

## Economy, Environment and Communities, Development Management

### Planning Committee

Report of Head of Planning and Building Control on 04 May 2022

Plans List Item Number: 4

#### Reason for bringing to committee

Called in by Councillor Andrew due to public interest.

#### Application Details

**Location:** 2, WALSALL ROAD, WILLENHALL, WV13 2EH

**Proposal:** PROPOSED CONSTRUCTION OF 4 NO. NEW THREE BED TOWNHOUSES WITH ASSOCIATED PARKING, ACCESS, EXTERNAL LIGHTING AND BIN STORES.

**Application Number:** 20/1575

**Case Officer:** Ann Scott

**Applicant:** W13 Ltd

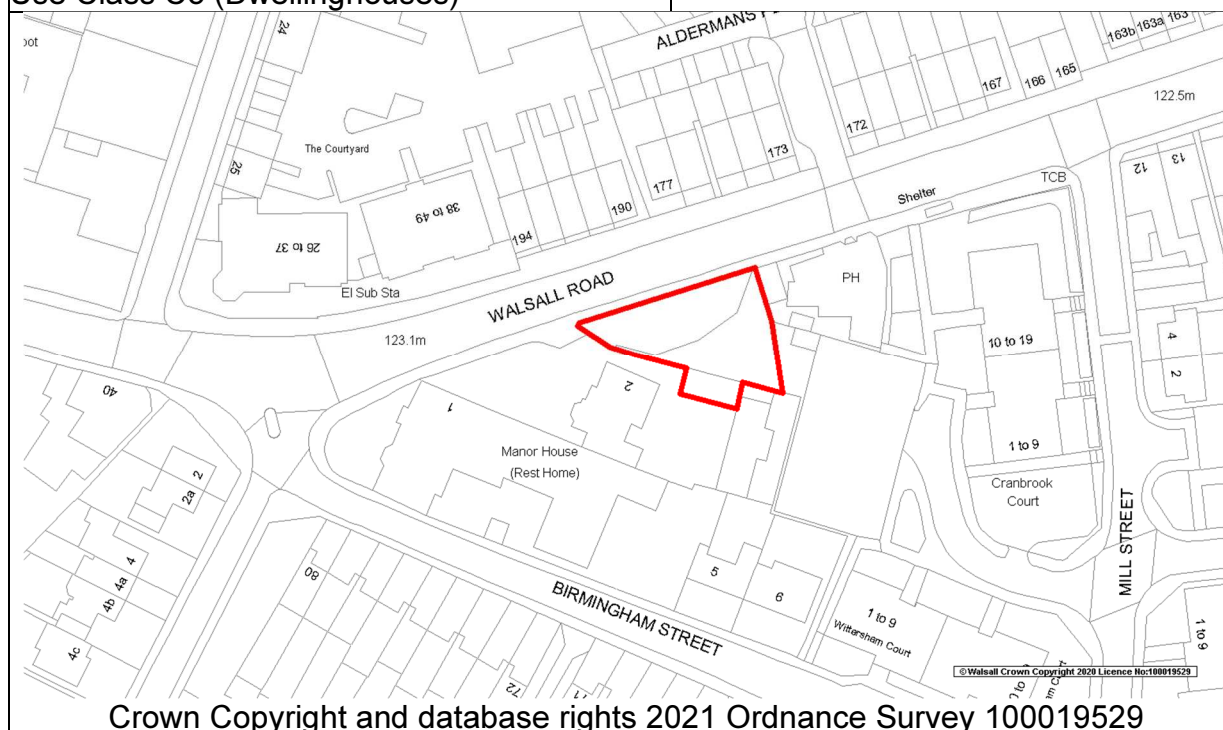
**Ward:** Willenhall South

**Agent:** W13 Ltd

**Expired Date:** 07-Apr-2021

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

**Time Extension Expiry:** 11-May-2022



#### Recommendation

Refuse

## Proposal

Proposed construction of 4 no. new three bed townhouses with associated parking, access, external lighting and bin stores.

## Site and Surroundings

The application site is at 2 Walsall Road Willenhall and is in proximity to an existing commercial premise with a shared access from Walsall Road. The application site currently forms part of the site with 3 no advertising hoardings displayed with a fence and grassed area in front facing Walsall Road. The adjacent premises are a clinic and the site incorporates an existing parking area to the rear of the advertising hoardings.

To the front of the application site along Walsall Road there is a single yellow line parking restriction in place.

The site lies between commercial developments being a clinic to the West of the application site and the Three Tuns public house to the East of the application site. The proposed rear garden/amenity areas of the new dwellings would back onto the car parking area to the Clinic site which shares vehicular access with the proposed dwellings parking and turning area.

## Relevant Planning History

02/0529 – Two storey Rear extension and change of use of land to car park for the flat above 3 Tuns Public House – Granted 16-07-2002.

Mills and Allen Ltd – Advertising Right 614 Adjacent 3 Walsall Road Willenhall

04/01487/OL – Demolition of existing office and construction of new build residential consisting of 9 x 1 bed apartments – Refused 12-07-2004

17/0944 Change of use of building from B1 to D1 Nursery – Refused 09-08-2017.

## 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 6 – Building a strong, competitive economy**
- **NPPF 7 – Ensuring the vitality of town centres**
- **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 and 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
- GP5: Equal Opportunities
- ENV9: Environmental Improvement Initiatives
- ENV10: Pollution
- ENV11: Light Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV17: New Planting
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV25: Archaeology
- ENV27: Buildings of Historic or Architectural Interest
- ENV28: The ‘Local List’ of Buildings of Historic or Architectural Interest
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- ENV36: Poster Hoardings
- ENV40: Conservation, Protection and Use of Water Resources
- H3: Windfall Sites on Previously Developed Land and Conversion of
- T1 - Helping People to Get Around
- T2 - Bus Services
- 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**

- CSP1: The Growth Network
- CSP2: Development Outside the Growth Network
- CSP3: Environmental Infrastructure
- CSP4: Place Making
- CSP5: Transport Strategy
- DEL1: Infrastructure Provision
- DEL2: Managing the Balance Between Employment Land and Housing
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- HOU3: Delivering Affordable Housing
- CEN2: Hierarchy of Centres
- CEN3: Growth in the Strategic Centres
- CEN4: Regeneration of Town Centres
- CEN5: District and Local Centres
- TRAN1: Priorities for the Development of the Transport Network
- TRAN2: Managing Transport Impacts of New Development
- TRAN4: Creating Coherent Networks for Cycling and for Walking
- TRAN5: Influencing the Demand for Travel and Travel Choices
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island
- ENV6: Open Space, Sport and Recreation
- ENV7: Renewable Energy
- ENV8: Air Quality
- WM1: Sustainable Waste and Resource Management

## **Site Allocation Document**

- HC2: Development of Other Land for Housing

## **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 and 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

## 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
- 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

**Highway Authority** – objection with regard to parking turning areas and shared access, including the position of the bin store. Spaces for plot one too remote and will be underutilised. Parking for plot 3 is awkward to reverse out of. Fencing fails to provide adequate visibility for vehicles entering and exiting the access.

Further comments on amended plans still raises concerns around access and parking.

- The parking spaces at an awkward acute angle to the access road and will be reliant on turning on the commercial access areas over which the residents would have no control and is likely to result in conflicts and disputes.
- The access to the parking spaces mixes residential traffic with commercial traffic parking and is likely to result in conflicts and disputes and not a safe environment for residents.

- The dwellings have stepped access to the front doors which is not fully inclusive design.
- The bin collection point presumably has a stepped entrance which is unacceptable from a collection point of view.
- The 2.1m high screen fence alongside the access fails to provide adequate inter-visibility at the access onto Walsall Road.

**Conservation Officer** – Concerns raised with regard to the number of units which needs to be reduced, a pair of semi-detached houses would be more supportable.

The proposed development would result in medium harm to the significance of the non-designated heritage assets, 2 Walsall Road and the Three Tuns Public House.

The design needs to be amended, so that the proposed houses sit subservient to the adjacent locally listed buildings.

**Environmental Protection** - Due to the new information on Air Quality from WHO (World Health Organisation) and concerns regarding exposure to poor air quality the applicant is required to carry out and provide an Air Quality assessment for the development site prior to reviewing any documents associated with this application.

**Planning Policy** - The amended plans do not raise planning policy issues.

**Severn Trent Water Authority** – No objections.

**Coal Authority** - The Coal Authority Response: Material Consideration.

The Coal Authority objected to this planning application in our previous letter dated 23 March 2021 as no Coal Mining Risk Assessment had been submitted at that time to identify and mitigate the risk to the proposed development from former coal mining activity.

The Coal Authority has no specific comments to make on the amended plans and our previous comments remain valid and relevant to the decision-making process.

## Representations

3 letters from third parties in relation to the following:

- Highway safety, parking and congestion/risk of accidents
- Residential amenity in proximity to commercial business including pub garden/outdoor smoking area which will cause complaints from occupiers
- Trees at the rear of the development
- Poor design not in keeping with the area
- Flood risk – Walsall Road floods during heavy rainfall



## Determining Issues

- Principle of development
- Layout and design
- Housing need
- Access and parking
- Impact on residential amenity
- Impact on character of the area
- Impact on heritage assets
- Flood risk and drainage
- Other issues
- Air quality
- Local Finance Considerations

## Assessment of the Proposal

### Principle of development

The revised NPPF says that decisions should encourage the effective use of land by re-using land that has been previously developed. The application is mostly on commercial land in a sustainable location. The NPPF also says that housing applications should be considered in the context of the presumption in favour of sustainable development.

The proposal is in a sustainable location being within the built-up area of Willenhall. However, the development is not a sustainable form of development if it fails to consider the environmental role - protecting and enhancing our natural, built, and historic environment. The report considers this further.

### Layout and design

The proposed layout of 4 no. 3 bedroom houses with associated access and parking provision within the site is cramped in terms of scale, mass and design and there is insufficient room within the site to park and turn around adequately. There are other issues associated with the proposed layout of the development that would have an adverse impact on the amenities of the locality and highway safety due to the shared vehicular access to the site from Walsall Road and proximity of the proposed development to nearby commercial premises.

In particular plot 1 has very limited rear amenity space and overall, the proposal is considered to be a cramped form of development on a constrained site with the potential for conflict between pedestrians and vehicles. The proposal includes rear amenity space which due to its triangular shape and diminishing gardens brings the residential uses closer to the commercial uses at the rear of the site. As such the development is not considered to accord with the Supplementary Guidance set out in Designing Walsall SPD. In particular Policy DW3 Character, DW5 Ease of Movement and DW8 Adaptability.

### Housing need



Chapter 5 of the NPPF relates to delivering a sufficient supply of homes. Paragraph 60 seeks to ensure the governments' objective of significantly boosting the supply of homes. Paragraph 61 relates to strategic housing supply policies and should be informed by local housing need. The council has an emerging housing supply shortfall and has recently failed the Housing Delivery Test because of low housing delivery over the last three years. Paragraph 73b of the NPPF seeks to ensure that the supply of new homes should be well located and designed, and supported by the necessary infrastructure and facilities including a choice of transport modes

The site is part of a commercial area and forms part advertising site/part car park to the adjacent clinic. The site lies within the built-up area of Willenhall. The housing scheme proposed is therefore supported on strategic planning policy grounds by BCCS policies CSP1 and HOU1, SAD policy HC2 and NPPF paragraphs 69 and 119.

Paragraph 74 relates to maintaining supply and delivery of housing sites over the development plan period. Local Planning Authorities should update annually a supply of deliverable sites against their housing requirement set out in adopted strategic policies.

The Black Country Core Strategy Policy HOU1 Delivering Sustainable Housing Growth seeks to create a network of cohesive, healthy, and prosperous communities and for the provision of sufficient land to provide for sustainable housing growth.

The latest available figures show that there was a 5 year housing land supply as at April 2021, however the Council failed the Housing Delivery Test published in January 2022 based on low levels of delivery over the last 3 years. This means that the size of the required supply buffer has increased resulting in the supply at the time of preparing this report being slightly less than 5 years, and the presumption in favour of sustainable development as described in the NPPF paragraph 11d) is in effect.

### **Access and parking**

The site is accessed via a shared access to the commercial premises of Walsall Road. To the front of the site are parking restrictions. The access is narrow and the car parking for the proposed development would be provided to the left of the access fronting Walsall Road.

The highways officer has expressed concerns about the amended plans and highlights the lack of adequate parking and turning provision within the site. Which may lead to conflict regarding the shared access to the adjacent commercial premises. In addition, the fencing in proximity to the access would restrict visibility and the stepped access to the dwellings would not be inclusive in design terms to users with disabilities. The fencing is proposed to maintain privacy for future occupants and would be retained.

The access to the parking spaces mixes residential traffic with commercial traffic parking and is likely to result in conflicts and disputes and not a safe environment for residents.

Para 110 of the National Planning Policy Framework 2021 seeks to ensure that specific plans for development should provide 'safe and suitable access to the site that can be achieved for all users' and that, under para 112, applications for development should 'give priority first to pedestrian and cycle movements, address the needs of people with disabilities and reduced mobility, create places that are safe and secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicle movements, allow for the efficient delivery of goods and access by service and emergency vehicles'.

The application is not considered to accord with the BCCS Policy TRAN2 Managing transport impacts of new development which seeks to ensure that application for development provide an acceptable level of accessibility and safety by all modes of transport to and from all parts of a development including, access by walking, cycling, public transport and car sharing and Policy DW5 Ease of movement in the Designing Walsall SPD.

### **Impact on residential amenity**

The site lies between commercial developments being a clinic to the West of the application site and the Three Tuns public house to the East of the application site. The proposed rear garden/amenity areas of the new dwellings would back onto the car parking area to the Clinic site as the Clinic shares the vehicular access with the proposed dwellings parking and turning area. Pedestrian access would be to the front and rear of the application site with a possible conflict with pedestrians and vehicles as the proposed gardens back onto the shared access.

The proposed dwellings are not considered to be adversely affected by overlooking to the rear gardens or amenity spaces other than from the potential for nearby commercial premises during hours of operation creating the potential for noise and disturbance. The site is enclosed to the rear by boundary fencing which is adjacent to the access to the parking for the wider site and plot 4. It is considered that the proposal meets with the separation distances in Annex D of Designing Walsall SPD but that does not preclude consideration of other matters in other Development Plan policies.

### **Impact on character of the area**

The proposed dwellings are similar in character to those opposite the site fronting Walsall Road. The dwellings are however situated in very close proximity to two locally listed heritage assets and medium harm is considered from the resulting development. There are no details of proposed materials but that could be potentially secured by a planning condition. The dwellings take reference from opposite the application site but the Heritage statement does not adequately assess the impact on the adjacent buildings and the context of the proposal in terms of design and materials. The site is fairly constrained and it is considered that the proposal would aim to squeeze 4 dwellings on a cramped site which in its scale, form, size and siting would fail to reflect the existing character of the locality in terms of its direct impact on the character and appearance of that part of Walsall Road in context with the surrounding buildings. Contrary to saved Policy GP2 and saved Policy ENV32 Environmental Protection of the

Walsall UPD and the BCCS Policy CSP4 Place Making and Policy ENV2 Historic character and local distinctiveness and the Designing Walsall SPD. In particular Policy DW3 Character, DW5 Ease of Movement and DW8 Adaptability.

### **Impact on heritage assets**

The site is adjacent The Three Tuns PH, No 1 Walsall Road and 170-173 Walsall Street, all three are locally listed and classed as non-designated heritage assets. That are in close proximity to the application site.

There is a further property of historical and architectural interest at 2 Walsall Road (currently functioning as beauty salon) – and although this building is not nationally designated or on the Local List it should also be given consideration as a non-designated heritage asset. This is due to the positive contribution the three buildings together make to the historic environment (and also in relation to the 18th century Toll House building on the other side of the Walsall Road / Birmingham Street junction) at this 'entry point' to Willenhall town centre.

Both the Manor House 1 Walsall Road, and the property currently at 2 Walsall Road (sometimes referred to as 'Holloway House') are of 19th century date and associated with the locally notable Harthill family, who were e.g. involved in the parish life of the nearby by Giles Church and medical professionals and clergymen in the town.

Paragraph 203 of the NPPF states *'The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset'*.

Whilst, the proposed dwellings are designed to replicate the dwellings on the opposite side of Walsall Road. The proposed dwellings would compete with 2 Walsall Road by virtue of their height, a non-designated heritage asset which has a medium to high level of significance due to its architectural features.

The proposed development would result in medium harm to the significance of the non-designated heritage assets, 2 Walsall Road and the Three Tuns Public House.

### **Flood risk and drainage**

The application site is situated in Flood Zone 1 an area at the lowest risk of flooding as defined on the Environment Agency Flood Map for Planning. There are no objections to the proposal from Severn Trent Water Authority and the proposal accords with the Black Country Core Strategy Policy ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island.

Drainage could be dealt with by a planning condition to secure details for the disposal of foul and surface water.

### **Other issues**

Regarding the existing advertising hoardings on the site. Poster contractors own the panels on which the posters are displayed; these contractors have rights to use the sites on which posters are placed. The contractor generally does not own the site, and the site owner may receive a rent from the contractor. The site presently has a right to advertise Mills and Allen Ltd – Advertising Right 614 Adjacent 3 Walsall Road Willenhall. These hoardings would need to be removed from the site to facilitate the development. There is limited information in the submission as to whether this hoarding is still in use presently.

The Coal mining report submitted with the application concludes that there is the possibility of shallow workings at the site and advises that intrusive investigations including boreholes should be carried out to identify the presence of workings at the site. If any workings are found, then a detailed ground investigation report and treatment would be required. Including a Coal Authority Licence closure document. These matters could be dealt with by a planning condition.

The site falls under the threshold for the need for open space contributions.

### **Air Quality**

Walsall has adopted Air Quality SPD and Policy ENV8 of the Black Country Core Strategy Air Quality relates to Promoting healthy living is a key element of the Sustainable Communities direction of change which underpins the Vision. Reducing exposure to poor air quality will improve the health and quality of life of the population and support Spatial Objectives. This application has failed to make an assessment of air quality, and has failed to provide details of any necessary mitigation measures and is therefore contrary to Black Country Core Strategy Policy ENV8 (Air Quality), the Air Quality SPD and the National Planning Policy Framework.

The Environmental Protection Officer has requested an air quality report in advance in accordance with WHO guidance. Officers requested this information, but this has not been submitted.

### **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 4 new homes.

The Government has indicated that, for 2020-21, 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.

## Conclusions and Reasons for Decision

Officers have spoken to the applicant's agent in this instance and requested amendments and additional information in accordance with the recommendations of statutory consultees. This information has not been forthcoming and as such there have not been changes put forward to overcome the Policy concerns and officers are unable to support the proposal.

Given that the amended plans submitted with this proposal gives no material planning considerations to overcome the policy concerns and nothing put forward in the current submission to provide support for the proposal in relation to highway safety, impact on heritage assets, air quality and the scale and form of the development proposed it is concluded that this application should be recommended for refusal.

## Positive and Proactive Working with the Applicant

Officers have spoken to the applicant's agent in this instance as there are no recommendations considered sufficient that could be changed in order to overcome the Policy concerns and no amendments put forward that would overcome the concerns officers are unable to support the proposal.

## Recommendation

Refuse

## Reasons for Refusal

1. The proposed shared vehicular access and parking area with no turning head is considered to be inadequate. The access serves as a rear access to the adjacent commercial premises, and the development proposed. The parking and turning provision is constrained and limited and if permitted, the development would add further vehicular traffic to this road from new residents, visitors, and service and delivery vehicles, resulting in added congestion and obstruction to the detriment of the existing residents. Resulting in the potential for pedestrian and vehicular conflicts detrimental to the safe and satisfactory operation of the development and to highway safety contrary to UDP Policy GP2, T1, and the NPPF 2021.
2. The proposed layout of 4 no. 3 bedroom houses with associated access and parking provision within the site is cramped in terms of scale, mass and design. There is insufficient room within the site to park and turn around adequately. Plot 1 has limited amenity space and overall, the proposal is a cramped form of development on a constrained site with the potential for conflict between pedestrians and vehicles. As such the development is not considered to accord with the Supplementary Guidance set out in Designing Walsall SPD. In particular Policies DW3 Character, DW5 Ease of Movement and DW8 Adaptability.

3. The proposed development fails to provide adequate justification in terms of its impact on nearby local heritage assets. The proposal would involve the erection of four terraced dwellings which would create less than substantial harm to the setting of the adjacent locally listed heritage assets and there is insufficient information in the submission to demonstrate the significance of the heritage assets and how the proposal would impact on them contrary to Paragraph 194 and 195 of the National Planning Policy Framework. The Black Country Core Strategy ENV2 Historic Character and Local Distinctiveness.
4. This application has failed to make an assessment of air quality, and has failed to provide details of any necessary mitigation measures and is therefore contrary to Black Country Core Strategy Policy ENV8 (Air Quality), the Air Quality SPD and the National Planning Policy Framework.

## **END OF OFFICERS REPORT**