinctive character and supports a sense of local pride and civic identity (see PPS 3 paragraph 16).

A range of regeneration initiatives is being pursued, which involves some residential development. A Design Guide SPD is in preparation and this will help to judge and improve the design quality of new developments. The Government wants more homes to be built and it wants good design, affordability and sustainability, including in relation to climate change.

UDP policy JP5 rejects housing on Core Employment Land on the basis that it is a non employment use, and the need could be satisfied elsewhere. However given the site constraints (namely the mine shafts, neighbouring residential occupiers, restricted access opportunities, and neighbouring listed buildings and structures) the site has been identified as part of housing land requirements as an "other known site" within the Council's monitoring figures for a period of time. The site is being progressed for housing development in the recently published Joint Core Strategy.

The applicant has submitted a detailed planning statement with the application. Officers agree with its conclusions and broadly its assessment of the planning policy assessment. It is therefore considered that the principle with regard to the loss of employment land is accepted by the Council.

### **The proposed layout (as submitted showing 301 units)**

Whilst indicative at this stage, the layout has been designed in consultation with Officers over a number of years and is broadly supported. The layout includes the opportunity to develop links to the development proposals at Reedswood Golf Course, currently at public consultation, as well as building a sense of place and character that would be positive in terms of urban design criteria.

The scheme has been designed to link and reflect the existing properties on Miner Street, provide a link to the canal from Miner Street with a focus on walking and other non-vehicular movements.

The central corridor of the development will provide a pleasant environment for meeting and a central core of the development which will lead off to several character areas.

Overall the use of the embankment and creating a sense of place is welcomed. Slight changes to the garages on plots 143 and 144 would be required in order to develop linkages to Reedswood Golf Course.

The applicant has submitted the application of up to 310 units and requests flexibility in the housing numbers and development density. Whilst Officers are keen to support the negotiated layout and provide flexibility in development density, which could potentially increase the number of houses on the site, this raises issues in relation to approving a layout which may change.

Therefore it is proposed to add an informative supporting the principles of the layout shown on the submitted scheme but also require layout to be approved once the development density is approved.

Therefore officers recommend that layout is not approved at this stage but the layout submitted is broadly supported as the correct approach in developing the site and making most efficient use of the site.

### **The proposed scale of development**

The scale of the development is broadly related to the storey heights shown on the application submission. This shows 2-storey development next to Miner Street, which will allow for the housing next to this boundary to be reflective of the changes in levels between these properties and Miner Street.

The area of 2-2.5 storey development will be located by the proposed development of Reedswood Golf Course. This will allow for large houses to be built on this boundary and allow for good links to Reedswood Park at a scale that will not be overbearing or dominant. This will also allow for the development to stand alone.

The main central element running through the site from the entrance to Rayboulds Bridge will be 2.5 to 3 storeys in height giving a central focus and a positive location feature to the development.

The use of the canal frontage as 3 to 4 storey development will create a positive feature along the canal, as one of the most aspirational parts of the development. It will allow for the new buildings to retain an industrial style and design building on the character of the area. The proposals will also add a focal point to the bend in the canal.

Overall the scale of development proposed is acceptable.

### **Access and transportation issues**

The site allows for access and turning and manoeuvring within the site. Internal garages and garages associated with the houses are not part of this application (as external appearance has not formed part of the submission) however it is clear from the Design and Access Statement and Transportation Assessment that the proposals will seek to offer on average 200% car parking for each house and approximately 150% on average for apartments. Overall this level of parking will be acceptable to officers.

The Transportation Assessment has been prepared in full consultation with Transportation Officers.

Offsite highways works are needed in a S106 and this is proposed. Conditions proposed relate to the construction and maintenance costs of offsite highways works, the completion of an acceptable travel plan, the submission of details

relating to parking, access for the Council's bin lorry, cycle storage and areas to be offered for adoption.

### **Relationship to neighbouring uses**

Whilst the concerns and objections from Pollution Control Officers are noted in relation to the Metafin works on the opposite side of the canal, mitigation methods and a satisfactory assessment as part of the reserved matters submission has been conditioned. The precise details of properties to the canal frontage are not defined by this permission and this will need to be an assessment carried out on the detailed submission at Reserved Matters stage.

It is considered that the proposals will not have a negative impact on industrial and commercial properties opposite and will allow them to continue to operate. Noise mitigation requirements have also been included as part of the conditions.

### **Future reserved matters**

As previously stated the layout is broadly supported and will need to build on the layout submitted which is broadly accepted as the correct approach.

The landscape scheme for the site must reflect the value of the canal as a wildlife corridor and must therefore have an ecological dimension.

External appearance should build on the industrial heritage and use a mix of contemporary and traditional architecture to build character areas and linkages through the site. The attention to detail in the elevation in this regard will be essential in the success of the detailed submission.

~~The applicants have commented that to achieve a 3 star CSH rating, we are advised by developers and English Partnerships (ref the Code Cost review prepared by Cyril Sweett for EP) will add some £3k to £4k to the cost to achieving an Eco Homes Very Good rating. This will therefore add in the region of £930k to £1.24m to the build costs of the scheme. The additional costs associated with ground conditions and CSH will be reflected in the price which developers are prepared to pay for the land. When these items are taken together with other S106 costs and the general downturn in the housing market, which has seen land prices fall, the effect is to squeeze the value of this site to a level where commercial viability is at risk. The additional costs resulted in Barratt Homes being unable to proceed at the agreed Price and my client will now have to remarket the site. We do therefore need to make sure that the planning permission attracts the right level of offers. They also comment, there are no policies within the Council's UDP or the RSS, which require development to achieve a Code 3 Standard. And therefore request that condition 20 be deleted.~~

~~Officers note that Eco Homes is no longer used for new developments and has been superseded by the Code of Sustainable Homes (CSH). In addition~~

Officers highlighted the CSH at the last Development Team – January 2007 albeit initial advice was towards 5 star standard:

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In determining planning applications Paragraphs 38-45 of the recently published Planning Policy Statement (PPS) 1 Supplement on Climate Change are relevant.

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Paragraph 39 is the main guidance in this regard. “In the interim period before the development plan is updated to reflect the policies in this PPS, planning authorities should ensure proposed development is consistent with the policies in this PPS and avoid placing requirements on applicants that are inconsistent. Where proposals are inconsistent with the Key Planning Objectives set out in this PPS, consideration should be given to how proposals could be amended to make them acceptable or, where this is not practicable, to whether planning permission should be refused.”

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Paragraphs 41 and 42 also state that Design and Access Statements should obtain from applicants the information necessary to show how their proposed development will contribute to the Key Planning Objectives set out in this PPS and relevant RSS and any DPD policies. The Design and Access Statement does not do this. I also note that RSS11 has been revised with Policy CC1 in addition to policies EN1 and EN2. In addition there is the West Midlands Climate Change Action Plan published by the West Midlands Regional Assembly WMRA and the Government Office for the West Midlands (GOWM) in December 2007 in anticipation of the new PPS1 supplement. In addition the more general policy backgrounds of ENV39 and ENV40 of the UDP are relevant.

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It is therefore there is sufficient Development Plan Policies, Government support and documented evidence to back up this condition. In addition at appeal the condition has been added by Inspectors in support of your Officers recommendations.

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It is also noted that it will be a statutory requirement (through Building Regs) that all new houses will need to be 3star by 2010 rising to zero carbon (5 stars) by 2016. As planning permission is extant for three years (i.e. in this instance to 2011) and given the timescale that it will take to build the project, it is considered that it is entirely reasonable to seek that all new houses constructed are built to a 3star standard. It is the applicant's responsibility to demonstrate fully how they are achieving this. Experience of dealing with other developers and being at recent meetings with the RTPI and House Builders Federation (HBF), indicated that all parties and major developers were reportedly signed up to this matter and supposedly had already factored into the build programme for developers, many are already looking at 4 stars and above.

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It is also noted that “The Code for Sustainable Homes: Setting the standard in sustainability for new homes” (Feb 2008) makes it mandatory for all social housing to be Code 3 (from April 2008) and all houses sold or completed to

~~complete a certificate of eco-compliance, failure to do so will result in a nil-rating.~~

~~The Certificate will be seen as a Mark of Quality. To quote the above document: "In this era, with a more environmentally conscious public, aware of the urgent need to limit their effects on climate change, there is a growing appetite amongst consumers for more sustainable products and services. With greater demand for homes that offer reduced environmental impact, lower running costs and features that enhance health and well-being, there is an increased need for home builders to demonstrate their capacity in sustainable home building, and to market the sustainability of their homes to homebuyers. The Code offers a tool for home builders to demonstrate the sustainability performance of their homes, and to differentiate themselves from their competitors."~~

In addition, the applicants raised questions about conditions 28 & 29 (as they were presented to you in April 2008), they question the lawfulness of these two conditions, which could have future implications for the access arrangements agreed as part of the outline planning permission and request that these two conditions are either removed or re-written as advisory notes.

With regard to Conditions 28 (which originally required vehicular AND pedestrian movements to link to Reedswood Golf Course) and 29 (requiring an assessment of use of Rayboulds Bridge Road as an access to the site) the applicant's design and access statement currently states: That emergency access only will be from Raybould's Bridge. Links are essential to delivering Reedswood Golf Course as vehicle and pedestrian links will be progressed in the joint TA which is currently being prepared. The Canalside Communities Project now embedded in the Preferred Options Joint Core Strategy (RC7) needs to be delivered in a comprehensive manner and the Caparo development cannot be delivered in isolation from the development of Reedswood Golf Course and Sydenham Playing Fields. Officers are concerned that the removal of the conditions would create a ransom situation and compromise the delivery of future developments identified above and the aims of the Canalside Communities project and the Preferred Options Core Strategy. However the requirement for vehicular links in what was condition 28 and all of what was condition 29 have been moved to Note A. Condition 28 will remain to promote pedestrian links.

### **Section 106 Agreement**

~~As the application is in outline, the broad scope of the Section 106 agreement is to be defined now with the precise amounts to be confirmed as part of the reserved matters.~~

~~-In relation to Education, the precise figure is not to be agreed as the precise mix and layout has yet to be approved.~~

~~-Affordable Housing, the equivalent of 25% shared equity. This would be in accordance with the current Supplementary Planning Document (SPD) but~~

also allow for social rent to be provided on site in accordance with the emerging SPD. Housing strategy officers support this provision.

~~-Open Space contributions would be sought at £701 per bedroom. On site works to the canalside embankment, landscaped area around Top Lock Cottage and the former Lock Museum and canal towpath improvements would be discounted from the total amount. The canal towpath works would need to meet the requirements and standard of British Waterways.~~

~~-Healthcare – £384.30 per bedroom would be sought in accordance with the adopted Supplementary Planning Document.~~

~~-Public Art – the scheme will include on site public art which will be developed in partnership with the Creative Design Team, precise details and locations will be development as part of the reserved matters submission.~~

~~-Transportation improvements to Old Birchills and Green Street junction would be funded by the development in addition to a contribution of 44% of the total cost of works to improve the Old Birchills/Green Lane/Hospital Street junction.~~

~~-Green Travel Plan – walking and cycle initiatives and bus passes for future residents in addition to a welcome pack being provided for future occupants. The Travel Plan document will be developed in co-ordination with Council Officers and Centro.~~

~~Any reductions in the Section 106 contributions from the above level will need to be justified in a viability assessment and submitted to the District Valuers Service for independent assessment at Reserved Matters Stage. The costs of the independent assessment will need to be met by the applicant.~~

## **Conclusion**

Overall the proposals are considered to be acceptable and should be supported. Should committee resolve to support the scheme will need to be submitted to the Government Office as a Departure from the Development Plan.

## **Summary of Reasons for Granting Planning Permission**

The proposals have been considered with the aims and objectives of the Development Plan (as set out by Section 38(6) of the Planning and Compulsory Purchase Act (2004). These are Regional Spatial Strategy for the West Midlands (RSS11) and the Unitary Development Plan (March 2005).

The redevelopment of the Caparo works is a significant project as part of the Canalside Communities project as defined by the Walsall Regeneration Company and Policy RC7 of the Black Country Joint Core Strategy Preferred Options consultation document.

It is noted that the proposals are in outline and that the layout plan and other detailed plans are indicative do not form part of the permission. The scale of the development, with regard to the storey heights proposed are agreed at this stage. The proposals have been reviewed by Midlands Architecture for the Designed Environment and the Council's Urban Design Officers working in partnership and the layout is broadly acceptable.

An appropriate level of car parking has been discussed and developed as well as promoting sustainable travel initiatives (including walking, cycling and public transport) whilst not compromising the deliverability and availability of existing operators in the area and future developments.

The proposed conditions also seek to have appropriate regard for ecological issues, sustainable use of natural resources, ground conditions, flooding and the heritage of the area, in particular the area around the Top Lock Cottage (a Grade II listed building) and the Walsall Locks Conservation Area. In addition an appropriate level of planning contributions has been sought and agreed following negotiation with the applicant.

As such, the proposed development, having considered all relevant public participation responses and consultation comments is considered to comply with the relevant policies of the Development Plan (namely Walsall Unitary Development Plan and the Regional Spatial Strategy for the West Midlands) and national planning guidance and best practice guidance. The proposed development is considered to comply with the relevant policies of the development plan, in particular policies GP1, GP2, GP3, GP7, T7, T12 T13, ENV10, ENV14, ENV18, ENV21, ENV23, ENV24, ENV26, ENV27, ENV28, ENV29, ENV32, ENV33, ENV34, ENV39, ENV40, JP5, H1, H3, H4, H9, H10, T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11 and T13 of Walsall Unitary Development Plan (March 2005) and Policies PA1, PA2, PA3, PA4, PA5, PA6, PA10, PA11, UR1, UR3, UR4, QE1, QE2, QE3, QE4, QE5, QE7, EN1, EN2, T1, T2, T3, T4, T5, T7, T8, T9, CF1, CF4, and CF6 of the Regional Spatial Strategy for the West Midlands (RSS11); Adopted Supplementary Planning Documents including Designing Walsall SPD, Affordable Housing SPD, on balance, having taken into account all material planning considerations, the proposal is acceptable.

### **Recommendation: Grant Permission Subject to Conditions and a Planning Obligation**

1. Application for approval of the first Reserved Matters shall be made within 6months of the date of this decision. Development must be begun not later than 6months from the date of approval of the final Reserved Matters permission.

*Reason:* Pursuant to the requirements of Section 92 of the Town and Country Planning Act 1990.

2. This development of each parcel of land shall not be commenced until details of the following, hereafter named “the Reserved Matters”, have been submitted to and approved by the Local Planning Authority:-

- a) Layout of the site
- b) The external appearance of the building(s)
- c) The landscaping of the site

*Reason:* Pursuant to Article 3 (i) of the Town & Country Planning (General Development Procedure) Order 1995

3. As part of the Reserved Matters submission, a Residential Travel Plan Framework shall be submitted to and approved in writing by the Local Planning Authority. The Framework shall be developed in partnership with this Council's Travel Wise co-ordinator and included in as part of a S106 Legal Agreement. This shall identify a package of proposed measures consistent with the aim of reducing reliance on the car, and should include details on:

- a) Public transport information and ticket details;
- b) Cycle provision and associated infrastructure; and
- c) Walking initiatives.

Prior to the first dwelling being occupied on the development hereby approved, the full Residential Travel Plan developed in partnership with this Council's Travel Wise co-ordinator shall be submitted to, and agreed in writing by the Local Planning Authority. The approved measures shall be implemented in accordance with the details written in the approved Travel Plan. A review of the approved Travel Plan shall be submitted to, and agreed in writing by, the Local Planning Authority in accordance with the approved Travel Plan. This will identify any refinements and clarifications deemed necessary to the Plan. The approved, revised plan shall thereafter be implemented in conjunction with the use approved under this permission, unless otherwise agreed in writing by the Local Planning Authority.

*Reason:* To ensure the satisfactory functioning of the development and to promote sustainable modes of transport.

4. Unless otherwise agreed in writing by the Local Planning Authority, before work commences on the area next to the Former Boatmans Rest and the Toll House, the canalside frontage and land adjacent to Rayboulds Bridge, the following shall be given the opportunity of making internal and external inspections for the purposes of making a record and identifying any artefacts or documentation meriting preservation:

- \* Walsall Local History Centre, Essex Street, Walsall, WS2 7AS  
(telephone Walsall 721305);

\* Community History Officer, Leisure Services Department, Walsall MBC, Civic Centre: Darwall Street, Walsall, WS1 1TR (telephone Walsall 630805).

\* Mike Shaw, Black Country Archaeologist, Planning Division, Civic Centre, St Peter's Square, Wolverhampton, WV1 1RP (telephone 01922 555493).

*Reason:* To secure an adequate record of the site's archaeology.

5. Prior to built development commencing a site investigation, ground contamination survey and assessment of ground gas, having regard to current best practice and approved in writing by the Local Planning Authority shall be undertaken. A copy of the findings of the site investigation, ground contamination survey and ground gas assessment, together with an assessment of the hazards arising from any land contamination and/or ground gas shall be forwarded to the Local Planning Authority within 1 month of completion.

*Reason:* In order to ensure satisfactory development of the application site.

6. Prior to built development commencing details of remedial measures to deal with the identified and potential hazards of any land contamination and/or ground gas present on the site (identified under survey work of Condition 5) and a timetable for their implementation shall be submitted to and agreed in writing with the Local Planning Authority.

*Reason:* In order to ensure satisfactory development of the application site.

7. Agreed remedial measures under Conditions 5 and 6 shall be implemented to the satisfaction of the Local Planning Authority in accordance with the agreed timetable. A validation report confirming the details of the measures implemented together with substantiating information and justification of any changes from the agreed remedial arrangements shall be submitted to and accepted in writing by the Local Planning Authority prior to the development being brought into use.

*Reason:* In order to ensure satisfactory development of the application site.

8. This development shall not be carried out other than in conformity with the approved plans and documents, except as may be required by other conditions of this permission or by any subsequent approved amendment/permission.

*Reason:* To ensure that the development undertaken under this permission shall not be otherwise than in accordance with the terms of the application on the basis of which planning permission is granted, (except in so far as other conditions may so require).

9. Before work commences on site details of measures to control water run off from the site during construction (including details of the timing of construction of the proposed measures, and of their removal) shall have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in accordance with the approval, unless otherwise agreed by the Local Planning Authority.

*Reason:* To protect the water environment.

10. For the duration of the reclamation of the site, and the construction period, the accesses to the site shall include wheel washing equipment in accordance with details previously agreed in writing by the Local Planning Authority.

*Reason:* To prevent mud being deposited on the public highway.

11. No demolition, construction or engineering works, (including land reclamation, stabilisation, preparation, remediation or investigation), shall take place on any Sunday, Bank Holiday or Public Holiday, and otherwise such works shall only take place between the hours of 07.00 to 18.00 weekdays and 08.00 to 13.00 Saturdays unless otherwise permitted in writing by the Local Planning Authority. No plant, machinery or equipment associated with such works shall be started up or operational on the development site outside of these permitted hours.

*Reason:* In the interests of the amenity of adjacent occupiers.

12. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from service vehicle areas and hardstandings shall be passed through an oil interceptor, designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

*Reason:* To protect the water environment.

13. Unless otherwise agreed in writing by the Local Planning Authority, no development shall be carried out until drainage details, incorporating:-

- a) sustainable drainage principles
- b) an assessment of the hydrological and hydrogeological context of the development
- c) the provision and implementation of a surface water run-off limitation and on site attenuation as appropriate, and a programme for implementation and completion

have been submitted to and approved in writing by the Local Planning Authority and in consultation with the Environment Agency and British Waterways. The scheme shall be implemented and completed in accordance with the approved details.

*Reason:* To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution

14. Before the development is brought into use, the accessways and manoeuvring areas shown on the approved plans shall be hardsurfaced in materials to be agreed in writing by the Local Planning Authority. The areas shall thereafter be retained and used for no other purpose.

*Reason:* To ensure the satisfactory appearance of the development and the satisfactory functioning of the development.

15. Unless otherwise agreed in writing by the Local Planning Authority, no development shall be carried out until details of security oriented design measures and physical security measures for all buildings and public spaces have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented concurrently with the relevant element of the development, and thereafter retained.

*Reason:* To ensure the safety of the occupiers and users of the development

16. Prior to the occupation of the buildings hereby approved, the location of communal satellite dishes to serve the apartment units shall be submitted to and agreed by the Local Planning Authority.

*Reason:* To ensure the satisfactory appearance of the building, to ensure amenities of future residential occupiers, to prevent a proliferation of satellite dishes on the building and to ensure satisfactory functioning of the development.

17. Prior to the commencement of development samples of the facing materials to be used have been approved in writing by the Local Planning Authority.

*Reason:* To ensure the satisfactory appearance of the development.

18. Unless otherwise agreed in writing by the Local Planning Authority in consultation with British Waterways, at all times, when construction is not underway, there will be unrestricted pedestrian access to the canal towpath.

*Reason:* To secure public access, in the interests of promoting improvements to the environment of the town centre.

19. All hand-held pneumatic machinery used in respect of demolition or engineering works, (including land reclamation, stabilisation, preparation, remediation or investigation), including breakers and chisels, shall be of an integrally silenced design; breakers and chisels shall only be used with muted steels.

*Reason:* To safeguard the amenities of the occupiers of adjoining premises

20. All plant and machinery in use shall be maintained and silenced in accordance with the manufacturer's and/or supplier's instructions or recommendations. Mobile and portable air compressors, pumps and electricity generating sets shall be of a recognised proprietary low-noise design, and wherever practicable, mains electricity shall be utilised in preference to electricity generating sets.

*Reason:* To safeguard the amenities of the occupiers of adjoining premises

21. No operations or activities incorporating explosive blasting, drop-balling or thermic/thermal lances shall be undertaken.

*Reason:* To safeguard the amenities of the occupiers of adjoining premises

22. Prior to development commencing, a noise survey shall be undertaken to the written satisfaction of the local planning authority. The results of this survey, including details of all instrumentation used, prevailing weather conditions and traceable calibration tests shall be submitted to the local planning authority within 2 months of completion.

*Reason:* To safeguard the amenities of the occupiers of adjoining premises

23. No development shall take place until suitable noise mitigation measures identified by survey work in Condition 24 of this permission to protect internal areas have been agreed in writing with the local planning authority, and the development shall not be occupied until such measures have been fully implemented.

*Reason:* To safeguard the amenities of the occupiers of adjoining premises.

24. As part of the Reserved Matters submission details of bin stores and cycle stores shall be detailed. The stores shall be implemented in accordance with the approved details.

*Reason:* In order to ensure satisfactory functioning of the development.

25. As part of the Reserved Matters submission the scheme shall progress a minimum gross development density of 40 dwellings per hectare.

*Reason:* In order to make efficient use of brownfield land.

26. As part of the Reserved Matters submission the scheme shall progress links to Reedswood Golf Course for pedestrian and cycle movement.

*Reason:* In order to ensure that this development and neighbouring potential developments are delivered in a comprehensive manner and good quality design and links to Reedswood Park are maintained and delivered and to ensure that the neighbouring highways network is not adversely affected.

27. As part of the Reserved Matters a plan showing the areas to be offered for highways adoption shall be submitted to and approved in writing by the Local Planning Authority. The plan shall show details of refuse and re-cycling storage areas for those properties that front the road and do not have rear access should also be provided to demonstrate that residents' bins will not obstruct the footway or visibility splays. The applicant shall also submit tracking details to show access for the Council's bin lorry. Should the Council's refuse vehicle be required to access roads and/or parking areas that are not being offered for adoption, the applicant will be required to indemnify the Council against damage caused to the road by the vehicle prior to the first occupation of any dwelling. The areas shall be implemented in accordance with the approved details.

*Reason:* In the interests of highway safety and to ensure the satisfactory appearance of the development and to ensure the satisfactory functioning of the development.

28. As part of the reserved matters submission highways improvements to Old Birchills detailed in the submitted Transport Assessment shall be detailed and submitted to the Council. The approved scheme shall be implemented in accordance with a timetable to be agreed in writing with the Local Planning Authority.

*Reason:* In the interests of highway safety.

29. As part of the reserved matters submission a phasing plan for development shall be submitted and agreed with the Local Planning Authority.

*Reason:* In order to ensure that the development is delivered in a satisfactory manner.

30. As part of the Reserved Matters submission a detailed air quality and odour assessment shall be submitted to and agreed in writing with the Local Planning Authority. The scope of the assessment shall assess the odour and air quality from neighbouring industrial processes at various heights. Any mitigation methods or requirements shall be implemented in accordance with the agreed recommendations within the air quality assessment.

Reason: In order to ensure the satisfactory amenity of neighbouring residential occupiers.

31. Prior to the commencement of development approved by this development (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved, in writing by the Local Planning Authority:

1. A preliminary risk assessment which has identified:
  - all previous uses.
  - potential contaminants associated with those uses.
  - a conceptual model of the site indicating sources, pathways and receptors.
  - potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on subsection 1 (above) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those offsite.
3. The site investigation results and the detailed risk assessment (in subsection 2.) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in subsection 3 are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.

*Reason:* To prevent the pollution to 'controlled waters'.

32. As part of the Reserved Matters submission a full Ecological Survey shall be carried out. Recommendations contained in the survey for the protection of protected species shall be incorporated, wherever practicable, into the design of the proposals.

*Reason:* In order to preserve and enhance the natural environment and safeguard any protected species.

NOTE FOR APPLICANT:

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A) The layout submitted as part of the outline approval is broadly acceptable if a scheme of 301 units is progressed at Reserved Matters stage. The principal improvements required are

- The area of Plots 143 and 144 in relation to the illustrative layout to improve connectivity of the site to future proposals for Reedswood Golf Course,
- Demonstration that the details of the proposals are acceptable to the highways authority,
- The development should consider links to Reedswood Golf Course for vehicular movement
- Notwithstanding the access approved, as part of the Reserved Matters submission the proposals shall consider the scope for using access from Rayboulds Bridge as a one-way access point (into the site).

B) Ground investigation surveys should have regard to current “Best Practice” and the advice and guidance contained in Planning Policy Statement 23 – Planning and Pollution Control; British Standard BS10175: 2001 "Investigation of potentially contaminated sites – Code of Practice"; British Standard BS5930: 1999 “Code of practice for site investigations”; Construction Industry Research and Information Association “Assessing risks posed by hazardous ground gasses to buildings(Revised)” (CIRIA C665); or any relevant successors of such guidance. You are strongly advised to consult with the Local Planning Authority on the construction, location and potential retention of any boreholes installed for the purposes of ground gas and or groundwater before installation of same.

C) When making assessments of any contaminants identified as being present upon the land and their potential to affect the proposed use regard should be had to the advice given in Contaminated Land Reports, R&D Publications, CLR 7 to CLR 11 and The Contaminated Land Exposure Assessment (CLEA UK) model or any relevant successors of such guidance. This list is not exhaustive. Assessment should also be made of the potential for contaminants contained in, on or under the land to impact upon ground water. Advice on this aspect can be obtained from the Environment Agency.

D) There are a number of large projects in the town centre, each with areas of new public realm. The Council and Walsall Regeneration Company are working on a strategic framework for public realm works and this should be used to guide the details of landscaping and surface materials.

E) Building works may not be undertaken, and a public highway may not be closed in the absence of the appropriate consent, which must be obtained through the Local Highway Authority. Those consents may require a public local inquiry if there are objections.

F) You are advised that although this permission has been granted you must also respect any ownership rights or other legal agreements including rights of way.

G) You are advised to refer to the agreement under Section 106 of the Town and Country Planning Act 1990 which was completed in conjunction with the development.

H) 'Habitable rooms' for the purposes of this condition shall be interpreted as living rooms and bedrooms.

I) Party wall and floor structures should have reasonable resistance to airborne and impact sound in accordance with Approved Document E of the Building Regulations 2000, (As Amended).

J) If your application includes demolition work, it may be necessary for you to also notify **Building Control Services** of your intention to demolish (Section 80 of the Building Act 1984). This should be done as soon as possible but **not less than 6 weeks** before commencement of the demolition work. Helpline number 01922 652408.

K) Your attention is drawn to the Party Wall etc. Act 1996. If you intend to carry out building work which involves:

- Work on an existing wall shared with another property;
- Building on the boundary with a neighbouring property;

You must find out whether that work falls within the scope of the Act. If it does, you must serve the statutory notice on all those defined by the Act as adjoining owners. You may wish to seek professional advice. However, two guidance booklets have been published entitled 'The Party Wall etc. Act 1996: Explanatory Booklet' or 'A Short Guide to the Party Wall etc. Act 1996', both are available from the DOE Publications Despatch Centre, Blackhorse Road, London, SE99 6TT. Tel. 0181 691 9191, Fax. 0181 694 0099.

L) This consent is given on the basis that all parts of the development including the guttering (foundations and fascia) are carried out on land within the ownership of the applicant.

M) For the avoidance of doubt, the term 'affordable housing' means subsidised housing at below market prices or rents intended for those households who cannot afford housing at market rates. It is usually managed by a registered social landlord.

N) The applicant/developer is advised to contact Des Harris British Waterways third party works engineer in order to ensure that any necessary consent is obtained and that the works comply with British Waterways' "Code of Practice for Works affecting British Waterways".

O) The Council consider the scheme should meet the terms of the Secured by Design concept, and will expect the submissions under this condition to meet that concept, or provide compelling justification for not doing so.

P) For the avoidance of doubt, no water should be discharged into the canal without first obtaining written consent from British Waterways.

Q) For the purpose of this condition instrumentation used for the determination of vibration levels shall accord with the main requisite components of British Standard BS 7482: 1991 'Instrumentation for the measurement of vibration exposure of human beings' where applicable or any superseding standard, and shall have a linear performance frequency range of not less than 1Hz to 80 Hz.

'Vibration sensitive' premises shall be taken to include, inter alia: any premises used as an occupied dwelling, hospital or similar institution, schools or other educational premises (when in use), places of worship (when in use), hotels and similar facilities.

R) With regard to suitable noise mitigation measures to protect internal and/or external residential areas, reference should be made to guidance and criteria contained in British Standard BS 8233, 1999 and World Health Organisation Guidelines for Community Noise 2000 and the following are relevant:

a). internal noise levels within bedrooms of residential development shall not exceed a Continuous Equivalent Noise Level,  $L_{Aeq(8 \text{ hours})}$ , of 35 dB together with a maximum instantaneous level of 45 dB  $L_{AFmax}$ , between the hours 23.00 to 07.00;

b). internal noise levels within living rooms of residential development shall not exceed a Continuous Equivalent Noise Level,  $L_{Aeq(16 \text{ hours})}$ , of 45 dB between the hours 07.00 to 23.00

Sound level measuring instrumentation shall conform to either 'Type 1' of British Standards BS EN 60651: 1994 'Specification for sound level meters' and/or BS EN 60804: 1994 'Specification for integrating-averaging sound level meters' and/or Class 2 of BS EN 61672: 2003 'Electroacoustics- Sound Level Meters - Part 1: Specifications (or any superseding standards as applicable) which shall have been verified in accordance with British Standard BS 7580 'Specification for the verification of sound level meters' Part 1: 1996 'Comprehensive procedure' within a preceding 2 year period.

Current guidance, procedures, recommendations and information to assist in the completion of a suitable noise survey may be found in:

Planning Policy Guidance Note PPG 24 'Planning and Noise'. 1994; Minerals Policy Statement 2: Controlling and Mitigating the Environmental Effects of Minerals Extraction in England; 2005 British Standard BS 7445: 2003 "Description and Measurement of Environmental Noise"; British Standard BS 7445-1: 2003 - Description and measurement of environmental noise - Part 1: Guide to Quantities and Procedures; British Standard BS 7445-2: 1991 - Description and

measurement of environmental noise - Part 1: Guide to the acquisition of data pertinent to land use; British Standard BS 7445-3: 1991 - Description and measurement of environmental noise - Part 3: Guide to application to noise limits; British Standard BS 4142: 1997 – Method for Rating industrial noise affecting mixed residential and industrial areas Calculation of Road Traffic Noise, 1988; Calculation of Railway Noise, 1995. This is not an exhaustive list.

Noise surveys should adequately establish the spatial variation of noise across a proposed development site using one or more measurement and/or calculation points, and may also need to take account of changes in noise levels on account of height above ground floor level. Additionally, a noise survey may have to take into consideration changes in a noise climate between normal weekdays and weekends, and require continued monitoring over a 24 hour period or longer. Secondary 'spot check' surveys will be required by the local planning authority in some instances to corroborate a continuous single noise survey.

Submitted noise measurement data must include details of all instrumentation used (microphones, sound level meters, data loggers, acoustic calibrators) inclusive of verification checks pursuant to British Standard BS 7580 Part 1: 1997 Specification for The verification of sound level meters Part 1 Comprehensive procedure conducted within the previous 12 month period, and recordings of prevailing climatic conditions on site of the course of noise measurements incorporating air temperature, wind speeds and direction as a minimum.

S) There has been the invasion of Japanese Knotweed on the site. The eradication of such species is not simple, therefore we wish to inform the applicant of the correct procedure to completely eradicate this invasive species, the information can be found at:

<http://www.environment-agency.gov.uk/subjects/conservation/840870/840941/?referrer=/subjects/conservation/>

T) It would be beneficial for the highways works to Green Street/Old Birchills as shown on Grontmij drawing number P461600/06/001 rev 2 to be implemented prior to the commencement of development.



To: DEVELOPMENT CONTROL  
COMMITTEE

Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

**REASON FOR BRINGING TO COMMITTEE:**

**Application Number:** 08/1049/FL  
**Application Type:** Full application

**Case Officer:** Bob Scrivens  
**Telephone Number:** 01922  
652488

**Applicant:**

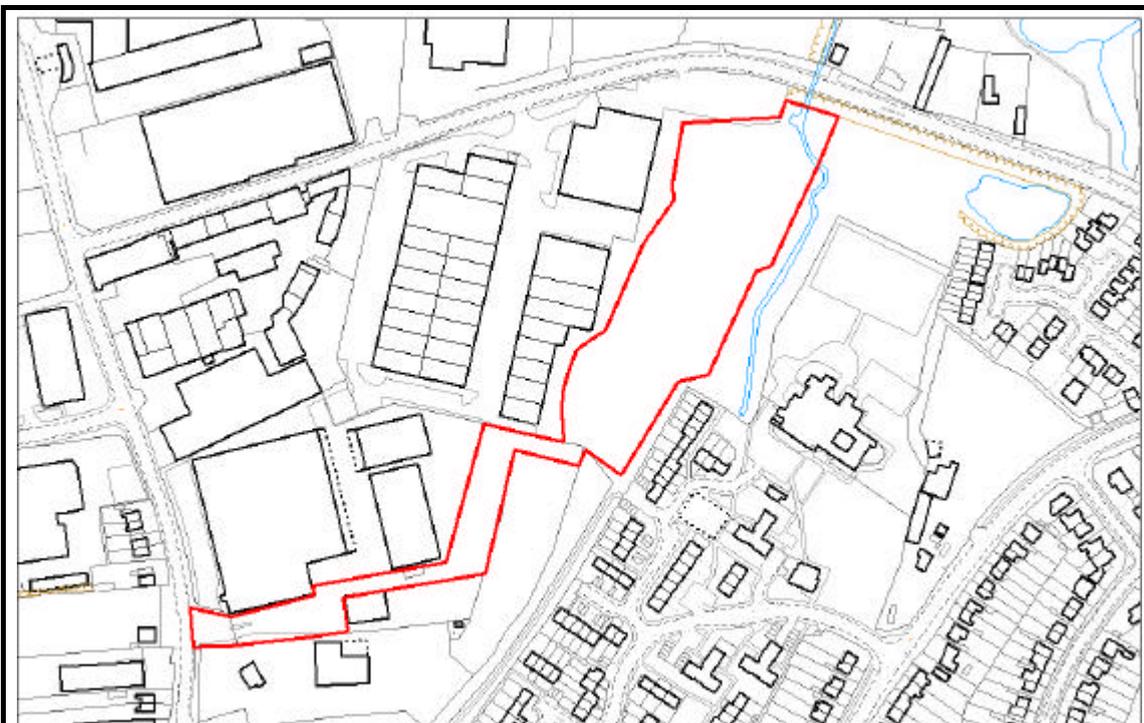
**Proposal:** Change of use to vehicle parking, and erection of a fence, creation of footpaths, and laying of a hardstanding

**Agent:** Mr. Aidan Paul Walker  
**Location:** LAND OFF, WATERY LANE, WILLENHALL, WALSALL, (EXTENDING TO R/O 29-45 HOLMAN CLOSE)

**Ward:** Willenhall South

**Expired:** 28/10/2008

**Recommendation Summary:** Grant Subject to conditions



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## **RECOMMENDATION – GRANT SUBJECT TO RESOLUTION OF E A OBJECTION**

### **Application and Site Details**

The site is an area of land between Holman Close (a housing area off Noose Lane) and the applicants main site, accessed off Neachells Lane (in Wolverhampton). There is a Local Nature Reserve (LNR) to the east.

The development has been largely carried out, some parts before the application was lodged, other parts since.

The scheme is

- use of the land for lorry parking (the applicants are a haulage company)
- laying a concrete hardstanding
- erecting fencing around the site
- erecting a noise bund between the hardstanding and the houses in Holman Close (presently the earth bank element of this has been installed – currently about 3 metres high, it is proposed to add a 2 metre acoustic fence to the top)
- hours of use would be 0700 to 1900, with no use on Sundays or Bank Holidays
- diverting public footpaths and creating replacements  
*(the applicants are generally agreeable to suggestions on this issue from the council – the present proposed layout replicates the definitive footpath routes)*
- landscaping

The applicants advise that they have had extensive consultation with local residents, and that they are generally happy with the scheme.

### **Relevant Planning History**

07/0079/fl/W6 was for the erection of buildings on a wider area including the site and land to the north. It was withdrawn. It shared the current application's approach to landscaping and fencing and footpath issues, and some of these works were carried out then.

**Relevant Planning Policy Summary** *(Note the full text version of the UDP is available from Planning Services Reception and on Planning Services Website)*

### **Unitary Development Plan**

2.2, 3.6, 3.7, & GP2: seek to make a positive contribution to the quality of the environment, whilst protecting people and ensuring adequate and safe access is provided.

GP4: local area regeneration by helping to bring forward derelict, vacant or underused land and buildings for new uses.

3.12, ENV19, ENV23 on conserving and promoting nature.

ENV24 on wildlife corridors.

3.16 and ENV33 The Council will consider development in relation to its setting, with reference to the character and quality of the existing local environment, and will require a high quality of built and landscape design.

3.16, GP7, ENV32, and 3.116: seeks the design of developments to create high quality living environments, well integrated with surrounding land uses and local character. Poorly designed development which fails to properly take account of the context or surroundings will not be permitted. Designing out crime' through design, layout, landscaping and boundary treatments is encouraged.

3.17 & ENV33: deals with landscape design and opportunities to create and enhance environmental quality.

3.18 on protecting water resources from pollution.

ENV10 on controlling pollution

ENV20 on Local Nature Reserve

ENV40 on conserving and protecting water resources

4.2 and 4.5 on providing a supply of employment land and JP1 naming this as an employment site

JP7 on uses of employment sites (specific reference is made to service uses complementary to local industry)

### **Local Development Framework (LDF)**

The Black Country Joint Core Strategy (JCS) has completed its preliminary stages, and while not formally part of the Development Plan is a consideration, though it has as yet only limited weight. The broad principles of the UDP are further advanced in the document taking account of recent national and regional planning guidance

### **Designing Walsall SPD**

DW2- Safe and Welcoming places- all development must contribute towards creating places that feel safe, secure and welcoming for everyone;

DW3 – Character -design to respect and enhance local identity;

DW4- Continuity -attractive spaces within new development should be defined or enclosed by buildings, structures or landscape;

DW5 Ease of movement- create places that are easily connected, safe to move through;

DW6 – Legibility - new development should contribute to creating a place that has a clear identity;

DW9 – High Quality public realm - new development must seek to ensure it creates places with attractive environmental quality;

### **Natural Environment SPD**

Policies N8, N9 & N10 deal with the need to fully assess, protect and secure compensatory planting for trees. Protection is proposed for protected animals, plants etc.

## **Regional Spatial Strategy for the West Midlands (RSS 11)**

The Regional Spatial Strategy has been revised and republished on 15<sup>th</sup> January 2008 to reflect the first Phase of Review. The Strategy seeks to provide broad regional directives and recognises the role of the regeneration of the Black Country to the overall performance of the West Midlands Region. The next phases of review are underway.

The focus for the Black Country policies is to continue its economic, physical and environmental renewal focused around improved infrastructure and the regeneration of town and city centres (including Walsall) to create modern and sustainable communities.

Overall the strategy promotes sustainable regeneration of previously developed land, promoting a high quality environment and sustainable development capable of being accessed by a variety of transport modes.

A major challenge for the Region is to counter the unsustainable outward movement from the Major Urban Areas of people and jobs (3.4(a)). Relevant policies include:

Policies QE1, QE2, QE3, QE4 and QE5 seeks to improve the quality of the environment whilst preserving quality. The policies also aim to enhance public spaces and urban green space.

There is no need for this application to be considered under the Conformity Protocol.

## **National Policy**

Planning Policy Statement (PPS) 1: indicates that planning policies should promote high quality inclusive design in the layout of new developments and individual buildings and that design which fails to take the opportunities available for improving the character and quality of an area should not be accepted." Paragraphs 33 to 39 also state the importance of good design.

PPG9 on Nature Conservation and Geodiversity, the Government Circular: Biodiversity and Geological Conservation on statutory obligations and their impact within the planning system and Circular 06/2005 set the scene on these issues.

*PPG24 on noise identifies that the "impact of noise can be a material consideration in the determination of planning applications. The planning system has the task of guiding development to the most appropriate locations. It will be hard to reconcile some land uses, such as housing, hospitals or schools, with other activities which generate high levels of noise, but the planning system should ensure that, wherever practicable, noise-sensitive developments are separated from major sources of noise (such as road, rail and air transport and certain types of industrial development). It is equally important that new development involving noisy activities should, if possible, be sited away from noise-sensitive land uses. Development plans provide the policy framework within which these issues can be weighed but careful*

*assessment of all these factors will also be required when individual applications for development are considered. Where it is not possible to achieve such a separation of land uses, local planning authorities should consider whether it is practicable to control or reduce noise levels, or to mitigate the impact of noise, through the use of conditions or planning obligations.”*

PPS25 on flooding identifies that flood risk should be considered at all stages of the planning and development process in order to reduce future damage to property and loss of life. It sets out the importance the Government attaches to the management and reduction of flood risk in the land-use planning process, to acting on a precautionary basis and to taking account of climate change. It summarises the responsibilities of various parties in the development process. The planning system should ensure that new development is safe and not exposed unnecessarily to flooding by considering flood risk on a catchment-wide basis and, where necessary, across administrative boundaries. It should seek where possible to reduce and certainly not to increase flood risk. It should help ensure that flood plains are used for their natural purposes, continue to function effectively and are protected from inappropriate development. The guidance also outlines how flood risk issues should be addressed in regional planning guidance, development plans and in the consideration of planning applications.

The Wildlife and Countryside Act 1981, and related material, offers protection to a range of species. These are legally protected under both European and domestic legislation and they are, therefore, a material consideration when determining a planning application.

## **Consultations**

### **Transportation - object**

The site straddles the boundary between Walsall and Wolverhampton, with access to the adopted highway in Wolverhampton. Therefore the views/consent of Wolverhampton Council will be required in this case. The hardstanding area is crossed by a number of Definitive Footpaths. The applicant has not provided sufficient information:-

- to justify the size of the hardstanding.
- whether it is linked to the expansion of any of the adjacent businesses/uses
- assessment of the possible impact on the highway cannot be determined.
- on the number and type of vehicles to be parked and number of vehicle movements expected during the hours of operation.
- the proposed parking layout of the hardstanding
- not demonstrated by swept path analysis that the access road and entrance to the hardstanding can be adequately negotiated

**Wolverhampton Council** – have been notified of the application but have not responded at the time of writing.

### **Pollution Control**

**Scientific Team** – no objections subject to conditions, including requiring the implementation of the noise barrier, and control of the hours of use.

**Contaminated Land team** – no objection subject to notes and conditions.

### **Environment Agency** – object

The submitted Flood Risk Assessment (FRA) does not meet the terms of the relevant policy documents.

### **Regeneration – Natural Environment** – objects

The latest scheme is capable of meeting previous concerns, but this is an application which meets the requirements for a landscape scheme to be submitted with the application in UDP policies ENV32 and ENV33.

Recommendation not to approve until a proper landscape scheme is received and approved.

Earlier comments also relevant:-

The site is in a wildlife corridor so the landscape treatment should enhance ecological value. Since both the wildlife corridor and the industrial land allocation are shown in the UDP, both carry weight. The protection and enhancement of the wildlife corridor should not be seen as a subservient matter when compared to a development proposal: Scheme should consider

- The planting of tree belts and hedges to provide a wildlife infrastructure around the site.
- Creation of great crested-newt foraging habitat.
- Use of predominantly native species.
- A higher level of landscape provision than would be expected if the site were not within a wildlife corridor.

If these things can be incorporated into a landscape scheme then the wildlife corridor issues can be satisfied.

The applicant has constructed a low quality greenway and erected a high fence, all without planning permission and possibly encroaching onto Council-owned land.

### **Public Rights of Way** - object

do not support the proposed east – west route across this site because pedestrians would continue to use the existing north – south route in preference to a footpath fenced in on both sides with blind corners and dead ends which leads nowhere. Would prefer to see the existing north – south route improved by being straightened to remove existing blind bends, and having the surface widened (3m.) and improved.

There is a narrow section where the proposed footpath comes out onto Watery Lane - it will be necessary to work with another land owner who is partly obstructing one of the public rights of way to negotiate space for the new proposed 3 metre wide route, or if this is not possible, the route will narrow slightly at this point.

The public rights of way are obstructed by the fencing installed by the applicants, but they are also built upon in part due to past development and borough boundary changes. For this reason public rights of way will consider funding part of the costs to the legal orders that are required to ensure that the public rights of way issues can be resolved, subject to any necessary approvals being obtained.

**Fire Service** – satisfactory.

**Drainage**– a 6 metre wide strip of land is required to access to the brook for maintenance.

### **Public Participation Responses**

There have been 3 letters of objection, together with a petition with 12 signatures of residents of Holman Close, concerned at:-

- How can the Council justify any support for the parking of commercial vehicles in such close proximity to houses
- Too near to houses
- Nuisance has increased
- Loss of outlook over fields
- Noise problems, including alarms going off
- Pollution (and they already suffer pollution from the existing industrial units and the applicants lorry park)
- Why are they being allowed to operate without permission
- How do people know if it safe – what is in the tankers for example
- There has been no consultation between residents and applicant
- Previous plans for lorry park were rejected (*it is likely this is a reference to the withdrawn application for a factory unit*)

All letters of representation are available for inspection upon publication of this committee report.

### **Determining Issues**

- Principle of the use
- Environment Agency objection
- Amenity of residents
- Transportation comments
- Public footpaths
- Ecology

### **Observations**

#### **Principle of the use**

The site is specifically identified for employment uses in the UDP (it is understood that this follows on from a planning permission given by BCDC, some years ago – it was incorporated in the then developed version of the UDP and has been rolled forward). The designation includes all of the land up

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to Watery Lane, but is restricted in width. The present applicants own land which is wider than the employment designated area.

The designated area is shown bounded by a Greenway, and the LNR.

The present application only includes the southern part of the employment designated land.

The purpose of the UDP designation is to provide certainty for developers about where activities are seen as acceptable. In practice, it would not be open to this Council to resist an employment proposal on this land, other than on matters of detail such as design, or landscaping.

### **Environment Agency objection**

The core of the LNR is also the route of a watercourse. That has implications for the use of this land. The EA have reservations about the submitted Flood Risk Assessment, and the applicants are exploring this direct.

The recommendation in this report reflects the expectation that these matters can be satisfactorily resolved.

### **Amenity of residents**

The UDP designation does not commit this Council to approving a use which would have an unacceptable impact on residents.

Pollution Control have commented on the scheme, and hold the view that the proposed bund and noise barrier fence, coupled with the restricted hours of use, will satisfactorily protect residents. The use is therefore acceptable in these terms.

### **Transportation comments**

The comments are summarised as the following sub-headings, and reactions are included.

#### Views of Wolverhampton Council will be required

They have chosen to offer none, to date. The access into the site from Neachells Lane is well designed, and amply capable of handling large vehicles. No further action seems called for.

#### Insufficient information to justify the size of the hardstanding

The applicants seek to expand their business. It is not for the planning system to demand a reason, unless there are disadvantages to the scheme that need to be understood and assessed.

#### No information on the number and type of vehicles to be parked / number of vehicle movements expected

As last item.

#### No details of the proposed parking layout

The applicants have declined to produce a parking layout. They do not intend to mark out parking bays. Instead it will be a free form parking arrangement guided by the needs of the user from time to time. This reflects their position as experienced transport operators.

Officers have concluded that as the application site is well away from the public highway, any traffic implications will only affect the site operator.

Conversely, poor arrangements could mean excessive shunting of vehicles, and this could have noise implications for the houses nearby. However, the noise and hours controls envisaged should avoid any such adverse impact.

#### No swept path analysis to show it can be accessed

The site is in use. Clearly it can be adequately accessed. Again, there are no implications for the public highway. Again there may be noise implications for residents, but these are already suggested to be controlled.

#### **Public footpaths**

The Definitive Map shows paths running across the site. They have been blocked for some years by fences (in Wolverhampton, and on the Borough boundary). There are no known complaints about those blockages.

At the time of the withdrawn application, the applicants erected a high fence around their land, and laid a new footpath. It runs from Watery Lane (though there is a short length outside their land, which has not been altered, and remains a narrower, beaten earth path), and connects to a Council created tarmac surfaced footpath, south of Holmans Close.

The new footpath featured in the withdrawn application. The present application has revised the proposed footpaths, and they now follow the lines of the definitive footpaths. However, there are no proposals in the scheme to remove the blockages.

On balance, officers conclude that the north – south footpath originally proposed is a good replacement for the definitive footpaths, but that the present application proposes revisions which are less effective. The recommendation reflects this conclusion, and seeks to revert to the earlier scheme.

Minor revisions are required, by the recommendation, to remove blind spots on corners, for improved security.

The applicants advise that the fencing and footpath works have drawn support from the local community, pleased at the reduction in areas of land subject to abuse.

Overall, officers support the scheme in the terms laid out.

### **Ecology**

The UDP designation of the site for employment use does not limit the relevance of this issue.

The scheme has been designed such that the employment designation is reflected in the proposed employment use area. The north – south footpath is slightly to the east of the Greenway designation on the (i.e. it is within the green spaces designated).

In essence, the development proposes moving the Greenway into the green area by a few meters, outside the boundary fence. The scheme then includes landscaping inside the boundary fence, of the green area in the UDP. Overall, the same area of green space will remain. The proposal also offers the scope, through a landscaping scheme, to improve the ecological value of the application site (previously grassland, using for grazing).

While a landscaping scheme up front (as envisaged by the UDP) is desirable, it is not seen in isolation as a reason to refuse the application. Conditions are recommended to address the issue.

### **Conclusion**

The scheme delivers the UDP objective of prompting employment, through this service use. It embodies the principles of green spaces, ecology and footpath provision, in ways that can be supported.

### **Summary of Reasons for Granting Planning Permission**

The legislation allows a developer to seek retrospective permission, as has happened in this case.

It is not necessary to seek further information to support this application on the subject of the size of the hardstanding, the proposed use, or the arrangement of that use

And impact on the highway from increased use of the site will not adversely affect highway safety

There is ample space on the site to provide landscaping and meet the needs of ecological improvement / protection

The footpaths proposed, as modified by the conditions in the permission, create a satisfactory arrangement for pedestrian access through the area. With the noise control measures already in place, and as controlled by the conditions, the development has a satisfactory relationship to the nearby houses. There is no entitlement to an outlook from the houses over the site, and the use is not judged to have the potential to pollute the area.

The proposed development is therefore considered to comply with the relevant policies of the development plan, in particular policies 3.6, 3.7, GP2, GP4, 3.17, ENV10, ENV32, ENV33, 4.2, 4.5 and JP1 and the provisions of the Designing Walsall SPD, the Natural Environment SPD, PPS25, and PPG9 and, on balance, having taken into account all material planning considerations, the proposal is acceptable.

**Recommendation: Grant Subject to conditions**

1. A) This permission approves the footpath running north-south along the eastern area of the site. The footpaths running east-west across the centre of the site and north-south along the western edge of the site are not approved.  
B) Within 6 months of the date of this permission, the north-south footpath approved under part (A) of this permission shall have been widened to 3 metres.

*Reasons:* A) The eastern footpath route best suits the arrangement of land uses in the area, and the proposals in the Unitary Development Plan for employment uses to be developed on the site.  
B) To ensure an adequately wide footpath.

2. Within two months of the date of this decision, details shall have been submitted for the written approval of the Local Planning Authority of revisions to the bends in the fence along the eastern area of the site, showing the removal of sharp bends in the fence. The approved details shall be implemented within 3 months of approval.

*Reason:* To promote the security of users of the footpath, by eliminating or reducing blind spots.

3. No demolition, construction or engineering works, (including land reclamation, stabilisation, preparation, remediation or investigation), shall take place on any Sunday, Bank Holiday or Public Holiday\*, and such works shall otherwise only take place between the hours of 07.00 to 18.00 weekdays and 08.00 to 14.00 on Saturdays, unless otherwise permitted in writing by the Local Planning Authority. No plant, machinery or equipment associated with such works shall be started up or operational on the development site outside of these permitted hours.

*Reason:* To protect the amenity of nearby occupiers.

4. Within 4 months of the date of this permission, the noise barrier shown on the deposited drawings at the rear of the area of Holman Close, shall have been completed, as specified in the application. The noise barrier shall be thereafter retained.

*Reason:* To protect the amenity of nearby occupiers.

5. Within 6 months of the date of this permission, a detailed landscaping scheme for the site shall have been submitted, for the written approval of the Local Planning Authority. The scheme shall provide details of:-

- proposals to explore recycling in situ soils;
- wildflower seeding and soil specification;
- tree pit / station detail;
- planting areas to be mulched to conserve soil moisture and reduce weed competition;
- a maintenance plan for the establishment and long term management proposals for planting and wildflowers

The approved scheme and maintenance plan shall be implemented and completed within 12 months of being approved, or such other period as may be agreed in writing by the Local Planning Authority, and the subsequent maintenance regime shall be as approved in that submission.

*Reason:* To ensure the satisfactory appearance of the development.

6. No external lighting shall be installed on the site until details have been submitted to and approved in writing by the Local Planning Authority. The lights shall be installed, and retained thereafter, in accordance with the approved details.

*Reason:* To safeguard the amenities of the occupiers of adjoining premises

7. Parking and manoeuvring of vehicles on site shall not take place on any Sunday, Christmas Day; Boxing Day; New Year's Day; Easter Monday; May Day; Spring Bank Holiday Monday and / or August Bank Holiday Monday, and otherwise shall only take place between the hours of 07.00 to 19.00 weekdays and 08.00 to 16.00 Saturdays unless otherwise permitted in writing by the Local Planning Authority.

*Reason:* To protect the amenity of nearby occupiers.

8. No loading or unloading of vehicles shall take place at any time on the development site.

*Reason:* To protect the amenity of nearby occupiers.

#### NOTES FOR APPLICANT.

A) The area of this proposed development has historically been utilised for the mining of coal and lignite and unknown filled ground that may have resulted in localised ground contamination that may present Health and Safety implications for person undertaking ground works. No specific detail of ground conditions in the area is available other than that obtained from previous land use data and historic mapping. This information should be brought to the attention of the builder or contractor undertaking the development in order

that they may implement any Health and Safety at Work precautions they feel appropriate when undertaking construction work at the site of the proposed development.

B) The landscaping scheme required to be submitted under the conditions in this permission should consider

- The planting of tree belts and hedges to provide a wildlife infrastructure around the site.
  - Creation of great crested-newt foraging habitat.
  - Use of predominantly native species.
  - A higher level of landscape provision than would be expected if the site were not within a wildlife corridor.
-



ITEM NO: 5.

To: DEVELOPMENT CONTROL  
COMMITTEE

Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

**REASON FOR BRINGING TO COMMITTEE: Requires delicate judgement**

**Application Number:** 09/1231/OL  
**Application Type:** Outline Application

**Case Officer:** Andrew White  
**Telephone Number:** 01922  
652429

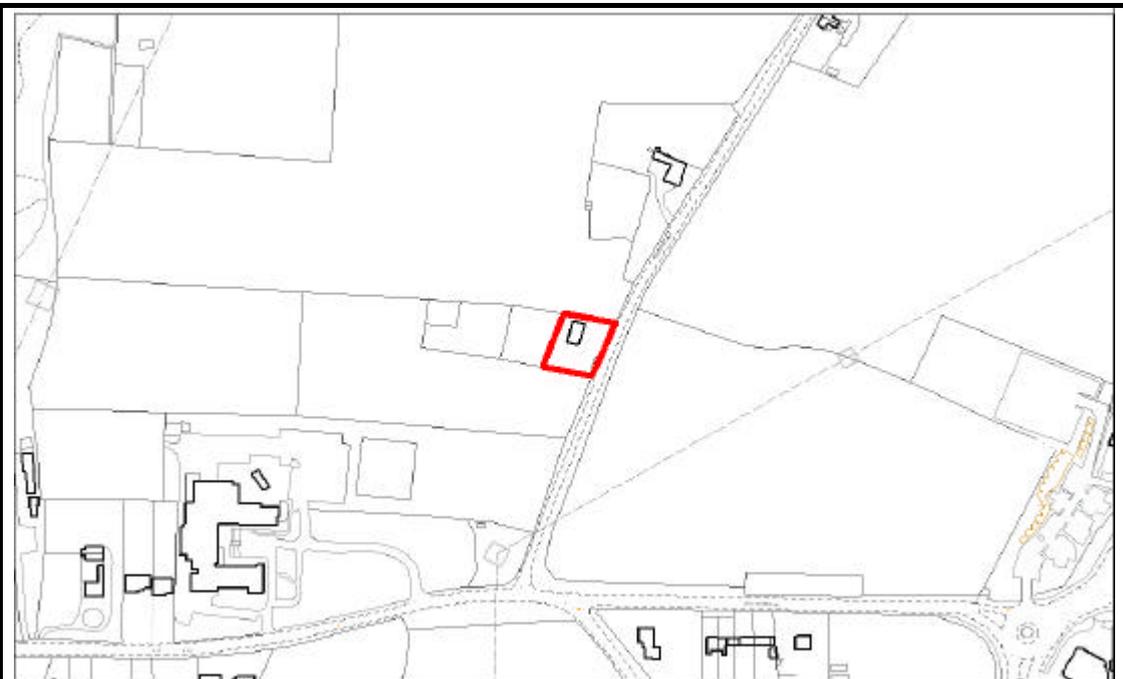
**Applicant:** Mrs Evans  
**Proposal:** Outline application for  
removal of existing caravan & extensions  
and construction of one three bedroom  
bungalow, access only to be considered

**Agent:** Simon Associates  
**Location:** 34 GOULD FIRM  
LANE, ALDRIDGE, WALSALL,  
WS9 0LX

**Ward:** Aldridge/Central & South

**Expired:** 03/12/2009

**Recommendation Summary:** Refuse Permission



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### **Application and Site Details**

The proposal is for outline permission for the construction of a 3 bedroom detached bungalow to replace the existing caravan and extensions. Access only is to be considered at this stage. The illustrative site layout demonstrates that there will be no change to the existing access arrangements which is via a gated entrance on the southern half of the plot. There is also a large driveway on this half of the plot and the application states that there will be parking for 3 cars, 2 light goods vehicles, 1 motorcycle and 1 disabled parking space. The proposed bungalow will be positioned in approximately the same position as the existing caravan and extensions, just over 11m from the front boundary. The illustrative drawing shows an "L" shape dwelling approximately 14m long and 12.8m wide maximum.

The site is located on the west side of Gould Firm Lane and is surrounded by open countryside. There are isolated dwellings nearby to the north and a hotel to the south. There is a screen hedge along the site frontage and the present caravan and extensions are located behind this with an extensive gravel driveway to the front and side.

The applicant states that the need for the replacement building has arisen from the following: -

- The need to provide a level of accommodation that responds to the applicant's physical disabilities which result from continuing impaired health
- To provide a dwelling that complies with current construction standards as set out in National Building Regulations and in particular with the environmental and insulation targets set by Central Government which cannot be achieved in the existing dwelling due to its structural composition
- To establish the applicant's right to a permanent dwelling on the land without restriction or condition to the present or future occupation of the dwelling permitted through the grant of any permission in response to this application.

The site lies within the Green Belt and has an area of 0.096 hectares. The applicant states that there was formerly a row of three terraced houses on the site plus a block of outbuildings and a separate building which had a combined floor area of 308 sq m (3315 sq ft). They consider for this reason the land was built upon and has a history of use for residential purposes. Nevertheless these buildings have since been demolished (in 1971 or thereabouts) and the site presently occupied by the applicant's caravan and extensions.

### **Relevant Planning History**

BC30730P - June 1992 - planning permission granted by the Secretary of State for the change of use of the property to the siting of a maximum of four mobile caravans for an extended gypsy family subject to four conditions;

1. Maximum of 4 caravans (including the mobile home) shall be allowed to occupy the site;

2. A personal permission for the applicant, their children and grandchildren;
3. Details of layout, boundary treatment and landscaping to be submitted,
4. Details of drainage and sanitation to be submitted.

ENF/1045/94 - May 1996 - Enforcement notice relating to land at 34-38 Gould Firm Lane, Aldridge was served stating;

1. It appears to the Council that the above breaches of planning control have occurred within the last four years;
2. In the opinion of the LPA, the structure currently erected in the position shown edged blue on the site does not accord with the definition of a 'caravan' as set out in the 1968 Caravan Sites Act. The structure is, therefore, not in accordance with the conditions imposed by the Secretary of State for the Environment in an appeal determination dated 4<sup>th</sup> June 1992, which granted permission for a restricted use to reflect the special considerations for gypsy occupation and to mitigate the degree of harm to the Green Belt;
3. In the opinion of the LPA, the building currently erected in the position shown edged green on the attached plan is a permanent structure contrary to UDP and PPG2 Green Belt Policy is visually intrusive and out of character with the open nature of this area of Green Belt;
4. The Council does not consider that planning permission should be given as to allow permanent structures or buildings on the site which could become lawful after four years would establish an inappropriate built development contrary to the character and function of the green belt and would set an undesirable precedent for the establishment of a dwelling house and other incidental residential buildings on site.

The notice required;

1. The removal from the site of the residential building erected on the site,
2. The removal from the site of the single storey permanent buildings erected on the site.

Compliance period within 6 months.

June 1997- An appeal was lodged against enforcement notice ENF/1045/940 The inspector agreed that under ground B (whether the work had been done) the appeal failed as the alleged works were a matter of fact.

The inspector agreed that under ground C (whether the work needed planning permission) the appeal failed as there have been breaches of planning control. The notice therefore took effect.

BC52133P - April 1998 - Planning application for retrospective permission for an open porch at the front of the mobile home, brick skirting on three sides, steps back and front, raised patio, sectional loose fitting conservatory and enclosed storage area was refused at Committee. These structures are the same as those in the previous enforcement matter. In June 1998- a Local Appeal into BC52133P for retrospective planning permission. This appeal was allowed. The officer's report states that 'when enforcement action was taken [June 1997] the Council were satisfied that the existing building is no longer a mobile home. This view has been endorsed by the appeal decision. The

status of the residence remains unchanged, the Councils rights to take enforcement action should the need arise in the future be unfettered...'

BC55641P - July 1998 - After Local Appeal: planning permission granted for the additions to the mobile home subject to conditions. Condition 3 states that 'the additions to the existing mobile home on the site at the date of this permission shall not be retained on the site in the event of the existing mobile home being replaced by any other succeeding caravan/mobile home at the same location within the site unless their retention with the replacement caravan/mobile home is authorised by the grant of planning permission from the local planning authority...' This was for the reason that 'the additions to the mobile home and the enclosed storage area are only permitted to be retained in association with a mobile home and use of the site for up to four caravans (including a mobile home) and as such, their permanent retention would be inappropriate development and detrimental to the appearance, character and planning policies, for this sensitive part of the green belt.'

03/0393/FL/E4 - July 2003 - application for removal of condition 2 on planning application BC30730P which stated "*the use hereby permitted shall be carried on only by Mr and Mrs J and Y Evans, their children and grandchildren.*" The application was refused for the following reason:

"Removal of Condition 2, of planning permission BC30730P, would remove the very special circumstances, which existed arising from the gypsy status of the occupants of the dwelling. No very special circumstances have been identified to justify permanent retention of such inappropriate development for occupation by persons who do not have gypsy status. Therefore, the approval of this application would be contrary to the provisions of the Unitary Development Plan (policies 3.1 and 3.2) and national planning policy stated within Planning Policy Guidance Note 2."

A subsequent appeal was dismissed in August 2004 as the Inspector stated the rationale for permitting the use of the site in the first place would be lost, as reference to very special circumstances prevailing at that time would be dispensed with. A general caravan site would remain that would fall outside any of the categories of development accepted in the Green Belt. To remove the condition would be to sanction inappropriate development in the Green Belt.

05/2230/CE/E4 – December 2008 a Certificate of Lawful Existing Use was sought for erection of a dwelling house. It was deemed not to be lawful for the following reasons: -

1. Planning permission was granted in 1992 for the siting of a maximum of four caravans (including the mobile home)
2. While there have been building works around the present caravan (granted planning permission in July 1998) the nature of the permission is such that it does not make the caravan a building

3. There is a current Enforcement Notice on this land, requiring the removal of those building works, subject to the provisions of the July 1998 planning permission

**Relevant Planning Policy Summary** (Note the full text version of the UDP is available from the First Stop Shop in the Civic Centre, and on the Planning Services Website [www.walsall.gov.uk/planning](http://www.walsall.gov.uk/planning)).

### **Unitary Development Plan (UDP)**

GP1: Supports the sustainable location of development.

2.2, 3.6, 3.7, & GP2: seek to make a positive contribution to the quality of the environment, whilst protecting people and ensuring adequate and safe access is provided.

3.21 & ENV1: Defines the purpose of the Green Belt.

ENV2: There is a presumption against construction of new buildings except where this is for agriculture, forestry or facilities essential for outdoor sport or recreation.

ENV3: Lists criteria for assessing proposals in the Green Belt.

ENV23: Development needs to demonstrate no adverse impact on species protected by European law and generally conserves natural elements.

GP5: The needs of all sections of the community should be taken account of with no discrimination against any individual or group, particular attention will be given to the needs of people who are in any way disadvantaged in order to maximise equality of opportunity engender greater social inclusion.

3.16, GP7, ENV32, H10 and 3.116: seeks the design of residential developments to create high quality living environments, well integrated with surrounding land uses and local character. Poorly designed development which fails to properly take account of the context or surroundings will not be permitted. Designing out crime' through design, layout, landscaping and boundary treatments is encouraged.

3.117 & ENV33: deals with landscape design and opportunities to create and enhance environmental quality.

ENV40: Adequate foul and surface water drainage infrastructure should be provided.

6.3 & H3: Encourage the provision of additional housing through the re-use of previously developed land provided a satisfactory residential environment can be achieved.

7.1: Seeks to promote an efficient highway network;

T7: All development should satisfy the car parking standards set out in Policy T13. All parking provision should be well designed and sensitively integrated into the townscape or landscape, respecting the character of the local area, and with appropriate use of materials and landscape treatment.

T13: car parking standards

1, 2 & 3 bedroom houses – 2 spaces per unit

## **Supplementary Planning Document (SPD)**

### **Designing Walsall SPD**

DW1-Sustainability – new development must show that its design maximises energy efficiency in terms of layout, orientation and sustainable use of resources;

DW3 – Character -design to respect and enhance local identity;

DW9 – High Quality public realm - new development must seek to ensure it creates places with attractive environmental quality;

Annexe E: Numerical Guidelines for Residential Development ... identifies privacy and aspect distances between dwellings including 24m separation between habitable windows for two storeys and above, 13m separation between habitable room windows and blank walls exceeding 3 metres in height, 45° code, garden dimensions of 12m in length and 68m<sup>2</sup> for housing and 20m<sup>2</sup> per dwelling where communal provision is made, set backs to avoid terracing and provision of boundary walls. Although failure to comply with these guidelines may not by itself be a reason for refusal of an application, it will be a factor to be used in determining whether a proposal would be compatible with the wider character of the area or the existing dwelling or the amenity of neighbours.

### **Natural Environment SPD**

Policies N8, N9 & N10 deal with the need to fully assess, protect and secure compensatory planting for trees.

### **Regional Spatial Strategy for the West Midlands**

Promotes sustainable regeneration of previously developed land, promoting a high quality environment and sustainable development capable of being accessed by a variety of transport modes.

### **The Black Country Gypsy and Traveller Accommodation Needs Assessment (GTAA) (July 2008)**

This identified a need for:

- 30 permanent residential site pitches for 2008 – 2013 within Walsall
- with a further 9 pitches from 2013 – 2018 within Walsall
- a total of 98 pitches over the next 10 years in the Black Country as a whole

The 39 pitches in Walsall include 6 further planned pitches within Phase 3 at the Council's Willenhall Lane site resulting in a requirement for 33 pitches in Walsall.

### **National Policy**

PPS1: Promotes sustainable and inclusive patterns of urban and rural development and emphasises the need to reject poor design.

PPG2: Seeks to protect against inappropriate development that is harmful to the Green Belt, including construction of new buildings. Very special circumstances to justify inappropriate development will not exist unless the

harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

PPS3: Seeks to achieve a wide choice of high quality homes and mixed housing to support a wide variety of households in all areas and provide a sufficient quantity of housing taking into account need and demand.

PPS9: Seeks to promote sustainable development, conserve, enhance and restore the diversity of England's wildlife and geology.

PPG13: Promotes sustainable patterns of development which reduce the need to travel, especially by car.

### **Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites**

The main aims of the Circular are to:

- create and support sustainable, respectful, inclusive communities
- where Gypsies and Travellers have fair access to suitable accommodation, education, health and welfare provision;
- reduce the number of unauthorised encampments;
- increase the number of gypsy and traveller sites to address under-provision;
- recognise, protect and facilitate the traditional travelling way of life of Gypsies and Travellers, whilst respecting the interests of the settled community;
- promote private Gypsy and Traveller provision
- help to avoid Gypsy and Travellers becoming homeless through eviction from unauthorised sites without an alternative to go to.

Paragraphs 41-46 give advice on transitional arrangements to be used where site allocation development plan documents are in the course of preparation.

Paragraph 49 recognises the presumption against inappropriate development in the Green Belt as new gypsy and traveller sites in the Green Belt are normally inappropriate development as defined by PPG 2.

### **Other Legislation**

#### **Caravan Sites & Control of Development Act 1960, Section 29;**

This provides that a 'caravan' means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted.

#### **Caravan Sites Act 1968, Section 13;**

This expands the definition of a caravan stating that it must be composed of not more than two sections separately constructed and assembled on site by bolts, clamps or other devices; and when assembled, physically capable of being moved by road from one place to another, and not to exceed any of the following limits-

- (a) length (exclusive of any drawbar): [65.616] feet ([20] metres);
- (b) width: [22.309] feet ([6.8] metres);

(c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): [10.006] feet ([3.05] metres).”

### **Human Rights Act 1998**

Article 8 of the European Convention on Human Rights provides that everybody has the right to respect for his private and family life and his home, and there should be no interference by a public authority with the exercise of this right, except where it is (amongst other considerations) in accordance with the law and is necessary in a democratic society for the protection of rights and freedoms of others.

### **Consultations**

**Transportation** – No objections. The existing vehicular access is being utilised.

**Pollution Control (Scientific Team)** - No objections.

**Pollution Control (Contaminated Land)** – No objections.

**Planning Policy** – Objects. The proposal is inappropriate development in the Green Belt and the applicant has not demonstrated whether very special circumstances exist to outweigh the harm to the Green Belt. The proposal would also create a permanent dwelling on the site that was originally allowed as a gypsy site and would therefore result in the loss of a gypsy site within the borough.

**Landscape** – No objections. The site appears visually as part of a small group of residential development along the lane and the proposals do not affect the established hedge along the highway frontage or tree planting within the site itself.

**Housing Standards & Improvement** – The existing site is a licensed caravan site. Replacement with a fixed structure (bungalow) would mean that the site is no longer licensable with Housing Standards.

**Fire Service** – No objections.

**Police Architectural Liaison Officer** – No objections.

**Severn Trent Water** – No objections in principle subject to details of drainage being provided.

### **Public Participation Responses**

One letter of support received from the proprietor of Fairlawns Hotel and Spa. This specifies: -

- the owners are good neighbours and brought business to the area as a consequence of the caravan club site they are operating adjacent
- a permanent building will enhance the environment

All letters of representation are available for inspection upon publication of this committee report.

### **Determining Issues**

- Permitted use of the site
- Whether very special circumstances exist to justify inappropriate development in the Green Belt
- Visual impact upon the surrounding area
- Relationship to surrounding occupiers

### **Observations**

#### **Permitted use of the site**

The Certificate of Lawfulness for Existing Use or Development (CLEUD) of the site as a dwelling house was refused in December 2008. This decision establishes the Council's view that the existing caravan and extensions presently on the site cannot be described as a "building" as defined in Section 336 of the Town & Country Planning Act 1990. The conclusion was based on the fact that the caravan failed the tests of size, permanence and physical attachment to determine whether it was classed as a building or not. As the caravan cannot be described as a building under these tests then there has not been a building operation and therefore the "erection of a dwelling house" had not occurred. This is also the reason why the description of the proposal refers to "removal of caravan and extensions and erection of a 3 bedroom bungalow" rather than "demolition of existing dwelling and construction of a 3 bedroom bungalow" as requested by the applicant as the proposal is a new dwelling rather than a replacement dwelling in the Green Belt.

Paragraph 3.4 of PPG2 states the construction of new buildings in the Green Belt is inappropriate unless it is for specific purposes including "*replacement of existing dwellings*". Replacement dwellings (houses) are not inappropriate in the Green Belt provided that they are not materially larger. The existing caravan and extensions presently on the site do not constitute a "dwelling house" as determined by the CLEUD the Green Belt policy relating to "replacement dwellings in the Green Belt" is not applicable.

#### **Whether very special circumstances exist to justify inappropriate development in the Green Belt**

Housing is inappropriate in the Green Belt. The existing use of the site is as granted on appeal in June 1992 which is for the siting of a maximum of four mobile caravans for an extended gypsy family. One of the key considerations in this appeal was whether there were any very special circumstances, arising from the applicants' status as gypsies, their personal circumstances and the circumstances of the application, which would justify overriding the normal presumption against residential caravans in the Green Belt. In allowing the appeal, the Secretary of State concluded that there were sound reasons for

considering the application favourably because of the family's gypsy status and the temporary nature of the caravans. The caravans could easily be removed once the family no longer needed them which would avoid any permanent damage to the Green Belt.

Paragraph 15 of Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites, provides the following definition of gypsies and travellers:

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members or an organised group of travelling show people or circus people travelling together as such”

The Circular goes on to state that ‘... traditional patterns of work are, however, changing and the community has generally become more settled’ and ‘a more settled existence can prove beneficial to some gypsies and travellers in terms of access to health and education services, and employment, and can contribute to greater integration and social inclusion within local communities. Nevertheless the ability to travel remains important part of gypsy and traveller culture.’

The applicant is applying to establish a permanent dwelling on the land. The Circular recognises that a gypsy family's health needs may cause them to cease to travel temporarily or permanently. It does not specify that if a gypsy ceases to travel whether accommodation could be provided in the form of a permanent dwelling house such as the bungalow applied for. Nevertheless, there is no information relating to the specific health needs of Mrs Evans other than to state *“a need to provide a level of accommodation which responds to the applicant's physical disabilities which result from her continuing impaired health”*. There is no evidence to demonstrate whether the very special circumstances recognised by the Secretary of State at the time of allowing the permission for the mobile caravans for the extended gypsy family at the site have altered to such an extent as to consider construction of a permanent dwelling at the site that would be inappropriate development. Neither is it clear why the family can't purchase a house elsewhere to live in a permanent building.

The applicant seeks to establish their right to a permanent dwelling on the land without restriction or condition to the present or future occupation of a dwelling permitted through the grant of any permission. However, the earlier proposal to remove the restrictive condition for occupation of the site by the applicant and their children and grandchildren only has already been dismissed at appeal. This was on the basis the rationale for permitting the use of the site for gypsy caravans in the first place would be lost, as reference to very special circumstances prevailing at that time would be dispensed with. To remove the restrictive condition would be to sanction inappropriate development in the Green Belt and results in loss of a gypsy site within the

borough.

Given the above it is considered the applicant has failed to demonstrate very special circumstances sufficient to justify inappropriate development in the Green Belt. This is contrary to both national and local planning policy.

### **Visual impact upon the surrounding area**

The proposed bungalow would occupy almost the same position as the existing caravan and extensions which sits well back from the highway and is well screened by existing hedging surrounding the plot. Despite the fact that appearance, landscaping, layout and scale are reserved matters it is considered that, if the principle of a bungalow were acceptable, then these matters could be suitably addressed to ensure no greater visual impact upon the surrounding area than the existing caravan and extensions. A building in the position indicated would not require loss of any existing trees or landscaping and hence would have no greater impact upon the openness and character of the Green Belt or surrounding area. As the plot is enclosed by tall dense hedging then the site is not prominently visible from within the Green Belt and does not affect the openness or character. The means of access is to remain as existing.

### **Relationship to surrounding occupiers**

The nearest neighbours are the detached dwelling approximately 50m to the north and Fairlawns Hotel 95 metres to the south-west. As the plot is enclosed by tall dense hedging then the site is not prominently visible from either. The neighbour's outlook, daylighting and privacy would therefore be unaffected.

Although the nearby hotel proprietor has offered support for the proposals stating that the applicant has brought business into the area and a permanent building would be an improvement these reasons are not sufficient to outweigh the harm by reason of inappropriateness the development would have upon the Green Belt. The first reason is not a material planning consideration and the second reason cannot be determined as the application is outline only so no details of appearance and landscaping for example have been provided.

### **Recommendation: Refuse Permission**

1. The proposal represents inappropriate development in the Green Belt. No very special circumstances have been demonstrated sufficient to outweigh the harm the proposed inappropriate development would have on the character, openness and purpose of the Green Belt. The proposal is therefore contrary to policies GP2, 3.3, 3.6 and ENV2 and ENV32 of Walsall Unitary Development Plan and Planning Policy Guidance 2: Green Belts.



ITEM NO: 6.

To: DEVELOPMENT CONTROL  
COMMITTEE

Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

**REASON FOR BRINGING TO COMMITTEE: Called in by Councillor  
Creaney, and significant community interest**

**Application Number:** 09/1603/FL  
**Application Type:** Full application  
**Applicant:** Mr Mohan Singh  
**Proposal:** Change of use to A5 hot  
food takeaway and erection of a brick  
built chimney to conceal extraction  
duct.

**Case Officer:** Val Osborn  
**Telephone Number:** 01922 652436  
**Agent:** Springfield Catering Direct  
**Location:** 112 CLARKES  
LANE,WILLENHALL,WV13 1JB

**Ward:** Willenhall South

**Expired:** 04/02/2010

**Recommendation Summary:** Grant Subject to conditions



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## **Status**

Cllr, Creaney supports the application and considers the concerns of local residents for anti-social behaviour have been addressed.

## **Application and Site Details**

The application proposes the change of use to hot food take-away of a shop unit at the end of a group of three shops which have two-storey maisonettes above. The proposed opening hours are 12.00 - 22.30 Monday to Saturday.

The site is a local shopping parade off the service road alongside Clarke's Lane and has a rear service access in addition to frontage lay-by parking for the parade.

The application also proposes the erection of a brick built chimney to conceal the extraction duct for the ventilation equipment. The chimney would be sited on the south side of the gable of the three storey building, projecting out from the gable by 0.4m, 1.1m in width and 9.8m in height. The proposed chimney would be between 1.5m and 2.15m above the roof line of the three storey building to which it would be attached.

The passageway on the south side of the premises has been secured by palisade fencing. The rear service access is via a gated and locked garage courtyard, accessed off Durham Avenue.

Some details of the specification of the flue systems have been submitted with the application. It provides for internal ducting, fan systems and grease sumps with an internal layout for the premises.

The proposed internal layout of the shop provides for the conversion of the external bin and storage area to create a potato preparation area within the hot food take-away. The waste bin is therefore proposed to be stored externally, on the pathway surrounding the block.

The site is part of a parade of three shops (a general store, a beauty parlour and the application site, currently vacant). The flats above the shops have external patio areas to the rear overlooking the service yard. This gated courtyard also provides access to garages for houses and flats at Durham Avenue and Lincoln Avenue.

The service road at the front, parallel with Clarke's Lane, also gives access to 100 to 112 Clarke's Lane which are three storey flats aligned askew to the service road so that the rear elevation of numbers 100 to 112 Clarke's Lane directly face towards the gable of the shops and flats above.

The site is approximately 400m from Shepwell Green where there is a MacDonald's, and approximately 1km from Lane Head and Bentley Local centres.

## **Relevant Planning History**

09/0606/FL – change of use to A5- Fish and chip shop, proposed opening hours of 12.00-14.00 and 16.00 - 21.30 hrs, refused 24 July 2090, for the following reasons;

1. The proposal would erect a flue chimney on the gable elevation of the building which would be a significant, ugly and obtrusive feature for the occupiers of nearby and overlooking properties. The proposed use would involve the operation of cooking plant and machinery and the siting of an unsightly oil collection sump and carbon box, which would be likely to cause noise and odour nuisance and appear obtrusive to adjacent and nearby occupiers, to the detriment of their amenity. As such the proposed development would be contrary to policies GP2, 3.6, ENV32, S6 and S10 of Walsall's Unitary Development Plan.
2. The proposed development is likely to encourage parking on the service road leading to flats off Clarke's Lane, numbered 100 to 126. The proposed development is likely to lead to an intensification of parking in this part of the service road, with nuisance caused by customers opening and closing cars and manoeuvring vehicles, particularly in the evening, likely to impact on amenity of the occupiers of the nearby flats. As such the proposed development would be contrary to policies GP2, 3.6, ENV32, S6 and S10 of Walsall's Unitary Development Plan.

## **Relevant Planning Policy Summary**

Adopted Unitary Development Plan

Policy GP2 sets out the general principles of development

GP7 proposals are expected to 'design out crime, with CCTV at priority areas.

Policy S1, S2 and S3 together with paragraphs 5.4, 5.5, 5.6, 5.7 and 5.8 defines town centre uses and seeks to integrate such uses within town and district centres. The nearest District Centre is Willenhall.

S6 on meeting local needs seeks to preserve local parades to meet day to day needs, and providing local facilities / services in areas that lack them

Policy S10 considers hot food takeaways and cafes and states

*These uses will be appropriate in the Town, District and Local Centres (subject to Policy S4) and in some shopping and commercial frontages elsewhere (if in accordance with Policies S6 and S7), subject to the following considerations:-*

*I. The use proposed must not adversely affect the amenities of existing or proposed dwellings (including those on upper floors above commercial premises) by reason of noise, smell, disturbance or traffic impact. Where there are existing activities which are open during the late evening, the Council will have regard to the cumulative impact on residential amenity.*

*II. Where the Council is minded to grant planning permission, the closing time for hot food takeaways will be considered in relation to the amenities of nearby dwellings - both existing and proposed - where*

*these are likely to be affected. In such locations, the Council will usually impose a condition requiring the premises to close at 23.00 hours Monday to Friday and 23.30 hours on Saturdays. Later opening hours and Sunday opening will be considered on their merits.*

*III. Permission will not be granted where the absence of adequate off-street parking would be likely to lead to on-street parking in a hazardous location.*

*IV. Permission will only be granted where ventilation and fume extraction equipment can be positioned to avoid potential problems of noise, vibration and/or odour nuisance for nearby occupiers and the equipment would not be detrimental to visual amenity.*

Policy ENV10 seeks to reduce pollution

Policy ENV32 seeks to create high quality design.

Policy T7 seeks to ensure car parking is laid out properly

Policy T8 seeks to promote walking

Policy T12 seeks to ensure appropriate access to public transport

Policy T13 seeks to ensure an appropriate level of car parking

### **Regional Spatial Strategy for the West Midlands (RSS11)**

The RSS is currently under review however the relevant Policy in RSS11 is PA11 which seek to enhance and strengthen town, district and local centres.

### **National Planning Policy**

Planning Policy Statement (PPS)1 seeks to ensure that development is located in sustainable locations and that efforts are made to reduce the impact on climate change..

PPS4 –Planning for Sustainable Economic Growth. This is the latest guidance, issued 29 December 2009 and brings together key planning policies related to the economy, particularly replacing PPG4 and PPS6. It refers to key centre uses, applies to all centres by definition (Annexe B) and has the overarching objective of sustainable growth, reducing the need to travel especially by car. New development should be focused in existing centres which allow genuine choice for the entire community.

EC10; applications for economic development should be assessed against impact considerations of;

b. provide accessibility by choice of means of transport;

c. secure high quality design;

d. impact on regeneration including on deprived areas.

EC14; Supporting evidence- a sequential assessment would be required for main town centre uses that are not in existing centres where gross floor space exceeds 200m<sup>2</sup>.

### **Consultations**

**Transportation** - No Objection.

**Environmental Health** – No objection.

May give rise to noise and odour nuisance from cooking processes and plant and equipment. These issues may be mitigated by the installation and use of odour control equipment and suitable sound attenuation or location of equipment such as fan motors. The document attached to the application indicates that the fan motor, likely to give rise to neighbouring properties, will be located within the premises and therefore noise disturbance will be minimal;

The application specifies a carbon filter system and a purified air odour unit. The equipment is satisfactory. Odour will not however be eliminated, some may escape through windows or doors.

Interceptor unit to prevent contamination of the drainage system by grease or food debris should be provided for by condition.

The layout / size is not ideal. It restricts facilities for example plentiful work surfaces for separation of activities.

The operation is also limited, for example by not providing a kebab grille and associated ventilation. There are, however other takeaways of similar size and the subsequent operation will reflect in how such premises are food safety rated.

Depending on trading conditions traders will try to introduce new lines to increase revenue. This will be subject to assessment during future inspections.

#### **West Midlands Police – No objections.**

However the application does not mention crime prevention or security measures and the following recommendations are made;

1. The serving counter should be high and wide to afford the staff protection from any aggressive customers.
2. As the premises are likely to be open into the evening it may attract anti-social or aggressive behaviour from customers and local youths. To deter such activity and to provide reassurance to staff and customers a CCTV system should be installed. The system should be digitally recorded with the images accurately showing the correct time and date. The system should have a capability to retain recorded images for a minimum of 28 days. The recording equipment should be located in a secure area well away from the public domain.

#### **Fire Service – No objection**

**Estates Team;** the footpath around the shops is owned by the Council. The courtyard and access road is owned by WHG. The tenant of the shop would have rights of access only across the WHG service road and the Council footpath.

#### **Public Participation Responses**

Seven letters have been received, objecting on the following grounds;

- The proposal will encourage youths to congregate in the locality, causing noise and nuisance and likely to engage in anti-social behaviour;

- The access road is narrow and provides insufficient parking for residents of the flats as well as customers for the proposed fish and chip shop; residents currently experience parking problems;
- The proposal will generate a litter problem; the existing 2 litter bins at the site are not used effectively; Such premises are characterised by use of disposal of food and packaging waste, which the application fails to address as a waste management plan;
- Occupiers of the flats above the shop will experience smells and odours arising from the proposed fish and chip shop;
- There will be smells and odour impacts as well as noise and disturbance caused to occupiers using the balconies to the flats;
- Whilst the street frontage may accommodate parking, vans and lorries from nearby industrial premises will be attracted to the proposal causing further noise and nuisance to occupiers of flats above the premises and in the locality;
- There are sufficient similar facilities in the locality, all within walking distance;
- The locality has only recently been cleared from drug and alcohol misuse.

**Walsall Housing Group** – Object on the following grounds;

1. There is insufficient parking to serve the use. Cars would park in Durham Avenue where the majority of residents are elderly and cause noise and disturbance.
2. Litter would make the area unattractive and put pressure on our estate management resources.
3. Chip shops always attract groups of youths and the residents have suffered from this kind of anti-social behaviour in the past.
4. Would deliveries affect the secured garage area (make it more accessible for vandalism and anti-social behaviour)?
5. Many hot food take aways in the vicinity that already serve the area.

All letters of representation are available for inspection upon publication of this committee report.

### **Determining Issues**

- appearance of the proposed ventilation flue
- operation of plant and equipment harming amenity;
- Parking and associated nuisance
- Fear of crime
- Waste management

### **Observations**

#### **Appearance of the proposed ventilation flue**

The alignment of the adjacent block of flats at 100-110 Clarke's Lane, set at a 45 degree angle to the service road, opens the gable elevation of the application site to a wide view from the public realm. The nearest block of

flats has two chimneys at a similar height, although sited nearest the ridge of the roof to the building.

The applicant illustrates a brick chimney on the southern elevation of the three building, extending the full height of the three storey building and between 1.5m and 2.15m above the eaves line of the roof and has proposed a satisfactory brick for this construction.

The proposed chimney would be significant in terms of height, but the use of brick would create a structure of acceptable appearance.

### **Operation of plant and equipment harming amenity;**

Policies S6 and S10 seek to guide proposals for hot food take-aways to local centres and established shopping parades where amenity would not be adversely affected. Policy S10 specifically refers to the amenity of occupiers of first floor flats above commercial premises. In particular the siting of ventilation and fume extraction equipment should be located so as to avoid problems of noise and nuisance to neighbours as well as be visually unobtrusive.

Environmental Health have no objection to the proposal, though they qualify this by stating that odour would not be eliminated, some could escape through doors and windows. The unit would have a front door entrance, blank gable elevation and rear service door for access to the service yard.

In this application the equipment nearest the rear service door is related to the preparation of potatoes, as a cold process with no ventilation equipment. In this case the escape of odour would therefore be limited. However an alternative hot food use could install ventilation equipment with an outfall duct on the rear elevation. This would impact on the occupiers of the flats above and their use of the external deck areas at the rear first floor. It would be appropriate to use a condition to secure this issue to protect amenity, and as a result, on balance, it would be hard to justify refusal on this basis.

### **Parking and associated nuisance**

The site has a shared parking area on the service road at the front. Use of this parking could (if it is very busy) impact on the flats adjoining, or the flats over the shops. Neither Transportation nor the Police see this as a key issue.

West Midlands Police comment that the proposal may attract anti-social and aggressive behaviour and CCTV should be installed so as to deter.

There is a risk that the large open frontage pavement would be a gathering point for youths, which would cause noise and disturbance to the occupiers of the flats above the shops, but again there is no objection from the Police.

On balance, the proposal is supported.

### **Fear of crime**

Residents are concerned that the proposal will attract youths and lead to anti-social behaviour. The local community is considered by West Midlands Police to be an established 'elderly' population, for whom anti-social behaviour is a real fear. Officers consider this is of significant weight.

Application 09/0606/FL proposed opening hours of 12.00-14.00 and 16.00 - 21.30 hrs. This early evening opening would have reduced the likelihood of youths gathering and disturbance from customers using cars, and therefore did not appear as a reason for refusal.

However the proposal provides opening hours of 12.00 -22.30 Monday to Saturday. The later opening is likely to materially increase the risk of anti-social behaviour and the fear of crime of local residents is seen as reasonable.

However, it remains the case that the Police do not object to the application. It would be difficult to refuse in such circumstances.

### **Waste management**

The application fails to provide a waste management strategy. The locality is currently tidy with very little street litter. However, local residents consider the 2 bins at the front do not adequately contain street litter. It is recognised that further waste bins related to the proposal would help to mitigate the problem.

The application proposes the location of a refuse container at the side of the premises. These types of lidded containers can be overfilled so that odours emanate and become unpleasant, attracting vermin. The entrance to first floor flats is at the rear of the shops and close to the proposed location of the bin. In the absence of a waste management strategy, the Council cannot determine that the waste arising from the proposal will be satisfactorily dealt with or establish what the collection arrangements might be so a condition is needed.

## **Summary of Reasons for Granting Planning Permission**

### **Recommendation: Grant Subject to conditions**

1. This development must be begun not later than 3 years after the date of this decision.

*Reason:* Pursuant to the requirements of Section 91 of the Town and Country Planning Act, 1990

2. No development shall commence until details of a method to prevent grease entering the drainage system have been submitted to and approved in writing by the Local Planning Authority. The premises shall not be open for business until this approval has been given and the approved details have been fully implemented. The approved equipment shall thereafter be retained and maintained in accordance with manufacturer's or installers requirements.

*Reason:* To protect the drainage system.

3. No development shall commence until details of waste management strategy providing for refuse collection system and location for bin storage has been approved in writing by the Local Planning Authority.

*Reason;* In the interests of the amenity of adjoining occupiers.

4. The premises shall not be open for business outside the hours 1200 to 22.30 hours Monday to Saturday.

*Reason;* In the interests of the amenity of adjoining and nearby occupiers.

5. Detailed plans and specifications shall be submitted to and approved in writing by the local planning for a CCTV system. The system shall be fully operational before the premises are brought into use. The system should be digitally recorded with the images accurately showing the correct time and date. The system should have a capability to retain recorded images for a minimum of 28 days. The recording equipment should be located in a secure area well away from the public domain.

*Reason;* In the interests of the safety of staff and amenity of adjoining residents.

6. This permission relates to the shop layout as submitted, drawing number 1404 and no further ventilation equipment shall be installed with external ventilation at the premises without the prior approval of the LPA.

*Reason;* In the interests of the amenity of adjoining and nearby residents.

7. Notwithstanding the submitted plans, in particular site plan drawing no 1406, the palisade fencing on the south side of the application site shall be retained as a secure fence, with no access available from Clarke's Lane service road.

*Reason;* In the interests of the amenity of adjoining and nearby residents and to safeguard security at the site.

**Summary of reasons for granting planning permission and the policies and proposals in the development plan which are relevant to the decision**

The proposed development would provide ventilation and extraction equipment that would adequately deal with fumes and odours arising from the hot food take-away. The available parking is considered adequate and its use, on balance, would not significantly be to the detriment of the amenity of occupiers of the flats above the shops or nearby residents. Whilst the fear of crime of local residents is acknowledged it is considered that it is unlikely to be significant sufficient, on balance to warrant refusal of the application. The proposal is therefore considered to comply with the relevant policies of the development plan, in particular policies GP2, GP7, 3.6, S6, S10, ENV10, ENV27, ENV29 and S5 of Walsall's Unitary Development Plan, and, on balance, having taken into account all material planning considerations, the proposal is acceptable.

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ITEM NO: 7.

To: DEVELOPMENT CONTROL  
COMMITTEE

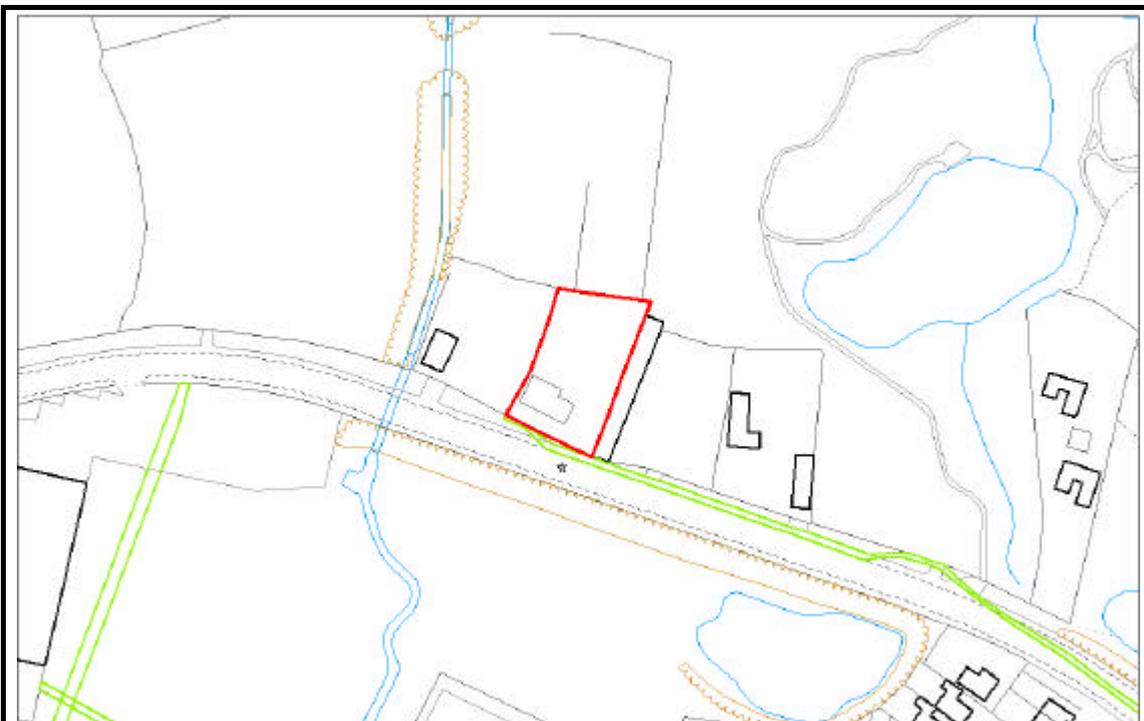
Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

**REASON FOR BRINGING TO COMMITTEE: Matter requiring delicate judgement**

**Application Number:** 08/1704/FL  
**Application Type:** Full application  
**Applicant:** DSG Mobile Mechanics  
**Proposal:** Retrospective application for alterations to extend and raise the roof of the vehicle repair workshop; retention of 3 mobile home caravans.  
**Ward:** Willenhall South  
**Recommendation Summary:** Refuse

**Case Officer:** Andrew Thompson  
**Telephone Number:** 01922 652403  
**Agent:** Gurprit Benning  
**Location:** GRASMERE, WATERY LANE, WILLENHALL, WV13 3BS

**Expired:** 14/07/2009



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### **Application and Site Details**

The application site is located on the northern side of Watery Lane, adjacent to Fibbersley Open Space which borders the site to the north and west. Further to the West are Watery Lane industrial estates which form the boundary between Walsall and Wolverhampton administrative boundaries. Immediately to the east is a long established scrapyard. To the Northeast is Fibbersley Nature Reserve and surrounding the site on all sides except immediately to the east is Waddens Brook Site of Importance to Nature Conservation.

The application site includes an area of approximately 45sqm which is designated as part of the Fibbersley urban open space in the northwest corner of the site to an area approximately 155sqm. The Local Nature Reserve (LNR) runs adjacent to the north east and to the north is a Site of Importance to Nature Conservation (Waddens Brook SINC).

The land immediately to the west has been used for earthworks. This is the subject of an ongoing enforcement investigation.

In respect of the application the proposal are retrospective and the development applied for is surmised below.

The mobile homes are not related to the vehicle workshop and are privately rented on short-term leases. They were brought onto the site in the following order:

1. Mobile Home in the middle of the three, parallel to Watery Lane (2006)
2. Mobile Home nearest Watery Lane (2007)
3. Mobile Home further from Watery Lane (2009)

All the mobile homes are 29sq.m. two of them are 2 bed and one is a single bed.

The vehicle workshop has been extended from a rectangular shaped building to an L-shaped building on the north and eastern boundary. The approved building stood at 20m by 4m with a shallow pitched roof. The maximum height of the building was 3.8m.

The extended main building now stands at 21.8m in length by 5.1m wide and 4.8m in height. The extension to the side is 9.8m in length by 6.8m wide and 3.4m in height. The building has been clad in a dark green metal.

In respect of other vehicles on the site at the time of the site visit most were transient in nature (miscellaneous cars) however there were two (a container and a caravan) that were also present on the site, and appear to have been for some time. It is noted that they are on the original site visit photos.

It is also noted that it is indicated on the submitted plans that the caravan at the front of the site is a 'staff waiting caravan' however neither of these structures form part of the application.

In addition it is noted that the parking layout and landscaping are not currently implemented. In the case of the area at the rear of the site there are a variety of materials, tyres and a dog compound are stored in the area which is shown as amenity area for the mobile homes. 2 employees currently work on the site.

### **Relevant Planning History**

BC41132P – (hereafter called the ‘1995 permission’)

Allowed on appeal established the use of the site for two vehicle workshops measuring 20m by 4m with a shallow pitched roof. The maximum height of the building was 3.8m.

The Inspector broadly concluded that when considered against the scrapyards use the proposed building and use of the site for car repairs would not cause material harm.

The Inspector imposed three conditions, two of which related to the implementation and maintenance of a landscaping scheme to the northern and southern boundaries and a further condition suggesting that storage should be kept below 2m in height. No landscaping scheme was submitted or implemented.

### **Relevant Planning Policy Summary**

#### **Adopted Unitary Development Plan**

GP1: Supports the sustainable location of development.

2.2, 3.6, 3.7, & GP2: seek to make a positive contribution to the quality of the environment, whilst protecting people and ensuring adequate and safe access is provided.

GP4: local area regeneration by helping to bring forward derelict, vacant or underused land and buildings for new uses.

3.12 The protection, management and enhancement of the natural environment is recognised as being fundamental to the social, economic and ecological well-being of the Borough and will be promoted and encouraged accordingly. Development proposals should not destroy, damage or adversely affect nature conservation interests and, where possible, should enhance provision for wildlife.

3.16: The Council will consider development in relation to its setting, with reference to the character and quality of the existing local environment, and will require a high quality of built and landscape design.

ENV10 – deals with Pollution effects from developments including ground contamination and noise.

ENV14: The Council will encourage the reclamation and development of derelict and previously developed land.

ENV18 - The Council will ensure the protection, positive management and enhancement of existing woodlands, trees and hedgerows. Development will not be permitted if it would damage or destroy trees or woodlands protected by Tree Preservation Order, in a Conservation Area or identified as Ancient

Woodland, or hedgerows of significant landscape, ecological or historical value.

3.16, GP7, ENV32, H10 and 3.116: seeks the design of residential developments to create high quality living environments, well integrated with surrounding land uses and local character. Poorly designed development which fails to properly take account of the context or surroundings will not be permitted. Designing out crime' through design, layout, landscaping and boundary treatments is encouraged.

3.117 & ENV33: deals with landscape design and opportunities to create and enhance environmental quality.

JP7- Other employment areas should also retain their overall industrial character, but other uses which assist regeneration and which generate employment opportunities may also be accommodated. Part d) is of relevance - When windfall sites or buildings come forward for reuse or redevelopment in these areas they will normally be safeguarded for appropriate employment uses as specified in the above policy. It is, however, recognised that there may sometimes be exceptional circumstances in which it will be more appropriate to consider other uses, such as housing, due to the relationship of the site to surrounding land uses or because the site is not well located to meet the needs of modern industry (as reflected in paragraph 4.3). Any alternative uses must satisfy other relevant policies of this Plan and must not have the potential to constrain the operation of neighbouring businesses, or appropriate future commercial investment

6.3 and H3:encourage the provision of additional housing through the re-use of previously developed land provided a satisfactory residential environment can be achieved.

H9: Housing densities in the range of 30 -50 dwellings per hectare are likely to be suitable on most sites, however higher densities are encouraged in locations close to town and district centres and in locations with good accessibility to a choice of means of transport.

7.1: Seeks to promote an efficient highway network;

T7: All development should satisfy the car parking standards set out in Policy T13. All parking provision should be well designed and sensitively integrated into the townscape or landscape, respecting the character of the local area, and with appropriate use of materials and landscape treatment.

T13: sets maximum car parking standards, account should be taken of the location of development in relation to local facilities and public transport and unless demonstrated

1, 2 & 3 bedroom houses – 2 spaces per unit

Flats with communal parking - 1.5 spaces per unit.

LC1: seeks to retain and enhance existing urban open spaces and readdress any deficiencies in the provision or accessibility of these.

## **Supplementary Planning Documents (SPD)**

### **Designing Walsall SPD**

DW1-Sustainability – new development must show that its design maximises energy efficiency in terms of layout, orientation and sustainable use of resources;

DW2- Safe and Welcoming places- all development must contribute towards creating places that feel safe, secure and welcoming for everyone;  
DW3 – Character -design to respect and enhance local identity;  
DW4- Continuity -attractive spaces within new development should be defined or enclosed by buildings, structures or landscape;  
DW5 Ease of movement- create places that are easily connected, safe to move through;  
DW6 – Legibility - new development should contribute to creating a place that has a clear identity;  
DW9 – High Quality public realm - new development must seek to ensure it creates places with attractive environmental quality;  
DW10 – new development should make a positive contribution to creating a sustainable environment.

Annexe E: Numerical Guidelines for Residential Development ... identifies privacy and aspect distances between dwellings including 24m separation between habitable windows for two storeys and above, 13m separation between habitable room windows and blank walls exceeding 3 metres in height, 45° code, garden dimensions of 12m in length and 68m<sup>2</sup> for housing and 20m<sup>2</sup> per dwelling where communal provision is made, set backs to avoid terracing and provision of boundary walls. Although failure to comply with these guidelines may not by itself be a reason for refusal of an application, it will be a factor to be used in determining whether a proposal would be compatible with the wider character of the area or the existing dwelling or the amenity of neighbours.

### **Natural Environment SPD**

Policies N8, N9 & N10 deal with the need to fully assess, protect and secure compensatory planting for trees.

Protection is proposed for protected animals, plants etc.

### **Regional Spatial Strategy for the West Midlands (RSS 11)**

The Regional Spatial Strategy has been revised and republished on 15<sup>th</sup> January 2008 to reflect the first Phase of Review. The Strategy seeks to provide broad regional directives and recognises the role of the regeneration of the Black Country to the overall performance of the West Midlands Region. The next phases of review are underway.

The focus for the Black Country policies are to continue its economic, physical and environmental renewal focused around improved infrastructure and the regeneration of town and city centres (including Walsall) to create modern and sustainable communities.

- a) to reverse out-migration accommodating within the Black Country all of the generated household growth from 2011 and meeting at least the levels of housing provision identified in Policy CF3 table 1;
- b) to raise income levels raising demand and household incomes (average earnings, GDP per head and reducing unemployment) to the UK average by 2033;

c) to create an inclusive and cohesive society within the Black Country removing barriers to opportunity and changing the socio economic mix by increasing the proportion of social grades A and B to match the national profile by 2033 or earlier; and

d) to transform the Black Country environment by protecting and enhancing the sub-region's environmental and heritage assets and biodiversity and implementing the Black Country as Urban Park concept.

Overall the strategy promotes sustainable regeneration of previously developed land, promoting a high quality environment and sustainable development capable of being accessed by a variety of transport modes.

A major challenge for the Region is to counter the unsustainable outward movement from the Major Urban Areas of people and jobs (3.4(a)). Relevant policies include:

Policies UR1, UR1b, UR1c and UR3 which seek to regenerate urban areas and in particular the major urban areas. Policies CF1, CF3, CF4 and CF5 seek to encourage housing in sustainable locations.

Policies QE1, QE2, QE3, QE4 and QE7 which seeks to improve the quality of the environment. The policies also aim to enhance public spaces and urban green space.

Policies T2, T3, T4, T5 and T7 seek to reduce the need to travel and promote sustainable modes of transport.

There is no need for this application to be considered under the Conformity Protocol.

### **National Policy**

Planning Policy Statement (PPS) 1: Sets out the overarching planning policies on the delivery of sustainable development through the planning system. PPS1 indicates that planning policies should promote high quality inclusive design in the layout of new developments and individual buildings and that design which fails to take the opportunities available for improving the character and quality of an area should not be accepted." Paragraphs 33 to 39 also state the importance of good design. Supplementary document published on the need to address climate change through the planning system.

PPS 3: Encourages reuse of previously-developed land for housing in sustainable locations and takes a sequential approach to location of new homes. Applications for residential on employment land should be given favourable consideration, subject to criteria. PPS3 also indicates that housing policy objectives provide the context for planning for housing through

development plans and planning decisions. This includes high quality housing that is well-designed and built to a high standard; a mix of housing, both market and affordable, particularly in terms of tenure and price, to support a wide variety of households in all areas; a sufficient quantity of housing taking into account need and demand and seeking to improve choice; and housing developments in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure.

PPS4 – A wide reaching PPS (replacing PPG4, PPS6 and parts of PPS7 and PPG13) - seeks to encourage and develop sustainable economic development.

PPS9 – seeks to preserve the quality of the natural environment and ensure the protection of endangered species.

PPG13 on transportation seeks to minimise the use of the car by the sustainable location of development. Limited parts of this are superseded by PPS4.

PPG17 seeks to safeguard areas of open space and encourage outdoor sport and recreation.

### **Consultations**

**Transportation** – Object due to the lack of parking.

*'The development does not provide the required level of car parking with regard to the MOT service bays. The UDP states 5 car parking spaces per service bay, meaning that the site requires 15 car parking spaces and only provides 9. Therefore the site is deficient by 6 spaces and is contrary to policies T7 and T13.*

*The proposal does not comply with UDP policy T13 A1 because the developer has failed to demonstrate that the development will provide adequate off-street parking to meet its own needs and that there will be no adverse affect on highway safety.*

*If approved, this is likely to lead to a demand for on street parking on Watery lane, to the detriment of road safety and the free flow of traffic.'*

### **Pollution Control**

**Scientific Team** – No objection

**Contaminated Land** – No objection

**WM Police** – No objection however recommend that movement sensitive lighting is installed.

**Seven Trent** – No objection subject to a drainage condition

**Tree Officer** – No objection subject to conditions relating to landscaping and tree retention conditions.

**Natural Environment Team** – No objection however there is a possibility that the application site could be used by Great Crested Newts. An exclusion fencing scheme is required. No reference is made to mobile homes because their positioning has no nature conservation implications. In landscape terms they are less desirable and should be screened from the road frontage, if possible.

**Fire Service** – No objection

### **Public Participation Responses**

None

### **Determining Issues**

- Visual impact
- The relationship between the mobile homes and the commercial use(s).
- The relationship between the use of this site and the neighbouring scrapyards use
- Impact on local nature reserve and urban open space
- The relationship to protected species
- Highway safety and car parking provision

### **Observations**

#### **Visual impact**

Established by the *1995 permission*, the industrial nature of the buildings and their scale are important considerations. In addition to the new extension on the northern boundary, the proposed vehicle repairs building has been built larger than approved, to increase the size of the main building by 1.8m in length, 1.1m in width and 1.7m in height.

Taken in the context of the application site and the former building on the site, the proposed car repairs building is seen in the context of the scrapyards and the industrial character to the West. In addition its proximity to the back boundary of the site helps reduce the scale and mass of the buildings. In this respect therefore the proposed extensions to the car repairs building are considered acceptable.

The three mobile homes are positioned on the west of the site, 10 to 20 metres from the main structure. They introduce residential use into an otherwise exclusively commercial area on the northern side of Watery Lane. The mobile homes would also be seen in the context of Fibbersley Open Space. Indeed M.H.3 uses land allocated as part of the Fibbersley Open Space. Officers consider that this relationship is inappropriate because this use is inconsistent with the aims of urban open space and, indeed this is referred to in the Inspector's decision to require landscaping as part of the 1995 permission. The area should form a landscaped area and buffer to the

use which supports the aims of neighbouring environmental and biodiversity allocations.

The proposed layout of car parking fail to take account of the root system of existing trees to the southern boundary and would not provide a qualitative landscaped buffer to the southern boundary. The proposals would harm the existing street trees on the southern boundary and the proposed landscaping scheme lacks quality in terms of the separation between the commercial and residential aspects of the development.

Further the proposed layout have a negative visual impact in terms of the position of the mobile homes and bulk and mass of the mobile homes when seen from the west.. The Inspector for the *1995 permission* took this into account, and restricted external storage to a height of 2m and sought a landscaping scheme to address this issue.

It is noted that the *1995 permission* required landscaping to the northern and southern boundaries. There is no record or evidence of such landscaping being implemented. The storage of materials on the northern boundary is incompatible with the aims of the landscaping scheme suggested by the *1995 permission* and the need to provide visual and environmental buffers to the proposed area.

Overall taking into account the development and the proposed layout it is considered that whilst the extensions to the car repair would be acceptable, the mobile homes have an adverse visual impact.

### **The relationship between the mobile homes and the commercial use(s)**

Whilst positioned on the western boundary of the site the mobile homes have the same access and share much of the site with the commercial use of car repairs which under the '*1995 permission*' is the lawful use of the whole site.

The three mobile homes are positioned on the west of the site, 10 to 20 metres from the main structure of the car repairs. Given this relationship and that most of the area between is proposed as circulation space for vehicles Officers consider that this relationship results in a poor quality relationship and housing layout.

With little opportunity for a significant buffer between residential and commercial uses on the site and the position of mobile homes, the layout would not allow for areas of private amenity space and even if the landscaping scheme was provided as shown on the submitted plans, a high quality residential environment.

The introduction of residential use in this area may also compromise the capability and future of employment use of the site due to the noisy and potentially anti-social nature of the neighbouring car repairs and scrapyard. In this regard therefore, Officer consider that the need to retain the site as a

sustainable location for employment and heavy industrial users, weigh significantly against the introduction of residential uses on the application site.

### **The relationship between the use of this site and the neighbouring scrap-yard use**

The commercial operations of the site and the relationship to the scrapyard formed a fundamental part of the *1995 permission*. In this respect the car repair operations are the main use of the site and in relation to the scrapyard work would sit well and work with this use.

The introduction of residential aspects in this close a proximity to the scrapyard raises significant concerns in terms of generating a requirement for a high quality environment. In this respect therefore the relationship, even with the landscaping and revised parking layout in place is unsatisfactory and contrary to the aims of achieving a high quality residential environment.

One of the aims of supporting economic development and considering the position of residential development is to ensure that the operations of existing industrial occupiers are not compromised. Considering the nature of neighbouring uses it is considered that ensuring that the introduction of residential users into the area could result in a negative impact on the ability to continue significant operations in the long term and as such are contrary to the aims of ensuring long term employment opportunities in the area.

### **Impact on local nature reserve and urban open space**

The application site includes an area of approximately 45sqm which is designated as part of the Fibbersley urban open space in the northwest corner of the site to an area approximately 155sqm. The Local Nature Reserve (LNR) runs adjacent to the north east and to the north is a Site of Importance to Nature Conservation (Waddens Brook SINC).

It is noted that the Natural Environment Team raise no objection and that the proposals should be assessed against the impact of the approved buildings which does not impact on any of the protected areas.

In this respect therefore the relationship of the proposed buildings to the SINC are a concern however following Natural Environment Team comments it is considered that the purposes of the SINC in nature conservation terms are not adversely affected. Notwithstanding these comments, the visual impact and relationship of the proposals to the designated areas of significant concern.

The Urban Open Space in the northwest corner of the application site is part of a wider scheme of green space as viewed from Watery Lane. The inclusion of a new building in the area removes the opportunity for and the retention of the area of open space or opportunity to integrate the uses successfully within the aims and objectives of open space through meaningful landscaping and ecological buffers. It is Officer's view that this area should have formed part of the landscaping scheme as part of the *1995 permission* and retained as such.

Instead the area has become a storage area for a variety of materials, tyres, a dog compound and other industrial/commercial paraphernalia. The lack of a quality environment and the harm to the continuous and overall open space causes harm to the character of the area.

The proposed landscaping scheme is not a good quality scheme and does not offer any significant improvement to the character of the area. The mobile homes have been in place for some time without effort to landscape or lay out the parking in a coordinated manner suggests that the landscaping proposals will not be implemented and that the open space will continue to be compromised in this area.

Overall it is considered that the proposals have an adverse impact on the open space and fail to bring forward a comprehensive or quality landscaping scheme that would work with or compliment the open space and natural environment to the north of the application site.

### **The relationship to protected species**

Natural Environment Team Officers highlight that there may be a presence of Great Crested Newts on the site. To this end officers have suggested a condition relating to an exclusion fence and buffer to the nature reserve. Overall, it is considered that the impact on protected species would not be significant enough to justify the refusal of the application on the impact on protected species alone.

### **Highway safety and car parking provision**

Transportation considers there is not enough parking provided in the scheme.

This is a retrospective application for the extended car repair use and the mobile homes, although the layout has not been implemented. The impact in terms of parking requirements can therefore be at least somewhat assessed from the number of vehicles that are present on the site.

Officers have inspected the site on several occasions. There is no evidence of a parking problem in terms of indiscriminate parking causes accidents in the area. Overall, taking into account the retrospective nature of the application and the number of cars witnessed on site on numerous site visits, there would be sufficient space within the site for car parking.

## **Summary of Reasons for Refusing Permission**

### **Recommendation: Refuse**

1. The retention of the mobile homes by reason of their scale, number and mass and their position in the application site would have an adverse visual

impact on the area resulting in a conflict with the visual open character of the Fibbersley Urban Open Space, Waddens Brook Site of Nature Conservation Interest and neighbouring Local Nature Reserve. As such the proposals are contrary to Policy GP2, ENV33, H10 and LC1 of Walsall Unitary Development Plan; Policies QE2, QE3 and QE7 of the Regional Spatial Strategy for the West Midlands and Policies DW2, DW4, DW9 and DW10 of Designing Walsall Supplementary Planning Document.

2. The proposals introduce a residential use into an area used in noisy commercial operations which would not be an appropriate location for residential land use. The proposals would result in potential harm to long term commercial operations in the area and impact on the continued viability of employment uses in the area. As such the proposals would be contrary to Policies GP2, ENV10, JP7 and H10 of Walsall Unitary Development Plan and Policies DW2, DW4, DW9 and DW10 of Designing Walsall Supplementary Planning Document.

3. The proposed layout would not form a qualitative or quantitative landscaping scheme and would create a poor quality residential environment and compromise the continued operation of the existing and neighbouring commercial operators by reason of noise, disturbance, lack of privacy to residential occupiers and poor quality residential environment. As such the proposals are contrary to Policies GP2, ENV10, ENV32, ENV33, H10 and T7 of Walsall Unitary Development Plan; Policies QE2, QE3 and QE7 of the Regional Spatial Strategy for the West Midlands and Policies DW2, DW4, DW9 and DW10 of Designing Walsall Supplementary Planning Document.

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ITEM NO: 8.

To: DEVELOPMENT CONTROL  
COMMITTEE

Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

**REASON FOR BRINGING TO COMMITTEE: Significant community interest**

**Application Number:** 09/1369/FL  
**Application Type:** Full application

**Case Officer:** Stuart Crossen  
**Telephone Number:** 01922  
652486

**Applicant:** Mr Pavittar Mohan  
Sanghera

**Agent:**

**Proposal:** Proposed first storey  
extension at the side

**Location:** 49 SEGUNDO  
ROAD,WALSALL,WS5 4QD

**Ward:** Palfrey

**Expired:** 01/02/2010

**Recommendation Summary:** Grant Subject to conditions



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## **Application and Site Details**

The application proposes a first floor side extension to a 1960's detached house to provide forth and fifth bedrooms. A second staircase would provide access from the ground floor of the existing side extension.

The house is the first within a row of similar styled detached houses with side gable roofs. It has a ground floor side extension with a tall side gable roof which has a steeper pitch than the main roof. The extension would increase the roof height by 1.4 metres, 200mm lower than the main roof height. The side elevation would have no windows.

The front elevation would be set back approximately 500mm from the original front elevation. Single windows are proposed to the front and rear in line and in proportion with the existing windows to serve each of the forth and fifth bedrooms.

To the left of the house frontage is an electricity sub-station with an access drive. Number 47 is on the other side of the sub station, it is angled almost 90 degrees to the application house and is approximately 30 metres from the proposal. The front elevation of number 47 directly faces the driveway of the application house and the proposal would be visible from the front elevation windows here. The proposal would not be seen from number 51, the other neighbouring property.

The frontage of the application house has been block paved and has three car parking spaces.

## **Relevant Planning History**

None

## **Relevant Planning Policy Summary**

***(note the full text version of the UDP is available from First Stop Shop in the Civic Centre and on the Council's web site)***

### **Unitary Development Plan Policies**

GP2: Environmental Protection

The Council will expect all developments to make a positive contribution to the quality of the environment and will not permit development which would have an unacceptable adverse impact on the environment. Considerations to be taken into account in the assessment of development proposals include:

I. Visual appearance.

VI. Overlooking, loss of privacy, and the effect on daylight and sunlight received by nearby property.

VII. The adequacy of the access, and parking.

ENV32: Design and Development Proposals.

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- (a) Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted. This policy will be applied to all development but will be particularly significant in the following locations:-
- On a visually prominent site.
  - Areas with a special character arising from the homogeneity of existing development in the neighbourhood.
- (b) When assessing the quality of design of any development proposal the Council will use some or all of the following criteria:-
- The appearance of the proposed development.
  - The height, proportion, scale, and mass of proposed buildings / structures.
  - The materials proposed for buildings, external spaces and means of enclosure.
  - The integration and co-ordination of buildings and external space.
  - The visual relationship of the proposed development with adjacent areas, the street and the character of the surrounding neighbourhood.
  - The effect on the local character of the area.
  - The integration of existing natural and built features of value.
  - The maintenance requirements of the development.

#### H10: Layout, Design and Dwelling Mix.

(a) The Council will expect the design of residential developments, including residential extensions, to:-

I. Create a high quality living environment, well integrated with surrounding land uses and local character (natural and built) and in accordance with the principles of good design set out in Policy ENV32.

(c) All proposals for residential development will be considered against the detailed standards and guidelines set out in the Council's Supplementary Planning Documents relating to residential design.

#### T7 – Car Parking

All development should satisfy the car parking standards set out in Policy T13.

#### T13: Parking Provision

1, 2 and 3 bedroom houses	2 spaces per unit
4 bedroom houses and above	3 spaces per unit

### **Supplementary Planning Document Designing Walsall**

Provides guidance on how to achieve good urban design within Walsall, including a range of key issues that developers must address. For residential developments, Privacy and aspect distances between dwellings must ensure that all occupants have a satisfactory level of amenity, whilst reflecting the

existing and emerging character of the area. This will normally mean designing developments that, as a minimum, meet the numerical guidelines contained in Appendix E (listed below) although distances greater than these guidelines state will be applicable where it is appropriate to the character of the area. It may be possible to achieve shorter distances through creative design or in order to protect an area's character.

- 45 degree code: particularly where new development impacts on existing (details of this code are available on request or can be downloaded from [www.walsall.gov.uk](http://www.walsall.gov.uk)).

### **National Policies**

#### **PLANNING POLICY STATEMENT 1**

Encourages good design. Paragraph 34 states that design which is inappropriate in its context should not be accepted.

### **Consultations**

**Pollution Control, Scientific Team:** No objections

**National Grid:** No objection.

### **Public Participation Response**

The owner of number 45 has objected on the grounds that the proposal will result in more people living at the property, which in turn would result in more cars in an area that has a lack of parking.

The owner of number 51 has objected on the grounds that the design does not fit in with the architecture of the surrounding properties and that the owner cannot maintain the existing property. The objector's main concern relates to parking issues and states that the occupiers of number 49 park haphazardly, causing obstructions, and considers that the proposal would make this situation worse.

The owner of number 47 has objected to the proposal, stating that they will directly face the proposal which would have a detrimental impact on their outlook and privacy. They are also concerned about the parking issues at this property, and claim that number 45, currently use the sub-station access road, to park vehicles in front of number 47. The owner of number 47 considered that the proposal would make worse the parking situation and has attached a copy of a letter from Eon which was sent to the residents warning that they should not park on their access and if this should continue a steel palisade fence would be erected.

## **Determining Issues**

- Design of Extension and Impact on Character of Area
- Impact on Amenity of Nearby Residents
- Parking.

## **Observations**

### **Design of Extension and Impact on Character of Area**

The proposed side gable would have the same plane as the original roof and is considered an improvement to the existing side extension which has an unusual steep pitch. The proposal is considered to integrate well with the original design of the house and would not be out of character with the neighbouring houses.

### **Impact on Amenity of Nearby Residents**

The two storey side elevation would have no windows and would not be built any wider than the existing single storey side extension. The height would be increased by 1.4 metres but would still be lower than the main ridge. The proposal would have no side facing windows and would not result in a loss of privacy to the neighbouring houses number 45 or 47. The proposal would have little impact on light due to the 30 metre separation distance and height, and is considered acceptable.

The proposal would integrate well with the street scene and would have no impact on Number 51.

### **Parking.**

There have been three objections which relate to parking. The house frontage has been hard surfaced and has provision for three spaces, which would meet the Councils parking standards. In this respect the proposal is considered acceptable.

Unauthorised use of the sub station for parking is a private matter which is not relevant to the consideration of this application.

## **Summary of Reasons for Granting Planning Permission**

The proposal would integrate well with the existing house and street scene. It would have no impact on the character of the area. There would be no loss of privacy to neighbouring houses. Adequate parking provision exists on the front of this house to meet the Councils standards.

The proposed development is considered to comply with Walsall's Unitary Development Plan, in particular policies GP2, ENV32, H10, T7 and T13, and the Supplementary Planning Documents "Designing Walsall" and other material planning considerations.

**Recommendation: Grant Subject to conditions**

1. This development must be begun not later than 3 years after the date of this decision.

Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act, 1990, as amended.

2: The walls and roof of the extension shall comprise facing materials that match those which are used in the existing building as it exists at the time of this application, and shall be retained as such after completion of the extension, unless otherwise previously agreed in writing by the local planning authority.

Reason: To ensure the satisfactory appearance of the development and to comply with policy ENV32 of Walsall's Unitary Development Plan.

3: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or succeeding Orders, no side facing windows or doors, other than as shown on the deposited plans, shall be installed in any part of this development without the prior approval of a planning application.

Reason: To safeguard the amenities of the occupiers of adjoining premises and to comply with policy GP2 of Walsall's Unitary Development Plan.

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ITEM NO: 9.

To: DEVELOPMENT CONTROL  
COMMITTEE

Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

**REASON FOR BRINGING TO COMMITTEE: Contrary to policy**

**Application Number:** 09/1590/FL

**Application Type:** Full application

**Applicant:** Mr & Mrs Bird

**Proposal:** Single storey front, side  
and rear extensions

**Ward:** Willenhall South

**Recommendation Summary:** Grant Subject to conditions

**Case Officer:** Helen Smith

**Telephone Number:** 01922 652486

**Agent:** Philip Tonks

**Location:** 17 RAVENSBOURNE  
GROVE, WILLENHALL, WV13 1HX

**Expired:** 19/01/2010



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## **Application and Site Details**

This application is for a single storey extension to the front, side and rear of a modern semi detached house to provide a dining room, front porch and canopy. The application house is located at the end of a cul de sac close to a vehicle turning head with trees adjacent to the driveway.

The proposed porch will project 1.5 metres forward of the original front elevation and will have a gable roof which will be 2.2 metres high to the eaves and 3.6 metres high to the ridge. The proposed canopy will project 1 metre forward of the original front elevation and will be supported by a gallows bracket. The canopy will lie close to the adjoining semi, number 19, which has a front habitable room window close to the application house.

The original plans detailed a side extension that was in line with the original front elevation. These have been amended to reposition the proposed front elevation 3 metres further back than the original front elevation. The proposed side extension will be 2.8 metres wide and will occupy part of the existing driveway used for parking. This section will have a gable roof which will be 2.3 metres high to the eaves and 4 metres high to the ridge. The blank elevation of the proposed side elevation will lie along the rear garden boundaries of house numbers 7 and 9 Ravensbourne Grove. Numbers 7 and 9 have rear facing habitable room windows and there will be a separation distance of 10.5 metres from these windows to the side elevation of this proposal.

The proposed rear extension will project 3.4 metres from the original rear elevation and will lie across the full width of the original rear elevation and the proposed side extension. This part of the proposal will have a pitched roof which will be between 2.5 and 3.7 metres high and will lie next to the rear garden boundary with number 19. Number 19 has a rear facing habitable room window close to the application house.

The proposed rear habitable room windows will face towards the rear gardens of houses along Little Island Drive. These houses lie at right angles to the application house and number 8 Little Island Drive has a blank side elevation wall and rear facing habitable room windows. The plans propose re-positioning the existing dropped kerb access to enable the existing parking provision of two spaces to be maintained.

## **Relevant Planning History**

The original planning permission for the house is subject to a condition which states that existing accessways, vehicle parking and manoeuvring areas shall be retained.

## **Relevant Planning Policy Summary**

***(Note the full text version of the UDP is available from Planning Services Reception and on Planning Services Website)***

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## PLANNING POLICY STATEMENT 1

Encourages good design. Paragraph 34 states that design which is inappropriate in its context should not be accepted.

### GP2: Environmental Protection

The Council will expect all developments to make a positive contribution to the quality of the environment and will not permit development which would have an unacceptable adverse impact on the environment. Considerations to be taken into account in the assessment of development proposals include:

I. Visual appearance.

VI. Overlooking, loss of privacy, and the effect on daylight and sunlight received by nearby property.

VII. The adequacy of the access, and parking.

### ENV18: Existing Woodlands, Trees and Hedgerows.

The Council will ensure the protection, positive management and enhancement of existing woodlands, trees and hedgerows.

### ENV32: Design and Development Proposals.

(a) Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted. Criteria are provided that the Council will use when assessing the quality of design of any development proposal.

(b) When assessing the quality of design of any development proposal the Council will use some or all of the following criteria:-

- The appearance of the proposed development
- The height, proportion, scale, and mass of proposed buildings/structures.
- The materials proposed for buildings, external spaces and means of enclosure.
- The visual relationship of the proposed development with adjacent areas, the street and the character of the surrounding neighbourhood.
- The effect on the local character of the area.

### H10: Layout, Design and Dwelling Mix.

(a) The Council will expect the design of residential developments, including residential extensions, to:-

I. Create a high quality living environment, well integrated with surrounding land uses and local character (natural and built) and in accordance with the principles of good design set out in Policy ENV32.

(c) All proposals for residential development will be considered against the detailed standards and guidelines set out in the Council's Supplementary Planning Documents relating to residential design.

## T7 – Car Parking

All development should satisfy the car parking standards set out in Policy T13.

### T13: Parking Provision

1, 2 and 3 bedroom houses	2 spaces per unit
4 bedroom houses and above	3 spaces per unit

## **Supplementary Planning Documents Designing Walsall**

Provides guidance on how to achieve good urban design within Walsall, including a range of key issues that developers must address. For residential developments, Privacy and aspect distances between dwellings must ensure that all occupants have a satisfactory level of amenity, whilst reflecting the existing and emerging character of the area. This will normally mean designing developments that, as a minimum, meet the numerical guidelines contained in Appendix E although distances greater than these guidelines state will be applicable where it is appropriate to the character of the area. It may be possible to achieve shorter distances through creative design or in order to protect an area's character. Appendix E includes;

- 24 metre separation between habitable windows in two storeys (and above) developments. This standard will be applied more robustly at the rear than across roads at the front.
- 13 metre separation between habitable room windows and blank walls exceeding 3 metres in height.
- 45 degree code : particularly where new development impacts on existing (details of this code are available on request or can be downloaded from [www.walsall.gov.uk](http://www.walsall.gov.uk))

## **National Policies**

### PLANNING POLICY STATEMENT 1

Encourages good design. Paragraph 34 states that design which is inappropriate in its context should not be accepted.

## **Consultation Replies**

**Environmental Regeneration – Arboriculture** – no objections but require conditions to provide details of landscaping works and protect existing trees and hedges onsite.

**Transportation** – no objections subject to a condition being attached that vegetation height within the pedestrian visibility splay shall be reduced to 600 mm and maintained at this height thereafter.

## **Pollution Control**

Contaminated Land Team - No objections, subject to the applicant being advised to take precautions during construction in view of the site formerly being utilised for a factory/works. While the site was remediated as part of the development there may be hotspots of localised ground contamination that may present Health and Safety implications for persons undertaking ground works.

Scientific Team – No objections

## **Public Participation Responses**

None

## **Determining Issues**

- Design of Extension and Impact on Character of Area
- Impact on Amenity of Nearby Residents
- Parking.

## **Observations**

### **Design of Extension and Impact on Character of Area**

The design of this modest extension with a gable roof design will combine with the existing house and the proposed pitch will mirror the pitch of the original roof. The street comprises of pairs of semi-detached houses of similar design, a number of which have single storey side extensions or garages. It is considered that this proposal will therefore integrate into the street scene and will not harm the character of the area. The proposed porch and canopy will be similar to others in the area.

### **Impact on Amenity of Nearby Residents**

The separation distance between the blank side elevation of the side and rear extension and the rear habitable room windows in numbers 7 and 9 Ravensbourne Grove will be 2.5 metres less than the recommended minimum separation distance of 13 metres referred to by policy. The proposed extension is acceptable in design terms although it will not meet the residential numerical standards, in this context. However as this proposal will partly lie within the outline of the existing house and will be to the north of house numbers 7 and 9 it is considered the aims of the principle policies to protect neighbours amenity and good design have been met. In addition it is possible to build a 4 metre high side extension under existing permitted development allowances without the need for a planning application although for the application property off-road parking for two cars must be provided. It is therefore considered that this proposal will have a minimal impact on numbers 7 and 9 which lie to the south of the application house.

The application house lies to the south of the adjoining semi, number 19. The proposed canopy has a lightweight design and it is considered that this part of

the proposal will have an acceptable impact on the daylight received by the front habitable window in 19. The proposed canopy also complies with the 45 degree code in relation to the front habitable room window in 19. The porch will lie 2 metres from the front garden boundary with 19 and will have little additional impact on the daylight available to the front of 19.

The proposed side extension will lie on the opposite side of the application house to number 19 and will not be visible from this house. The proposed rear extension will lie next to the rear garden boundary with number 19. However, as this will only project 3.4 metres it is considered that this part of the proposal will have an acceptable level of impact on the rear habitable room window at 19.

The rear of the proposed elevation will face across gardens and as the rear habitable room windows in 8 Little Island Drive lie at 90 degrees to the application house it is considered that this proposal will not have an adverse impact on the privacy of the occupiers of 8 or the application house.

### **Parking**

The application house has two bedrooms and two parking spaces each measuring 2.4 by 4.8 metres are required to meet policy. This proposal will occupy part of the existing parking allowance and the proposal includes the re-positioning of the existing dropped kerb to maintain the provision of two parking spaces. To ensure that the pedestrian visibility splay is maintained landscaping within this area is required to be no higher than 600mm.

### **Summary of Reasons for Granting Planning Permission**

The proposed development is considered to accord with the aims and objectives of Walsall's Unitary Development Plan, in particular policies GP2, ENV18, ENV32, H10, T7 and T13, and the Supplementary Planning Documents "Designing Walsall" and "Conserving Walsall's Natural Environment", and other material planning considerations, as follows:

The design is in keeping with its surroundings. The position of this extension will have little impact on the privacy, daylight and sunlight received by nearby properties. The separation distance between rear facing habitable rooms in numbers 7 and 9 Ravensbourne Grove and the proposed 4 metre high blank side elevation will be 2.5 metres less than the recommended minimum separation distance of 13 metres referred to by policy. However as the majority of the extension will lie within the outline of the existing dwelling, which lies to the north of 7 and 9, it is considered that this proposal will have an acceptable impact on the daylight and sunlight available to the rear windows in 7 and 9.

There is sufficient space within the curtilage of the application property to provide two parking spaces required to serve this dwelling.

## **Recommendation: Grant Subject to conditions**

### **Conditions and Reasons for conditions:**

1. This development must be begun not later than 3 years after the date of this decision.

Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act, 1990, as amended.

2. No development shall take place until full details of both hard and soft landscaping works have been submitted to and approved in writing by the Borough Council and these works shall be carried out as approved. This scheme shall include indications of all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out, and details of the measures to be taken to protect existing features during the construction of the development. Any approved vegetation within the front pedestrian visibility spay will be maintained at a maximum height of 600mm thereafter.

Reason: To preserve and enhance the visual amenities of the locality and highway safety in accordance with Policy ENV18 of the Walsall UDP 2005.

3. In this condition 'retained tree' means an existing tree or hedge which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the development.

- (a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping shall be carried out in accordance with British Standard 3998 (tree work) and in accordance with any supplied arboricultural method statement.
- (b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Borough Council.
- (c) Following the completion of any arboricultural works but before any equipment, materials or machinery are brought onto the site in connection with the development, protective fencing and ground protection such as geomembrane or scaffold boards shall be installed around all retained trees in accordance with details that first shall be submitted to and agreed in writing by the borough council. Such protection shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition nor shall any fires be started, no tipping, refuelling, disposal of solvents or cement mixing carried out and ground levels within those

- areas shall not be altered, nor shall any excavation or vehicular access be made, without the written consent of the Borough Council
- (d) Prior to the commencement of works on site and after the installation of the tree protection in accordance with (c) above the Council's arboricultural officer shall be notified to allow a full inspection of the protection measures.

Reason: To preserve and enhance the visual amenities of the locality in accordance with Policy ENV18 of the Walsall UDP 2005.

4: No development whatsoever shall commence until the dropped kerb is repositioned to allow for the provision of two parking spaces on the frontage of the application property each measuring 2.4 by 4.8 metres with the necessary permits in place and retained thereafter. The existing driveway shall be enlarged in accordance with condition 5.

Reason: In the interest of highway safety and to comply with policies GP2 and T4 of Walsall's Unitary Development Plan.

5. All drainage from the extended part of the driveway hard surface shall be to a soakaway or to natural ground drainage within the curtilage of the property, and there shall be no new connection made to any drain or sewer leading off the site unless otherwise agreed in writing by the local planning authority.

Reason: To ensure the provision of sustainable drainage in accordance with Planning Policy Statement 25.

6: The walls and roof of the extension shall comprise facing materials that match those which are used in the existing building as it exists at the time of this application, and shall be retained as such after completion of the extension, unless otherwise previously agreed in writing by the local planning authority.

Reason: To ensure the satisfactory appearance of the development and to comply with policy ENV32 of Walsall's Unitary Development Plan.

7: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or succeeding Orders, no side facing windows or doors, other than as shown on the deposited plans, shall be installed in any part of this development without the prior approval of a planning application.

Reason: To safeguard the amenities of the occupiers of adjoining premises and to comply with policy GP2 of Walsall's Unitary Development Plan.

8: This permission relates to the amended plans deposited on 18 December 2009.

Reason: To define the permission.

### **Note for Applicant**

1. The area of this proposed development was formerly utilised as a factory/works, while the site was remediated as part of the development there may be hotspots of localised ground contamination that may present Health and Safety implications for persons undertaking ground works. No specific detail of ground conditions in the area is available other than that obtained from previous land use data and historic mapping. This information should be brought to the attention of the builder or contractor undertaking the development in order that they may implement any Health and Safety at Work precautions they feel appropriate when undertaking construction work at the site of the proposed development.
  2. Although planning permission has been granted, you will also need to obtain a road opening permit. Please telephone Walsall (01922) 653790 for details.
-



To: DEVELOPMENT CONTROL  
COMMITTEE

Report of Head of Planning and  
Building Control, Regeneration  
Directorate on  
04 Feb 2010

**REASON FOR BRINGING TO COMMITTEE: Objection from significant  
Consultee**

**Application Number:** 09/1446/FL  
**Application Type:** Full application

**Case Officer:** Alison Deakin  
**Telephone Number:** 01922  
652487

**Applicant:** Walsall Metropolitan  
Borough Council

**Agent:**

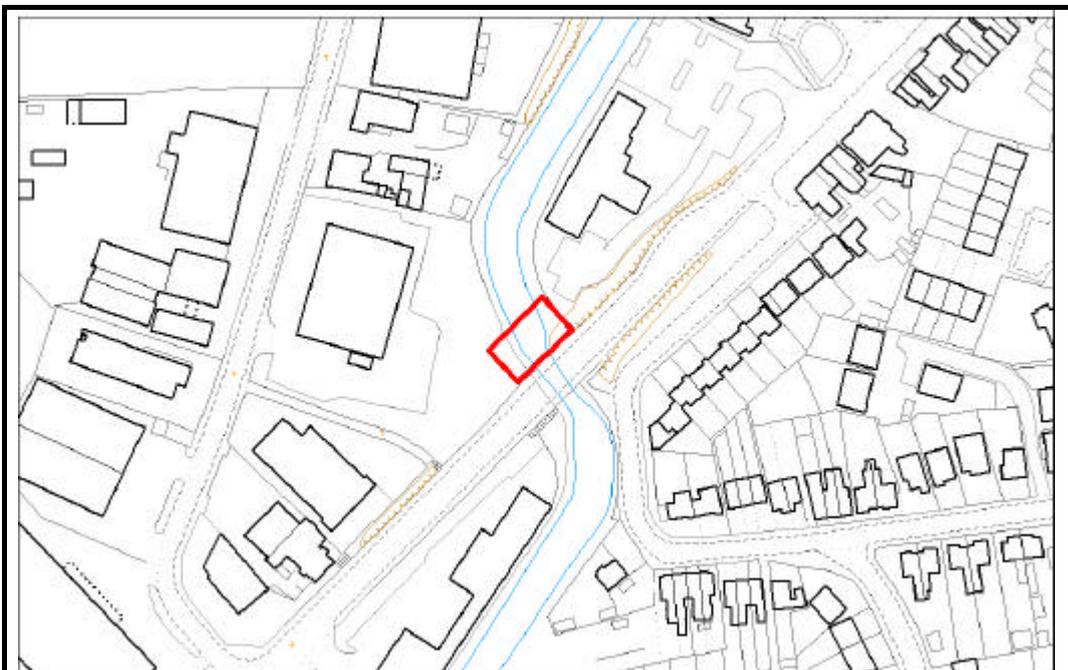
**Proposal:** Installation of 5m high art  
sculpture on concrete canal edge pilings

**Location:** WALSALL WOOD  
CANAL BRIDGE, LOWER HIGH  
STREET, WALSALL WOOD

**Ward:** Aldridge North and Walsall Wood

**Expired:** 16/12/2009

**Recommendation Summary:** Grant with conditions, subject to no new  
information raising new material issues



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Number LA 076414.

## **Application and Site Details**

The site is situated on the northern side of High Street, Walsall Wood (A461), adjacent to the Daw End Branch canal and the canal bridge.

To the north of the site is the St John's health centre and car park, to the south and east there are residential properties on the opposite side of High Street, to the south west and west are industrial premises.

The proposal is for an art sculpture sited 3m from the canal edge on the canal towpath near Walsall Wood Bridge, High Street. The proposed sculpture has been repositioned to the towpath side of the canal following discussion with British Waterways regarding the structural stability of the original position on the opposite side of the canal. Publicity for the amended plans expires on 5<sup>th</sup> February 2009 hence any further representations will be reported in supplementary papers.

The sculpture would be 2m high and 0.9m wide. The sculpture is a figure of a fisherman based on a local character David Evans. The figure is made from steel plate fixed on a pipe with the top being 5 metres above the ground. The surface has laser cut wording included.

The artwork is part of an art trail that is being designed through Walsall Wood as a tribute to the area's industrial past as well as the sense of unity within the community that the area is well known for. The trail will run along the A461. The aim of this piece is to mark the importance of the canal network to Walsall Wood. The height and position of the sculpture will mean that it will be visible from the canal, by pedestrians using the footpath and by passing motorists.

## **Relevant Planning History**

None.

## **Relevant Planning Policy Summary**

*(Note the full text version of the UDP is available from the First Stop Shop in the Civic Centre, and on the Planning Services Website [www.walsall.gov.uk/planning](http://www.walsall.gov.uk/planning)).*

### **Walsall's Unitary Development Plan 2005**

#### **GP2: seeks to ensure all development make a positive contribution to the quality of the environment**

3.16: Development will be considered in relation to its setting, with reference to the character and quality of the existing local environment, and will require a high quality of built and landscape design.

ENV32: Poorly designed development which fails to take account of the context or surroundings will not be permitted.

ENV34: The Council will require the provision of public art to enhance the quality and individuality of existing spaces, particularly in public spaces and prominent locations.

LC9: The Council will encourage environmental improvements to enhance the attractiveness and recreational potential of the canal network. Development alongside the canal should relate positively and achieve high standards of design and be sensitively integrated with the canal.

### **Supplementary Planning Documents**

**Designing Walsall:** Aims to promote a high quality environment and high standards of urban and landscape design throughout the Borough and identifies the basis on which the design of buildings and spaces will be considered during the development control process.

DW9: Seeks to ensure new development creates places with attractive environmental quality and states public art as one of the essential components of a high quality public realm.

### **Regional Policy**

The Regional Spatial Strategy for the West Midlands promotes the regeneration of the metropolitan area and sustainable development in accordance with national government guidance.

### **National Policy**

PPS1: Creating Sustainable Communities - a key principle is that design which fails to take the opportunities available for improving the character and quality of an area should not be accepted. Planning should seek to maintain and improve the local environment. The general approach should be to enhance as well as protect landscape and townscape character.

### **Consultations**

**Transportation** – No objections subject to restricting the overall height to no greater than 5 metres (as applied for) and prevention of illumination. The applicant has stated that the proposed sculpture is specifically designed to ‘catch the eye of drivers and pedestrians’ and, as such, the Highway Authority must consider whether the development will be detrimental to highway safety including matters such as;

- the geometry, speed and nature of the adjacent highway
- the position of traffic signs and signals
- the proximity of road junctions and accesses
- the size and location of the development
- illumination of the development

On balance the proposals are acceptable subject to restricting the overall height and prevention of illumination.

**Pollution Control (Scientific Team)** – No objections.

**Pollution Control (Contaminated Land)** – No objections.

**Environmental Health** – No objections.

**Strategic Policy** – No objections. The proposals would not have any adverse impact upon the environment rather it would have a positive impact. The sculpture contributes to the local distinctiveness and wider environmental improvement initiative.

**Police Architectural Liaison Officer** – No objections.

**Environment Agency** – No objections.

**Inland Waterways** – Objects to the design and location of the sculpture. The sculpture is of a fly fisherman which is a type of fishing not found on the canal, and the position on top of a 3m pole means that it is visually prominent. It also fails to relate to the canal and is liable to damage and vandalism from the road and may cause a distraction to motorists. The amended location on the canal towpath may improve its structural stability but does not address these concerns. A silhouette of a boat carrying coal, bricks or limestone would better reflect the historic significance of the canal in Walsall Wood.

**British Waterways** – No objections to this revised location on the opposite side of the canal towpath and no objections on design grounds as the scale, material and visual impact of the structure do not cause concern and any discrepancies in the image of the fisherman are discrete.

### **Public Participation Responses**

One letter of objection received summarised as follows: -

- Distraction to motorists given proposed position
- Potential target for vandalism
- Money could be better spent on other projects (e.g. improving Streets Corner to Brooklands Rd to welcome visitors, renovating the nearby derelict school, erecting a building for teenagers to meet, upgrading Oak Park)

### **Determining Issues**

- Contribution to the character and appearance of the surrounding area
- Impact on residential amenities
- Highway safety
- Public Safety

### **Observations**

**Contribution to the character and appearance of the surrounding area**

The design of the artwork is the outcome of a large amount of public consultation and designed to reflect the history of the area and the local community's interests and aspirations. Whilst comments have been made about the appropriateness of the type of fisherman depicted, the sculpture is based on a well loved local character David Evans and the laser cut writing within the body of the figure includes information on the history of the canal network in the area. The artwork is part of a larger arts trail and is set high up to ensure that it will be seen by users of the canal and towpath, pedestrians walking along the bridge and passing vehicles.

When travelling north east along the A461 the artwork will be seen against the backdrop of the adjacent health centre and when travelling south west against the industrial buildings in the distance in Hall Lane. For canal users the sculpture will be seen against the back drop of the canal bridge.

Inland Waterways objects to the design of the sculpture which they state looks like a fly fisherman as found on rivers and lakes rather than a typical canal angler. This is due to the trilby hat worn by the fisherman and the short rod. They also consider that mounting the sculpture on a pole is visually obtrusive and may cause a distraction to drivers and attract vandals. However, the sculptor has acknowledged that although canal fisherman usually fish in day to day attire it would be difficult to tell the difference on the sculpture silhouette hence the fisherman is fitted out in full fishing regalia. He has also advised the rod is based on a 1940's wooden rod as if it was designed on a modern rod it would be too fragile and creates a weakness within the structure.

British Waterways consider this explanation acceptable in terms of the design and support the revised proposals. In regard to potential distraction to drivers the transportation officer is satisfied that the sculpture will not cause a distraction to drivers as it will be seen over a long distance on the approach to the bridge. The revised position of the sculpture is also considered far enough away from the canal bridge to prevent it being used as a climbing aid and the materials robust enough to prevent vandalism. The potential compromises in the design are required only due to the need to maintain the integrity of the sculpture. On balance it is considered that the sculpture will enhance the visual amenities of the surrounding area.

### **Impact on residential amenities**

The closest residential properties are situated to the south east of the site on the opposite side of High Street, and are set back within a service road, off the main road, at a lower level than the road, that rises over the canal bridge. The sculpture would hardly be visible from these properties. The proposals would therefore have no adverse impact on the amenities of these residences.

### **Highway safety**

Transportation has no objections to the proposed sculpture. It will be viewed by motorists over a long distance when approaching in either direction along

the High Street and is therefore considered not to cause a distraction to motorists.

### **Public Safety**

The proposal is located on the canal towpath side of the canal but despite there being public access it should be robust enough to prevent vandalism. The position of the sculpture is also considered sufficiently far enough away from the bridge to prevent it acting as a climbing aid or being subject to vandalism. The sculpture will not affect safety of pedestrians using the bridge or on the canal towpath.

### **Summary of Reasons for Granting Planning Permission**

The design of the sculpture is the result of a large public consultation exercise and it is designed to reflect the history of the area, based on a local character, David Evans and forms part of a larger art trail through Walsall Wood.

The position and height of the artwork would allow for views by users of the canal and towpath, pedestrians crossing the bridge and passing motorists. The installation would have no adverse impact on the amenities of the surrounding occupiers or the character and appearance of the area.

Despite Inland Waterways concern regarding the design of the sculpture it is considered that, whilst they are a significant consultee in respect of proposals next to the canal, support from British Waterways and the public should be given greater weight in considering the proposals. Negotiations have also taken place to relocate the sculpture to address potential structural concerns therefore this outstanding concern regarding design is not sufficient to warrant refusal of the application.

The transportation officer is satisfied that restricting the height of the sculpture will prevent distraction to drivers and therefore have no highway or public safety implications. The design of the sculpture mounted on a pole will also prevent it being vandalised.

The proposed development is considered to comply with the relevant policies of the development plan, in particular policies GP2, 3.16, ENV32, ENV34 and LC9 of Walsall's Unitary Development Plan (March 2005), and policy DW9 of Supplementary Planning Document: Designing Walsall; the Regional Spatial Strategy and PPS1.

**Recommendation: Grant with conditions, subject to no new information raising new material issues**

1. This development must be begun not later than 3 years after the date of this decision.

*Reason:* Pursuant to the requirements of Section 91 of the Town & Country Planning Act, 1990.

2. The works hereby approved shall only be carried out in accordance with details contained within the following drawing numbers:

- Location Plan (drwg. no. D 41811) received 11/01/10
- Visualisation received 11/01/10
- Design & Access Statement received 11/01/10

*Reason:* In order to define the permission and ensure the satisfactory development of the application site.

3. The development shall be constructed in accordance with the materials indicated on the approved drawings unless the Local Planning Authority agrees to any variation in writing.

*Reason:* To ensure the satisfactory appearance of the development.

4. The total height of the proposed sculpture shall not exceed 5.0 metres and shall remain un-illuminated at all times, unless otherwise agreed in writing by the Local Planning Authority.

*Reason:* To ensure the satisfactory appearance of the development and to safeguard highway safety.