



## Economy, Environment and Communities, Development Management

### Planning Committee

Report of Head of Planning and Building Control on 27 April 2023

Plans List Item Number: 3

#### Reason for bringing to committee

The application has been called in by Councillor Flint who supports the proposal, on the grounds that the proposal provides the opportunity for new homes to the benefit of the wider Borough, the design of the proposal requires wider consideration and there will be no significant harm to the amenities of the surrounding area.

#### Application Details

**Location:** LAND TO THE REAR 107 AND 109, LICHFIELD ROAD, BLOXWICH, WALSALL, WS3 3LU

**Proposal:** DEVELOPMENT OF FOUR, THREE BEDROOM HOUSES AND ASSOCIATED PARKING AND LANDSCAPING (RESUBMISSION OF 22/0011)

**Application Number:** 23/0248

**Case Officer:** Thomas Morris

**Applicant:** Eric Russell

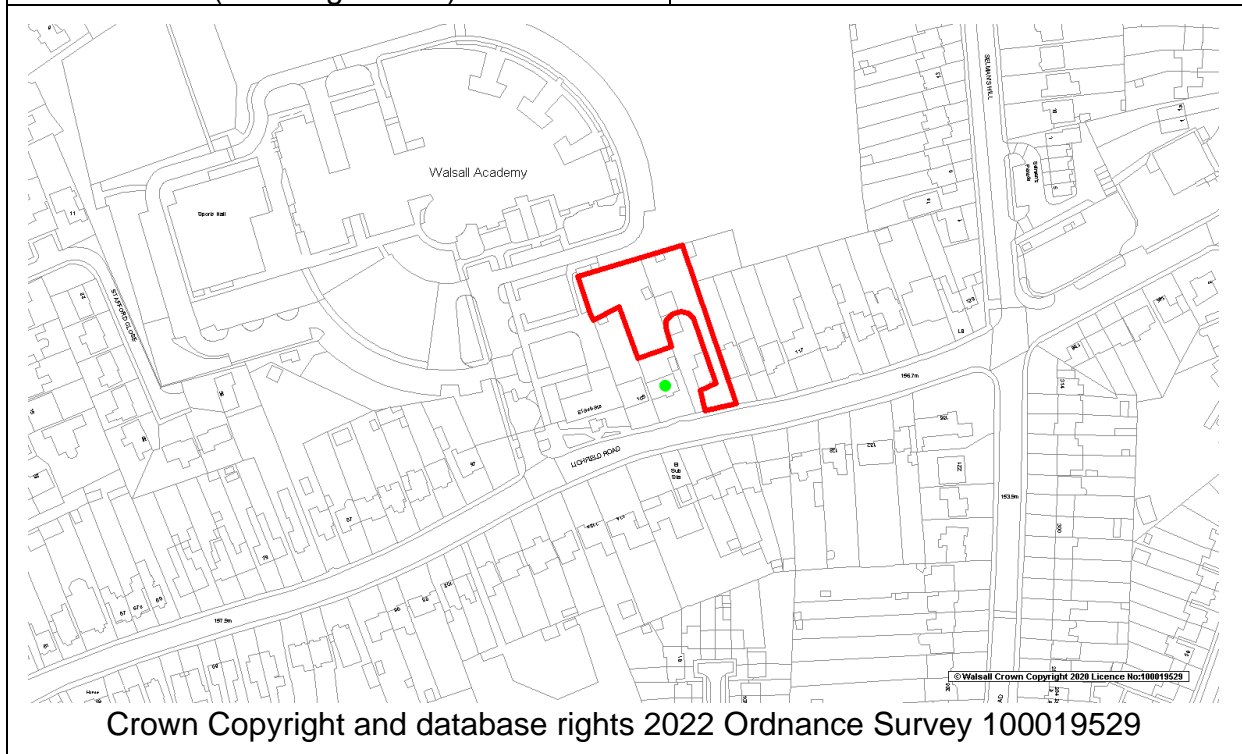
**Ward:** Bloxwich East

**Agent:** DCMS

**Expired Date:** 21-Apr-2023

**Application Type:** Full Application: Minor Use Class C3 (Dwellinghouses)

**Time Extension Expiry:**



#### Recommendation

Refuse Permission.

## Proposal

This application seeks full planning permission for the erection of four dwellinghouses with associated parking and landscaping at land to the rear of 107 and 109 Lichfield Road, Bloxwich. The application is a resubmission of the identical proposal at the site for the erection of four detached dwellinghouses and associated works (22/0011), which was refused in February 2023.

The 22/0011 application was also a resubmission of application reference 20/1222 at the site. The 20/1222 application was for the erection of five detached dwellinghouses and associated works and was refused in December 2021. The amended 22/0011 application, as well as this new application, sought to resolve the previous refusal reasons for the 20/1222 application and this report is set out as such.

With regards to the proposal under assessment here, the proposed dwellinghouses are detached, two-storey, comprising three bedrooms each and all feature the same design, albeit with no details submitted of the proposed materials to be used. The dimensions of the proposed dwellinghouses are approximately 8.5m (length) x 7.6m (width) x 8.2m (height to roof ridge) x 5m (height to roof eaves). The gross internal floor areas of the proposed dwellings are approximately 110sqm, comprising a living room, dining room, kitchen/breakfast/family room and WC at the ground floor and three bedrooms, a study and bathroom at the first floor.

The proposed site layout includes gardens to the rear of the new dwellings, comprising areas of approximately 70sqm (Plots 1, 2 and 3) and 208sqm (Plot 4). Each plot will comprise two car parking spaces located to the front of the proposed dwellings and an additional five car parking spaces as well as bin storage area to the rear of 107 Lichfield Road.

The pedestrian and vehicular access to the site off Lichfield Road will use the existing driveway for 109 Lichfield Road, which is located in between 109 and 111 Lichfield Road. The driveway will be modified to provide a private shared space driveway with a width of 5.5m and distance from Lichfield Road to the front elevation of the closest of the proposed dwellings (Plot 1) of approximately 54m.

The application is supported by the following documents:

- Design and Access Statement.
- Transport Note dated 20/12/2021.

## Site and Surroundings

The application site comprises land to the rear of 107 and 109 Lichfield Road in the Bloxwich East Ward. The west side of the site is also located to the rear of 105 Lichfield Road. The site is currently garden land which is in an overgrown state. The overall site area is approximately 1444sqm.

The surrounding area is primarily residential in nature and this section of Lichfield Road is characterised by detached and semi-detached dwellings of various styles and sizes. The established pattern of development comprises a linear built form with a strong consistent building line fronting Lichfield Road with driveways and landscaped areas fronting existing dwellings.

107 Lichfield Road is a large, detached dwelling set back from the highway with a gated access driveway and an area of off-road parking for four vehicles. 109 Lichfield Road is a detached two storey dwelling with a tiled gable end roof.

Millfield's Nursery and Walsall Academy are sited approximately 15m to the north of the application site. The site is not within a conservation nor is it a listed building. The area is a coal development low risk area and is within the Cannock Chase SAC.

## **Relevant Planning History**

### **Land to the rear of 107-109 Lichfield Road:**

22/0011 - Development of four, three bedroom houses and associated parking and landscaping – Permission Refused 17/02/2023.

20/1222 - Development of 5 x 3 bedroom houses and associated parking and landscaping – Permission Refused 03/12/2021.

19/1590 - Erection of 5 x 3 bedroom detached dwellings with associated access, parking and landscaping at land to the rear of 105, 107 and 109 Lichfield Road – Application Withdrawn 21/08/2020.

17/1209 - Erection of 4 x 1 bedroom detached bungalows – Application Withdrawn 03/08/2018.

### **107 Lichfield Road:**

20/0097 - Rebuild and extend existing garage to form garden annex granny flat – Permission Granted 23/03/2020.

06/1439/FL/H1- Two-Storey Side Extension, and Boundary Wall and Gates to Front – Permission Granted 25/09/2006.

06/0493/FL/H1 - Two-storey extension and front boundary wall – Permission Refused 21/06/2006.

02/1278/FL/H1 - First Floor Side Extension – Permission Granted 31/08/2002.

### **109 Lichfield Road:**

No specific planning history.

## **Relevant Policies**

### **National Planning Policy Framework (NPPF)**

[www.gov.uk/guidance/national-planning-policy-framework](https://www.gov.uk/guidance/national-planning-policy-framework)

The NPPF sets out the Government's position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a "*presumption in favour of sustainable development*".

**Key provisions** of the NPPF relevant in this case:

- **NPPF 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 5 – Delivering a sufficient supply of homes**
- **NPPF 8 – Promoting healthy and safe communities**
- **NPPF 9 – Promoting sustainable transport**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**
- **NPPF 14 – Meeting the challenge of climate change, flooding & coastal change**
- **NPPF 15 – Conserving and enhancing the natural environment**
- **NPPF 16 – Conserving and enhancing the historic environment**

On **planning conditions** the NPPF says:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

On **decision-making** the NPPF sets out the view that local planning authorities should approach decisions in a positive and creative way. They should use the full range of planning tools available and work proactively with applications to secure developments that will improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

### **Reducing Inequalities**

The Equality Act 2010 (the '2010 Act') sets out 9 protected characteristics which should be taken into account in all decision making. The **characteristics** that are protected by the Equality Act 2010 are:

- age
- disability
- gender reassignment
- marriage or civil partnership (in employment only)
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Of these protected characteristics, disability and age are perhaps where planning and development have the most impact.

In addition, the 2010 Act imposes a Public Sector Equality Duty "PSED" on public bodies to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality and to foster good relations. This includes removing or minimising disadvantages, taking steps to meet needs and encouraging participation in public life.

Section 149(6) of the 2010 Act confirms that compliance with the duties may involve treating some people more favourably than others. The word favourably does not mean 'preferentially'. For example, where a difference in ground levels exists, it may be perfectly sensible to install some steps. However, this would discriminate against those unable to climb steps due to a protected characteristic. We therefore look upon those with a disability more favourably, in that we take into account their circumstances more than those of a person without such a protected characteristic and we think about a ramp instead. They are not treated preferentially, because the ramp does not give them an advantage; it merely puts them on a level playing field with someone without the protected characteristic. As such the decision makers should consider the needs of those with protected characteristics in each circumstance in order to ensure they are not disadvantaged by a scheme or proposal.

### **Development Plan**

[www.go.walsall.gov.uk/planning\\_policy](http://www.go.walsall.gov.uk/planning_policy)

### **Saved Policies of Walsall Unitary Development Plan**

- GP2: Environmental Protection
- GP3: Planning Obligations
- GP5: Equal Opportunities
- GP6: Disabled People
- ENV17: New Planting
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- ENV40: Conservation, Protection and Use of Water Resources
- H1: Renewal of Existing Residential Areas
- T1: Helping People to Get Around
- T7: Car Parking
- T8: Walking
- T9: Cycling
- T10: Accessibility Standards – General
- T11: Access for Pedestrians, Cyclists and Wheelchair users
- T12: Access by Public Transport (Bus, Rail, Metro and Ring and Ride)
- T13: Parking Provision for Cars, Cycles and Taxis

### **Black Country Core Strategy**

- CSP2: Development Outside the Growth Network
- CSP3: Environmental Infrastructure
- CSP4: Place Making
- CSP5: Transport Strategy
- DEL1: Infrastructure Provision
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV5: Flood Risk, Sustainable Drainage Systems & Urban Heat Island
- ENV8: Air Quality

## **Walsall Site Allocation Document 2019**

- HC2: Development of Other Land for Housing
- EN1: Natural Environment Protection, Management and Enhancement
- EN3: Flood Risk
- T4: The Highway Network
- T5: Highway Improvements
- EQ2: Cannock Chase Special Area of Conservation

### **Supplementary Planning Documents**

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

Development with the potential to affect species, habitats or earth heritage features:

- NE1: Impact Assessment
- NE2: Protected and Important Species
- NE3: Long Term Management of Mitigation & Compensatory Measures

Survey standards:

- NE4: Survey Standards

The natural environment and new development:

- NE5: Habitat Creation and Enhancement Measures
- NE6: Compensatory Provision

Development with the potential to affect trees, woodlands and hedgerows:

- NE7: Impact Assessment
- NE8: Retained Trees, Woodlands or Hedgerows
- NE9: Replacement Planting
- NE10: Tree Preservation Order

#### **Designing Walsall**

- DW1: Sustainability
- DW2: Safe and Welcoming Places
- DW3: Character
- DW4: Continuity
- DW5: Ease of Movement
- DW6: Legibility
- DW7: Diversity
- DW8: Adaptability
- DW9: High Quality Public Realm
- DW9(a): Planning Obligations and Qualifying development
- DW10: Well Designed Sustainable Buildings

#### **Air Quality SPD**

- ***Section 5 – Mitigation and Compensation:***



- Type 1 – Electric Vehicle Charging Points
- Type 2 - Practical Mitigation Measures
- Type 3 – Additional Measures
- 5.12 - Emissions from Construction Sites
- 5.13 – Use of Conditions, Obligations and CIL
- 5.22 – Viability

## Consultation Replies

**Ecology** (*New comments not received, the following comments are from the 22/0011 application*) – No objections on ecology grounds and advise that the site is within the Cannock Chase SAC 15km zone of influence and mitigation measures are therefore required.

**Environmental Protection** (*New comments not received, the following comments are from the 22/0011 application*) – No objections, subject to the following conditions:

- For a Desk Study and Site Reconnaissance to be conducted to identify the potential for ground contamination and ground gas.
- Submission prior to development commencing of a Site Investigation, Ground Contamination Survey, Ground Gas Assessment and Remediation Strategy (depending on the findings of the Desk Study and Site Reconnaissance).
- Submission of a Construction Management Plan.
- Installation of electric vehicle charging point and Ultra-Low NOx boilers.

**Local Highway Authority** (*New comments not received, the following comments are from the 22/0011 application*) – Object to the proposals on highways and pedestrian safety grounds, due to the following reasons:

- The proposed private driveway fails to include a segregated footway to minimise conflict between pedestrian and vehicles accessing the site.
- The 2m x 43m visibility splay is not acceptable as it falls short of the minimum setback distance of 2.4m for an access serving multiple dwellings on a 30mph road. The required 2.4m x 3.4m pedestrian visibility splay is also not likely to be achievable.
- There is insufficient space for a refuse collection vehicle from the access and within the site which will result in risks to highway safety and no alternative means of refuse collection have been proposed by the applicant.

**Natural England** – Advise that as the site is within 15km of the Cannock Chase Special Area of Conservation (SAC), a Habitats Regulation Assessment is required and Natural England should be reconsulted once this is received and when the application progresses to an Appropriate Assessment.

**Severn Trent Water** (*New comments not received, the following comments are from the 22/0011 application*) – No objections and no conditions required.

**The Coal Authority** – No objections and no conditions required.

**West Midlands Fire Service** – No objections and provide general guidance in relation to fire safety measures for the proposal, stating that failure to meet these requirements may result in an objection and an unsatisfactory proposal.

## Representations

Two letters of objection were received, based on the following grounds:

- The new application has not been changed from the previous proposal and all the same refusal reasons should remain.
- The proposed dwellings will overlook the playground of the neighbouring nursery school and the classrooms and social areas of the school. The overlooking of the nursery/school spaces raises concerns regarding safeguarding of children at the site.
- Trees at the site have already been removed by the applicant and there is no screening of the nursery/school from the application site.
- The proposal will result in highways and pedestrians' safety issues due to the increase in vehicles crossing the pavement in close proximity to the school's access off Lichfield Road where there is a very high number of pedestrian movement.

## Determining Issues

- Principle of Development - Backland Development
- Highways Safety
- Visibility Splay
- Refuse Collection
- Impact on Neighbour Amenity
- Impact on Walsall Academy and Nursery School
- Ground Conditions and Environment
- Flood-risk and Drainage
- Ecology and Trees
- Cannock Chase Special Area of Conservation
- Local Finance Considerations
- Five-Year Housing Land Supply

## Assessment of the Proposal

### Principle of Development - Backland Development

This proposal represents inappropriate backland development which would cause harm to the character and amenity of the local area, would erode the spatial characteristics of the existing site and would be poorly related to its surroundings in terms of design, density and layout.

The application site has the same red line boundary as the previously refused applications 20/1222 and 22/0011 and therefore still proposes a backland style development of parts of the rear gardens of 107-109 Lichfield Road. The main change in this third iteration of the proposed scheme in comparison to the first in terms of the proposed site layout is that one of the proposed dwellings (Plot 5) has been removed from the proposal, the proposal is identical to the most recently refused application with reference 22/0011. The remaining proposed dwellings will be sited in the same position as was previously proposed, with their front elevations facing the rear gardens of 105, 107 and 109 Lichfield Road to the South and their rear elevations facing the Walsall Academy and Nursery School site to the North.



Whilst the amendment to the proposal in removing Plot 5 is acknowledged, the application ultimately still proposes a backland style of development of garden land, which is considered to be contrary to the characteristics of the local area, which primarily features detached/semi-detached dwellinghouses with large rear gardens, set within a strong building line fronting Lichfield Road. Whilst the existing dwellings at 107-109 Lichfield Road would be retained, the proposal would still introduce a tandem style of development where the new dwellings would be sited to the rear, entirely disconnected from the established street frontage, and failing to tie into the existing pattern of development in the area. The removal of Plot 5 makes no difference to the overall impact of the scheme on the character and appearance of the area and the proposal would still relate poorly to its surroundings and is considered to result in an erosion to the spatial characteristics of the area.

In summary, the proposal is considered to be unacceptable with regards to the impact on the character of the area and is contrary to saved policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals) of the Walsall Unitary Development Plan, policies CSP4 (Place Making), ENV2 (Historic Character and Local Distinctiveness), ENV3 (Design Quality) and HOU2 (Housing Density, Type and Accessibility) of the Black Country Core Strategy, SAD Policy HC2 (Development of Other Land for Housing), DW3 (Character), DW4 (continuity) and DW6 (Legibility) of the Designing Walsall Supplementary Planning Document and section 12 of the National Planning Policy Framework (Achieving well-designed places).

## Highway Safety

The current application proposes a shared space access where pedestrians and vehicles have equal priority, which is said to be in keeping with a 'very low speed, very low traffic volume environment the driveway will serve'. The overall width of the driveway remains in line with previous submissions at 5.5m (although the submitted Transport Statement states the width is 5.3m), however, the driveway will occupy the full width of the access rather than including a separate pedestrian and vehicle area, as was previously proposed. The submitted Transport Note has also provided examples of other shared space arrangements in Walsall (and further afield), including at the Millers Walk estate off Wolverhampton Road. The Transport Note also references the Warrington Borough Council Residential Design Guide, but this is not considered relevant to a proposal in Walsall.

The applicant has clarified that the application includes a private driveway to serve the four proposed dwellings (as well as the existing dwelling at 109 Lichfield Road) and is not an 'access road'. Regardless of the definition, it is accepted that the proposed driveway provides the access to the site, but the use of the term private driveway to describe the access is not disputed.

Whilst the changes to the access arrangements and the information provided within the Transport Note are acknowledged, these changes do not ultimately resolve the issues raised in refusal reason 2 of 20/1222 which stated that *"the intensification of the vehicle access serving four dwellings is likely to either result awkward vehicle reserving movements onto Lichfield Road which is a classified road (A4124) and a strategic highway or vehicles blocking of the highway footway at a sensitive location close to school and nursery where at times there will be relatively high footfall passing by thus causing significant harm to the highway safety of drivers, cyclists and pedestrians"*. The examples given of shared space driveways on the Millers Walk Estate were approved over 20 years ago and are not considered relevant to meet current fully inclusive design standards. The Local Highway Authority does not dispute that shared private driveways

are common, but they were assessed under previous design guidance and there are ongoing concerns around the use of shared space designs for disabled users and those with visual impairments. These concerns have not been satisfactorily addressed within the proposal and the Local Highway Authority are required to ensure that developments wherever possible are fully inclusive as part of its duties under the Equalities Act 2010.

It is also noted that the examples of shared space driveways at the Millers Walk Estate all appear to be situated within the estate itself and not directly from Wolverhampton Road, which would be more comparable with the application site which is accessible from Lichfield Road. Consequently, the examples provided of shared spaces are not considered to be comparable situations, given that Lichfield Road is a 30mph classified road which carries relatively high levels of strategic and local traffic.

For these reasons, the proposed shared space access, whilst providing greater space for vehicles passing than previous iterations with a segregated footway, would instead result in a greater likelihood of conflict between pedestrians and vehicles along the driveway. The access arrangement at the site is therefore still considered to be unacceptable with regards to pedestrian/highway safety. The proposal is therefore contrary to saved policies GP2 (Environmental Protection), T10 (Accessibility Standards – General) and ENV32 (Design and Development Proposals) of the Walsall Unitary Development Plan and policy TRAN2 (Managing Transport Impacts of New Development) of the Black Country Core Strategy and the National Planning Policy Framework.

## **Visibility Splay**

The 2.0m x 43m visibility splay as shown on revised block plan REV 1D, received 10/09/2021, is not acceptable to the Highway Authority. The setback distance should be 2.4m, which is an industry wide accepted distance and the minimum recommended distance for an access serving multiple dwellings onto a 30mph road as set out in Government guidance Manual for Streets. It is clear that the position of the proposed access is unable to achieve the required 2.4m set back due to third party land issues. Likewise, the required 2.4m x 3.4m pedestrian visibility splay, whilst not shown on the submitted plans, is also unlikely to be achievable for the same reason. The splays are required to meet highway design standards due to the intensification of the access, the proximity of the access to a secondary school and nursery entrance and the nature of Lichfield Road being a classified road (A4124) and a strategic highway.

The applicants Transport Note attempts to justify the visibility arrangement at the site. Reference is made to the proposed visibility being the same as the existing visibility and therefore not reducing visibility at the site, and that the development will not result in a significant increase in vehicle movements to the site (suggesting a likely two vehicle movements per hour). The existing visibility setback distance of 2m for the x-distance (rather than 2.4m as is required by the Local Highway Authority) is accepted by the applicant, however, they suggest that given this is the same as the existing visibility, it is therefore acceptable at the site and is generally acceptable in slow-speed environments. The applicant also suggests that visibility will be improved due to the modifications to the boundary wall to make way for a parking area to the front of 109 Lichfield Road.

However, the Local Highway Authority continue to advise that a visibility splay of 2.4m x 43m is required for the proposed development in this location. Although it is accepted that the visibility splay at the site is the existing visibility, the proposed development will intensify the use of the access given that it will serve an additional four dwellings, as

well as the existing dwelling at 109 Lichfield Road, and it is therefore considered not to be unreasonable for the access to comply with current guidance to safeguard pedestrian and highway safety.

Furthermore, the Local Highway Authority disputes that the site is within a slow speed environment. Lichfield Road is a classified road and carries relatively high levels of traffic. The use of a 2m (x-distance) visibility splay would normally be more appropriate in a traffic calmed residential location, which is not the case for the application site, especially given the intensification of its use. Manual for Streets states that a 2m (x-distance) visibility splay will require vehicles to protrude into the highway/footway, which is not acceptable in a location being close to the main entrance to the Walsall Academy site and again, given the intensification of the access as a result of the proposal.

In summary, the Local Highway Authority maintains that a visibility splay of 2.4m x 43m is required for the proposed development. This is to ensure that emerging drivers are able to see approaching pedestrians before manoeuvring out and over highway and footway and vice-versa. The amended proposal has failed to demonstrate that this be achieved at the site's access. The proposal is therefore contrary to saved policy GP2 (Environmental Protection) of the Walsall Unitary Development Plan, policy T4 (The Highway Network) of the Walsall Site Allocation Document, DfT Manual for Streets guidance and the National Planning Policy Framework.

## **Refuse Collection**

The proposed access arrangements to the site show the width of the driveway of 5.3m-5.5m. The proposed site plan also shows a Swept Path Analysis, demonstrating how a refuse vehicle could enter/exit and manoeuvre within the site. Notwithstanding the amended plans, the Council's Local Highway Authority advise that the proposed site layout is unsuitable for refuse vehicles. Whilst the width of the private shared drive has been increased by virtue of the removal of the footway on the latest application, the access to the site off Lichfield Road itself is tight and would likely result in refuse collection vehicles having to shunt in and out of position, leaving them exposed to traffic and in a vulnerable position on Lichfield Road. The Swept Path Analysis also still shows a lack of manoeuvring space, leaving minimal margin for error which would require absolute precision from refuse vehicle drivers, which could not be reasonably expected.

Furthermore, given that the proposed driveway will be private, it is considered to be extremely unlikely that a refuse collection vehicle would actually enter the site and will instead park on the kerbside on Lichfield Road. Whilst refuse collection already takes place in this manner for the existing dwellings fronting Lichfield Road, the distance from the furthest of the proposed dwellings (Plot 4) to the highway is approximately 75m, which exceeds the overall maximum distance recommended in Manual for Streets of 55m, for residents to carry waste (30m) and for collection operatives to walk to collect bins (25m). No proposals for alternative refuse collection arrangements have been submitted in support of the application which would justify such an arrangement.

As such, the proposal is therefore contrary to saved policies GP2 (Environmental Protection) ENV32 (Design and Development of Proposals) of the Walsall Unitary Development Plan, policy T4 (The Highway Network) of the Walsall Site Allocation Document and the National Planning Policy Framework.

## **Impact on Neighbour Amenity**

Part of the front elevation of the Plot 4 dwelling will directly face the rear garden of 105 Lichfield Road, with a separation distance of just 1.8m from the ground floor dining room

window and the first-floor bedroom 3 window of the proposed dwelling (Plot 4) to the rear garden of 105 Lichfield Road. This arrangement with habitable windows directly facing the neighbour's garden at 105 Lichfield Road would therefore result in a significant loss of neighbour privacy, particular through the introduction of the first-floor bedroom window at the Plot 4 dwelling and is therefore considered to be unacceptable.

In addition, the proposed turning head and vehicle parking spaces will be located directly adjacent to the rear garden of 105 Lichfield Road, resulting in an unacceptable level of additional noise and disturbance from vehicle movements, doors closing and people congregating in the area, to the detriment of the amenity of the occupiers of 105 Lichfield Road. No amendments to the scheme, further information or justification for this has been provided by the applicant and this arrangement is therefore considered to be unacceptable.

Furthermore, the proposed main access to the site provided by the private shared driveway will be located adjacent to 113 Lichfield Road. It is considered that this would introduce a level of vehicle movement which would result in an unacceptable level of additional noise and disturbance to the rear garden amenity area serving this neighbour, and increased light pollution, particularly to ground floor habitable windows in the front elevation. The applicant has provided no further information or justification for this arrangement.

The proposal is therefore considered to have an unacceptable impact on the amenities of neighbouring occupiers, by virtue of the overlooking of the private amenity space of 105 Lichfield Road from the front elevation of the proposed Plot 4 dwelling and due to noise and disturbance impacts on the rear gardens of 105 and 113 Lichfield Road. The proposal is therefore contrary to saved policy GP2 (Environmental Protection) of the Walsall Unitary Development Plan and the National Planning Policy Framework.

### **Impact on Walsall Academy and Nursery School**

The layout of the site and proximity of the rear elevations of the proposed dwellings to the boundary with the Walsall Academy and Nursery School site to the North is at a distance of 7.7m. Objections have been received regarding the proximity of the proposed dwellings to the school and the subsequent overlooking of school social spaces, as well as safeguarding concerns. No further justification to this issue has been provided by the applicant within the amended proposal. The proposal is therefore still considered to be unacceptable with regards to the impact on the Walsall Academy and Nursery School site and it is considered that these existing facilities could have the potential to have unreasonable restrictions placed on them as a result of development permitted after they were established. The proposal is therefore contrary to Paragraph 187 of the National Planning Policy Framework which requires that new development integrate effectively with existing community facilities and facilities should not have unreasonable restrictions places on them as a result of new development.

### **Ground Conditions and Environment**

No information has been submitted regarding ground conditions at the site and no information was provided regarding any contamination or ground gas issues. As such, Environmental Protection have advised that as a minimum a desktop survey and site appraisal is undertaken to determine whether an intrusive investigation is required. Conditions to address these matters would be required in the event of the approval of the application.



## **Flood-risk and Drainage**

The site is located outside of flood zones 2 and 3, within an established residential area generally at low risk of flooding. The proposal will continue the existing residential use of the site albeit with the addition of four dwellings and is not considered likely to result in any increase in flood-risk or additional pressures on the drainage system in the area. Severn Trent Water have raised no objections to the proposal and would not require a drainage condition to be included in the event of an approval. The application is therefore considered to be acceptable with regards to flood-risk and drainage matters.

## **Ecology and Trees**

With regards to ecological impacts at the site, a bat survey is not required for this application. The site is predominantly surrounded by built form and does not fall within the Council's bat buffer zone. Whilst there are some trees present at the site, a tree survey has not been submitted, but none are protected by a Tree Preservation Order, and none appear to be of significant quality so as to warrant protection. The application is therefore considered to be acceptable with regards to the impact on ecology and trees at the site.

## **Cannock Chase Special Area of Conservation (SAC)**

Pursuant to the Habitats Directive (92/43/EEC), where a plan or project is not connected with the nature conservation management of a European designated site, the competent authority must determine whether the plan or project is likely to have a significant effect on the site, either alone or in combination with other plans or projects. This is reflected in national law in the Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations"), which place a duty upon competent authorities to consider the potential for effects upon sites of European importance prior to granting consent. This is referred to as a screening assessment. If likely significant effects are identified by the screening assessment, the competent authority must then undertake an Appropriate Assessment of the implications.

Approximately 20% of Cannock Chase falls within the Cannock Chase Special Area of Conservation ("SAC"), allocated primarily for its dry heathland. Council areas in the vicinity of the SAC have formed a Partnership and commissioned reports to assess impacts upon the SAC and how they arise. The evidence indicates that development which would increase visitors within 15km of the SAC may have a significant impact.

Walsall Council joined the Cannock Chase SAC Partnership on 17th October 2022 and has implemented Black Country Core Strategy Policy EQ2 which enables the collection of payments to mitigate against impacts arising from new relevant development falling within the 15km Zone of Influence of the Cannock Chase SAC. The mitigation payment of £290.58 per each net new dwelling is non-negotiable. Permission must be refused where appropriate mitigation is not provided pursuant to the Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations").

The Project has been screened to identify whether potential effect pathways between the Project and the SAC are present which are likely to result in significant effects upon the SAC. The screening exercise carried out on April 1st 2022 by the SAC Partnership authorities found likely significant effects on the SAC arising as a result of increased recreational activity from new residential development and related population growth that is likely to disturb the ground. A 21/12/12 Cannock Chase SAC Visitors Survey investigating visitor access patterns found that the majority (75%) of visitors originated

from within a 15km distance of the SAC (also supported by 2018 visitor survey data) and The Cannock Chase SAC Planning Evidence Base Report Stage 2 (12/07/21) determined that within this 15km 'zone of influence', measures to reduce recreational pressure would be most effective.

The Habitat Regulation Assessment Stage 1: Screening Assessment has been undertaken using the available information associated with this planning application. The screening assessment is designed to check if an application is likely to have a significant effect on Cannock Chase SAC's conservation objectives, based on available evidence. Should it be determined that no significant affects are likely, no further assessment in respect to the SAC is required. Please note as per guidance and CJEU ruling (case C323/17), mitigation measures cannot be taken into account at the screening stage of the HRA assessment.

The proposed application is situated within 15km of the Cannock Chase SAC and proposes a net increase of four dwellings. This development would result in an increase in recreational disturbance resulting in significant harm of the SAC and should progress directly to Stage 2 the undertaking of an Appropriate Assessment.

While Walsall Council, as the Competent Authority, will carry out HRA Stage 2: Appropriate Assessment, which will include the consultation of key stakeholders including Natural England, it will be the responsibility of the applicant to provide and secure suitable mitigation on which to base the Appropriate Assessment. Suitable mitigation should be in the form of the necessary mitigation payment of £290.58 per each net new dwelling which can be secured by a Unilateral Undertaking, or within a Section 106 Agreement when other obligations are required.

The applicant was contacted on March 14th 2023, requesting them to complete a Habitat Regulation Assessment as part of the Cannock Chase SAC assessment process. However, whilst the applicant has submitted a draft Unilateral Undertaking in relation to the mitigation payment, they have not yet submitted the Habitat Regulation Assessment. Whilst it is accepted that as the applicant has submitted the Unilateral Undertaking, it is likely they will agree to pay the mitigation payments, given that this has not yet been agreed and they have not yet submitted a Habitat Regulation Assessment, refusal reason 1 has been included in order to reflect the current situation. It is acknowledged however that this refusal reason could be resolved in the event of an approval.

## **Local Finance Considerations**

Section 143 of the Localism Act requires the local planning authority to have regard to 'local finance considerations' when determining planning applications. In Walsall at the present time this means there is need to take account of New Homes Bonus monies that might be received as a result of the construction of new housing.

This application proposes four new homes. The Government has indicated that, for 2022-23, it will award approximately £1,000 per dwelling per year, plus a further £350 for each affordable dwelling, for each net additional dwelling provided. The payment is made each year for a period of 4 years from completion of the dwelling. The weight that should be given to this, including in relation to other issues, is a matter for the decision-maker.



## Five-Year Housing Land Supply

Notwithstanding the previous concerns raised, it is acknowledged that the proposal will provide new housing at the site and will therefore contribute to Walsall's housing supply, in a situation where the Council is no longer able to demonstrate a five year housing land supply and has failed the housing delivery test published in January 2022, based on low levels of housing delivery over the last 3 years. For these reasons the presumption in favour of sustainable development as described in Paragraph 11d of the NPPF is in effect, meaning that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposal.

### Conclusions and Reasons for Decision

The application proposes a backland style of development of existing garden land, which would be entirely disconnected from the street frontage and would fail to tie into the established pattern of development in the area. The removal of the Plot 5 dwelling does nothing to mitigate the harm of the proposal on the character and appearance of the area as the overall site plan still inserts new dwellings to the rear of the established building line which is at odds with the character of the area.

The proposed access to the site is also still unacceptable as the alterations to provide a shared access and thereby removing the segregated pedestrian footpath fails to resolve the highways and pedestrian safety concerns. The amended access will now result in conflict between pedestrians and vehicles, visibility at the site's access will be insufficient to meet the relevant highways safety standards in this location and the access route will be impractical for refuse vehicles. This issue has not been resolved within any iteration of the various schemes at the site and continues to present a challenge to achieving a development of this nature at the site.

Furthermore, the first floor bedroom window at the proposed Plot 4 dwelling will be located at just 1.8m from the boundary of the rear private garden of 105 Lichfield Road, resulting in a significant harm to this neighbour's amenity due to the direct overlooking of their existing private amenity space. There is no existing boundary treatment at the site or any other circumstances which would mitigate the overlooking of the garden and this arrangement will therefore result in a significant loss of neighbour privacy. The introduction of the proposed access and parking adjacent to existing rear gardens will result in a further loss of amenity to neighbouring properties.

The impact on Walsall Academy and Nursery School has not been addressed and the proposal has the potential to place unreasonable restrictions on the existing facility which is contrary to the NPPF. A further reason for refusal is also included on the grounds that the applicant has not yet formally agreed to provide any Cannock Chase SAC mitigation measures/payments, although it is accepted that this issue could be resolved in the event of the approval of the application.

In summary, when viewed collectively, the totality of the harm which would be caused by the proposed development is considered to be highly significant and demonstrable and outweighs the benefits of the proposal in providing housing in the Borough within the context of the lack of five-year housing land supply. For these reasons, given that there are no material planning considerations in support of the proposals it is concluded that this application should be recommended for refusal.

## **Positive and Proactive Working with the Applicant**

Officers have spoken with the applicant's agent and in this instance are unable to support the proposal.

## **Recommendation**

Refuse permission

## **Reasons for Refusal**

1. The application fails to provide the necessary Cannock Chase Special Area of Conservation (SAC) mitigation. The proposed development falls within the 15km zone of influence relating to the Cannock Chase SAC and has failed to provide any information in relation to likely impacts on the SAC arising from the proposed addition of 4 dwellings and has failed to provide any potential necessary mitigation measures or a mechanism for securing them. The application is therefore contrary to the Conservation of Habitats and Species Regulations 2017, Policies CSP3 (Environmental Infrastructure), CSP4 (Place-Making) and ENV1 (Nature Conservation) of the Black Country Core Strategy, Saved Policy ENV23 (Nature Conservation and new development) of the Walsall Unitary Development Plan, Policy EN1 (Natural Environment Protection, Management and Enhancement) of the Walsall Site Allocation Document and the NPPF.
2. This proposal represents inappropriate backland development which would cause harm to the character and amenity of the local area, would erode the spatial characteristics of the existing site and would be poorly related to its surroundings in terms of design, density and layout, contrary to saved policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals) of the Walsall Unitary Development Plan, policies CSP4 (Place Making), ENV2 (Historic Character and Local Distinctiveness), ENV3 (Design Quality) and HOU2 (Housing Density, Type and Accessibility) of the Black Country Core Strategy, SAD Policy HC2 (Development of Other Land for Housing), DW3 (Character), DW4 (continuity) and DW6 (Legibility) of the Designing Walsall Supplementary Planning Document and section 12 of the National Planning Policy Framework (Achieving well-designed places).
3. The private shared driveway as shown on Block Plan 2020-109 Sheet 1, fails to include a segregated footway required to provide a traffic free, fully inclusive route for residents and visitors of the development of at least 1.5 metres width in order to minimise conflicts between pedestrians and vehicular traffic along the driveway. The provision of such a footway would significantly reduce the width of the driveway available to vehicles below what would be acceptable to allow two vehicles to pass safely and satisfactorily and is therefore contrary to saved policies GP2 (Environmental Protection), T10 (Accessibility Standards – General), TRAN2 (Managing Transport Impacts of New Development) of the Black Country Core Strategy and the NPPF 2021 para 112.
4. The 2.0m x 43m visibility splay as shown on Block Plan 2020-109 Sheet 1, is not acceptable to the Highway Authority. The setback distance should be 2.4m, which is an industry wide accepted distance and the minimum recommended distance for an access serving multiple dwellings onto a 30mph road as set out in Government guidance Manual for Streets 2. It is clear the position of the proposed access is unable to achieve the required 2.4m set back due to third

party land issues. Likewise, the required 2.4m x 3.4m pedestrian visibility splay, whilst not shown on the revised plan, is also unlikely to be achievable for the same reason. The splays are required to meet highway design standards due to the intensification of the access, the proximity of the access to a secondary school and nursery entrance and the nature of Lichfield Road being a classified road (A4124) and a strategic highway. The proposal is therefore contrary to the NPPF, Saved UDP Policy GP2 (Environmental Protection), SAD Policy T4 (The Highway Network), DfT Manual for Streets guidance and to the detriment of highway safety.

5. A refuse collection vehicle (RCV) would not reverse off this section of Lichfield Road; the access is tight and therefore there is a very high probability that drivers may have to shunt in and out for positioning leaving them exposed to the traffic on the main road and in a vulnerable position for longer than could be justified in a risk assessment. Further, there is a lack of space in the site and Block Plan 2020-109 Sheet 1 shows the RCV route leaves no margin for error and would take absolute precision which could not be expected of drivers. As such, the likelihood of causing damage due to this is too high to be acceptable. No alternative waste collections arrangements have been provided and is therefore contrary to the NPPF and the Unitary Development Plan, in particular policies GP2 (Environmental Protection), ENV32 (Design and Development of Proposals) and SAD Policy T4 (The Highway Network).
6. Plot 4 would introduce habitable room windows at ground and first floor which would introduce a direct form of overlooking to the rear amenity space serving No.105 Lichfield Road. Furthermore, the provision of the turning head and vehicle parking directly adjacent the rear garden of No.105 would also introduce an unacceptable level of additional noise and disturbance from vehicle movement, doors closing, and people congregating resulting in significant additional overlooking, loss of privacy and noise and disturbance to the detriment of this neighbour's amenity. The proposal is contrary to Saved UDP Policy GP2 (Environmental Protection) and the NPPF.
7. The proposed main access directly adjacent No.113 would also introduce an unacceptable level of vehicle movement which would result in an unacceptable level of additional noise and disturbance to the rear garden amenity area serving this neighbour, and increased light pollution, particularly to ground floor habitable windows in the front elevation. The proposal is contrary to Saved UDP Policy GP2 (Environmental Protection) and the NPPF.
8. The proposed development would not integrate effectively with the nearby school Walsall Academy and nursery Millfield's Nursery School, and it is considered that these existing facilities could have the potential to have unreasonable restrictions placed on them as a result of development permitted after they were established. The proposal is therefore contrary to paragraph 187 of the NPPF.

## END OF OFFICERS REPORT