



## Planning Committee

Report of Head of Planning, Engineering and Transportation on 04-Oct-2018

**Plans List Item Number: 1.**

### Reason for bringing to committee: Major application

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

**Proposal:** OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 252 DWELLINGS (ACCESS AND SCALE TO BE CONSIDERED)

**Application Number:** 11/1411/OL

**Applicant:** Caparo Industries PLC

**Agent:** Harris Lamb

**Application Type:** Outline Permission: Major Application

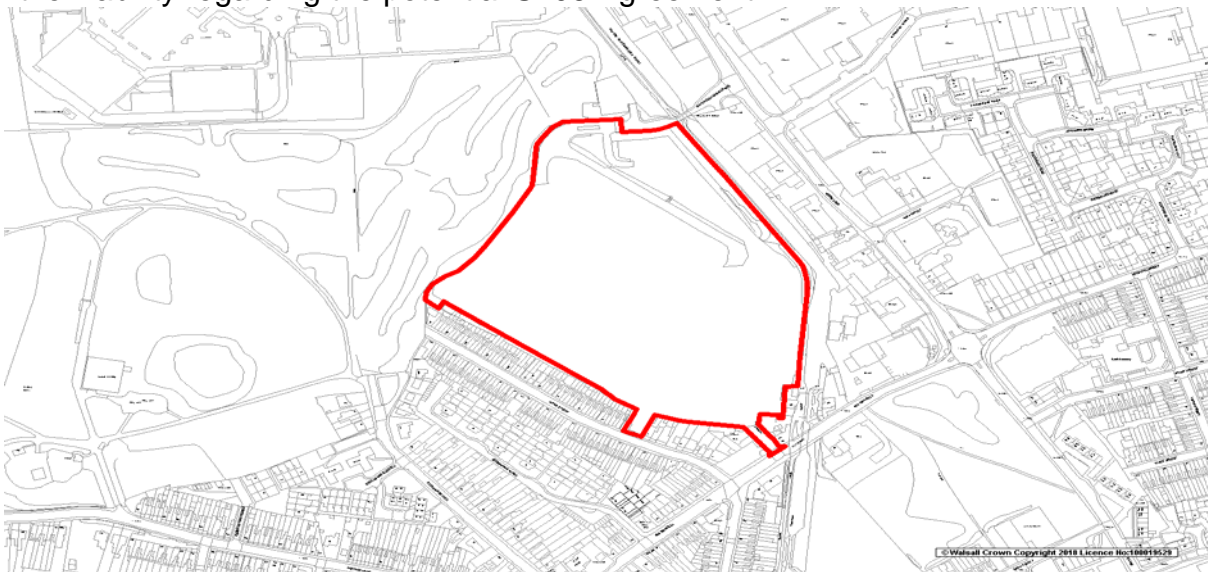
**Case Officer:** Alison Ives

**Ward:** Birchills Leamore

**Expired Date:** 06-Feb-2012

**Time Extension Expiry:**

**Recommendation Summary:** Grant permission subject to conditions and a S106 Agreement to secure affordable housing and urban open space unless the independent valuation confirms that the viability of the scheme would not allow for such. Delegate to the Head of Planning, Engineering & Transportation subject to no new representations following publicity of amended plans and subject to any necessary amendments to conditions to address consultee responses and to resolve the viability regarding the potential S106 Agreement.



## Current Status

The application was originally registered in November 2011. At that time the application was described as “Outline application (considering access only) for up to 310 dwellings. Resubmission of 08/0163/OL”. On 5<sup>th</sup> January 2012 Committee resolved to grant permission subject to conditions and a S106 Planning Obligation as set out in the report. The S106 was to have delivered the following:

- Equivalent of 14% Affordable Housing towards shared equity housing
- A maximum of £965,000 towards Walsall Children Services with any surplus from this figure directed towards other service areas (e.g. Greenspaces)
- £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

The S106 has not been completed hence the application remains undetermined.

In April 2018 the application was updated with new supporting documents and a viability assessment provided in order to justify waiving any S106 obligations. In September 2018 amended details were provided extending the application site boundary along Old Birchills to incorporate highway improvements and to change the description to “Outline application for residential development of up to 252 dwellings (access and scale to be considered)”. Reserved matters to be determined at a later stage are appearance, landscaping and layout.

The applicant's details have also been updated as Receivers for the Caparo 1988 Pension Scheme.

The following supporting documents have been updated:

Design & Access Statement, Heritage Statement, Supplemental Site Investigation Report, Transport Assessment, Residential Travel Plan, Ecological Appraisal, Flood Risk Assessment and Drainage Strategy, Noise Assessment, Air Quality Assessment, Financial Viability Assessment.

## Proposal

The application seeks outline permission for residential development of up to 252 dwellings, considering access and scale only.

The proposed layout plan identifies the main vehicular access from Green Street (off Old Birchills) leading into the site. This is 5.5m wide with footways on either side. The amended plan extends the site boundary along the highway in Old Birchills to incorporate the land required for highway improvements proposed in the form of curb realignment and vehicle turning lanes. There is an emergency access to the site via Rayboulds Bridge off Green Lane that will be available for pedestrians and cyclists. There is a further pedestrian access leading from the site onto Miner Street and a pedestrian access to the Wyrley & Essington Canal.

In terms of scale the proposals identify up to 252 dwellings and the supporting documents identify this could be a mixture of 2 to 4 storey buildings including a mix of housing and apartments throughout the site to respect the surrounding context.

The site is 6.6 hectares.

Design & Access Statement – Describes the site context, proposals, potential layout, scale, access, parking and refuse provision, boundary treatments, landscape design and sustainability.

Heritage Statement – Concludes the physical impact to Walsall Junction Conservation Area would not significantly affect its architectural or historic values and the non-designated heritage assets affected are of negligible value. The setting of designated heritage assets, Old Birchills Toll House and Boatman's Rest are not adversely affected and their setting may be enhanced by demolition of current building that detract from them.

Geoenvironmental Investigation Desk Study and Factual Report (2011) – Prepared when the application was originally submitted in 2011. This identifies the site history, geology and mining, hydrology, hydrogeology and gas risks. It also gives results of fieldwork, soil-gas and groundwater monitoring, chemical testing and geotechnical testing. It identifies a risk evaluation and remediation proposals.

Supplemental Site Investigation Report – This supplements the original site investigation desk study. There were 22 trial pits and 16 light percussion boreholes undertaken to enable detailed investigation of sub-surface ground conditions. Conditions identified include subsurface obstructions (e.g. relic foundations, below ground pits and tunnels, redundant site drainage), deep made ground, elevated levels of metals within made ground, PAH hotspots at 0.8m below ground level, elevated VOCs in soils, asbestos, elevated levels of carbon dioxide, Japanese Knotweed, a 34m depth shaft, Limestone Mining considerations, pile design to take account of shallow mine workings. Proposals for dealing with these are included in the report.

Transport Assessment – Identifies the site as being highly accessible to the local highway network with links to the strategic highway network. Traffic surveys and analysis of road traffic accidents have been carried out identifying no existing highway safety concerns that may be exacerbated by the proposals. Pedestrian and cycle links are close to the site and give access to Walsall town centre, there are frequent bus services and access to Walsall railway station. A new primary ghost island priority junction with Old Birchills is proposed plus a TRO along the extent of the primary access (double yellow lines). A secondary emergency access that will also provide pedestrian and cycle access is proposed off Rayboulds Bridge. Parking and cycle storage can be accommodated on site. Travel demand indicates approximately two additional vehicles every minute as a result of the proposals. The signalised junction at Green Lane/Hospital Street/Old Birchills operates over capacity and some phasing/timing adjustments may be required. The proposals will result in cumulative implications on Junction 10 of the M6 but as these impacts are expected as part of the wider growth of the local area and have been considered as part of the planned major highways scheme. In conclusion the proposals would have no significant impact on the surrounding highway network.

Residential Travel Plan – Details sustainable travel measures to be made available for the proposed development with a main objective of reducing single occupancy car trips in favour of more sustainable modes of transport. A Travel Plan Co-Ordinator will be appointed to monitor for a period of five years post initial occupation.

Ecological Appraisal – This identifies habitats of brownfield land subsequently vegetated with scrub and short perennial species with the exception of a belt of trees along the north-eastern boundary which benefits the green infrastructure along the boundary with the canal. There is limited potential for common amphibians, badgers are not currently resident on site, no evidence of roosting bats as the buildings on site have negligible potential to support roosting bats and trees have low potential to support roosting bats, no reptiles were recorded on site, nesting birds should be safeguarded. Japanese Knotweed is also present on site.

Precautionary measures during site clearance are recommended to protect all species including a review for new evidence of badger activity no less than 3 months prior to commencement of works, precautionary felling of trees, sensitive lighting, avoidance of vegetation removal during bird nesting season (Sept-Feb) and a Method Statement for removal of vegetation detailing best ecological practice. If works to the canal become necessary a survey and assessment for water voles and white-clawed crayfish should be undertaken prior to any works commencing.

Flood Risk Assessment and Drainage Strategy – Assesses risk of flooding at the site and identifies the site within Flood Zone 1 (low risk of fluvial and tidal flooding) and low risk of flooding from other sources. In order to ensure the proposed development does not have an adverse impact and increased flood risk elsewhere sustainable drainage of surface water and foul drainage should be achieved. Surface water run-off will be designed to achieve less than greenfield run-off and discharged into public sewers at a limited discharge rate (15 litres per second) requiring attenuation storage and SuDS design. Foul water will be discharged into the combined sewer in Old Birchills.

Noise Assessment – Main sources of noise are identified as traffic on Green Lane and Old Birchills and industrial activity at Walsall Boat Builders. Noise monitoring was carried out at four locations in September 2017. Existing noise levels are below current World Health Organisation guidelines in outdoor living areas and indoor noise limits can be achieved by thermal double glazing with windows closed. Acoustic ventilation will be incorporated where required. Appropriate mitigation will be required to protect future residents from noise from Walsall Boat Builders as the specific noise level exceeds the daytime background noise level.

Air Quality Assessment – Identifies construction phase and operational phase air quality measures. Specific mitigation measures are proposed for construction phase to reduce the effects from earthworks, construction and trackout. There will be negligible impact on air quality from development-generated vehicles and air quality effects within the site will not be significant. Mitigation measures are proposed in accordance with the Air Quality SPD.

Financial Viability Assessment - Demonstrates how the scheme is unviable with 25% full policy compliant affordable housing provision and would fail to deliver housing to the open market. With full policy compliant affordable housing the project would deliver a profit margin of -0.9% on the gross development value. Without any affordable housing the

project delivers a profit margin of 13.11%. A list of abnormalities on the site is identified such as contamination, deep made ground materials, elevated metals, asbestos, Japanese Knotweed, mine shafts and Limestone mining, pile design and the need for 750cm capping across the site. The detailed costs include for suspended floor slabs, piling, imported topsoil, stormwater attenuation, remediation/gas membrane/mine shafts.

## **Site and Surroundings**

The application site comprises the land formerly occupied by Caparo Industries and is bordered by Miner Street, the Wyrley and Essington Canal and Reedswood Park and Golf Course. To the southeast of the site is located a public house and the former lock museum and Top Lock Cottage. The site has now been largely cleared of buildings with only minimal structures remaining.

The site is accessed principally from Green Street, off Old Birchills. Also located on Green Street is a small car repairs business. The Caparo Industries southern car park (fronting onto Old Birchills) is not included in the application site. Rayboulds Bridge is an adopted public highway.

The existing site 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 UDP but is allocated for housing development in the emerging SAD. Much of the canal, which bends around the site, is designated as a Conservation Area with the locks being listed. In addition Old Birchills Tollhouse (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 Mine Consideration Zone. The site is in Flood Zone 1.

This proposal has been screened under the Environmental Impact Assessment Regulations (2017) and found not to require an Environmental Statement as part of this planning application.

## **Relevant Planning History**

08/0163/OL – Outline Application for residential development of up to 310 dwellings (access and scale to be considered) – GSC & S106 Agreement 30/11/2010. The S106 Agreement sought to secure 14% affordable housing, £965,000 education contribution and junction improvement contributions.

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

### Former Canal Museum

17/1330 (& 17/1331 Listed Building Consent) - Change of use from D1 (Canal Museum) to C3 dwelling house and erection of single storey rear extension - GSC 04/07/18.

206 Old Birchills

13/0936/FL (& 17/0937/LB Listed Building Consent) - Change of use from offices to residential including general refurbishment of the building and internal and external alterations – GSC 10/01/14. Various minor amendments granted subsequently.

## **Relevant Policies**

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

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

On **consultation** the NPPF makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs. Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days. Statutory

consultees should be aware of the risk that, should they fail to respond within a specified time period, a local planning authority may proceed to decide the application in absence of their advice.

### **Local Policy**

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

### **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
- EMP1: Providing for Economic Growth
- EMP3: Local Quality Employment Areas
- EMP4: Maintaining a Supply of Readily Available Employment Land
- 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
- ENV4: Canals
- ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island
- ENV6: Open Space, Sport and Recreation
- ENV7: Renewable Energy
- ENV8: Air Quality
- WM5: Resource Management and New Development

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- GP3: Planning Obligations
- GP6: Disabled People
- ENV10: Pollution
- ENV11: Light Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV24: Wildlife Corridors
- ENV25: Archaeology

- ENV26: Industrial Archaeology
- ENV27: Buildings of Historic or Architectural Interest
- ENV29: Conservation Areas
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- ENV40: Conservation, Protection and Use of Water Resources
- JP5: Core Employment Areas
- JP8: Bad Neighbour Industrial Uses
- H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings
- T1 - Helping People to Get Around
- T4 - The Highway Network
- T5 - Highway Improvements
- T7 - Car Parking
- T8 – Walking
- T9 – Cycling
- T10: Accessibility Standards – General
- T11: Access for Pedestrians, Cyclists and Wheelchair users
- T13: Parking Provision for Cars, Cycles and Taxis
- LC1: Urban Open Spaces

### **Emerging Site Allocation Document**

HC1: Land allocated for New Housing Development (Site HO181 – Former Caparo)

HC3: Affordable Housing and Housing for People with Special Needs

### **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
- NE10 – Tree Preservation Order

#### **Designing Walsall**

- DW1 Sustainability
- DW2 Safe and Welcoming Places



- DW3 Character
- DW5 Ease of Movement
- DW9 High Quality Public Realm
- DW9(a) Planning Obligations and Qualifying development
- DW10 Well Designed Sustainable Buildings

### **Open space, sport and recreation**

- OS1: Qualifying Development
- OS2: Planning Obligations
- OS3: Scale of Contribution
- OS4: Local Standards for New Homes
- OS5: Use of Contributions
- OS6: Quality and Value
- OS7: Minimum Specifications

### **Affordable Housing**

- AH1: Quality of Affordable Housing
- AH2: Tenure Type and Size
- AH3: Abnormal Development Costs
- AH4: Provision Location
- AH5: Off Site Provision

### **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**

**Archaeologist** – Comments awaited.

**Building Regulations** – No comments on access consideration only.

**Canal & River Trust** – Comments awaited.

**Coal Authority** – No objections. The Coal mining legacy potentially poses a risk to the proposed development and further intrusive site investigation works are necessary to establish the exact situation regarding coal mining legacy issues on the site. A condition to secure this is recommended.

**District Valuation Officer** – Comments awaited.

**Education Services** – No comments received.

**Environment Agency** – No objections. A condition is recommended to protect controlled waters. A comprehensive assessment had been undertaken and all groundwater quality samples obtained indicated that no dissolved pollution seemed present. The soil analyses data showed that there were some (shallow) areas of metal and hydrocarbon pollution, which had been broadly delineated and put forward for remediation in order to remove potential long-term sources. The Agency agree this approach and the applicants specific conclusions for ground and surface waters at the time (i.e. Georisk concluded that there was not a significant risk to Controlled Water receptors at the site, having only found perched water within the varying Made Ground deposits and no linkage to the adjacent canal either). On this basis the Agency endorsed the applicants outline clearance and clean-up proposals.

**Fire Service** – No objections subject to provision of suitable water supplies for firefighting purposes.

**Flood Risk Officer** – The site is in Flood Zone 1. No objections subject to the development being carried out in accordance with the details in the submitted Flood Risk/Drainage Strategy. A condition is recommended to secure such measures.

**Historic England** – Specialist conservation and archaeological views should be sought where relevant. The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3 (2nd edition) recommends a staged approach to the assessment of impact based on an understanding of the significance of the heritage assets involved, how their setting contributes to their significance and how this will be changed by the development.

**Natural England** – Up to date ecological appraisals have been provided to enable the Council to fully assess ecological impacts.

**Pollution Control** – No objections in principle. Conditions are recommended to ensure the future occupants and their homes are not exposed to significant levels of contaminants and ground gases; noise mitigation measures are undertaken to protect future occupants; electric vehicle charging points are installed for use by future occupants and an Environmental Management Plan is implemented to control noise, vibration, dust and debris drag-out during engineering or construction works.

**Strategic Housing** – The original consideration of the application set the affordable housing complement at 14%. However, reviewing the application in the current policy climate 25% affordable housing would be sought, this equates to 63 dwellings. The tenure of the affordable housing is recommended as a mixture of social rent and shared ownership units.

**Structures** – Awaiting comments.

**Transportation** – No objections subject to addressing issues in respect of highway design. Whilst it is acknowledged the proposal has been previously approved, highway design guidance has changed since and there are a number of design issues around the submitted layout mainly concerning access to the site. This will need to be secured as part of a Reserved Matters submission.

Parking provision of about 220% across the development is indicated which is considered acceptable taking into account the site being in a relatively sustainable location. The predicted trips to the site will impact on the A34 Green Lane/Old Birchills junction and therefore improvements have been recommended by the applicant's Transport Consultant, the details and costs of which to be agreed with the Highway Authority.

## Representations

Three letters of objection received summarised as follows:

- Another 310 houses not needed in the area
- Existing properties difficult to sell
- Poor reputation in the area
- Many occupiers of proposed houses will be on benefits so costs the Council
- Heavy traffic congestion in the surrounding area already
- How close are properties to neighbours
- Support the development in principle with reservations regarding how the proposals impact on the Listed Buildings Old Birchills Tollhouse and Boatman's Rest
- More details required on the proposed method of demolition of the warehouse which is attached to the Listed Buildings
- More details required on levels and boundaries to maintain security and outlook to the Listed Buildings
- The boundary wall is in Walsall Locks Conservation Area and requires consent
- Concern over safety of the partially demolished warehouse building
- Falling debris from the partially demolished warehouse
- Unsatisfactory demolition has caused the walls of the warehouse to bow (as confirmed by a Chartered Surveyor)
- An independent survey identifies that the retaining walls need rebuilding with designed drainage and waterproofing systems
- No remediation to wall in three years and this is causing damage to the Listed Buildings (including water ingress dissolving mortar in the foundations due to high sulphate levels)
- Request rebuilding of wall and some interim security/safety measures to prevent risk to human safety
- Water drainage details are required
- An independent survey of the "rear boundary wall and other matters" has been prepared by a Chartered Surveyor on behalf of the objector which concludes:
  - *Areas of the boundary wall at former Caparo works are unstable and could collapse onto 206 Old Birchills*
  - *The vegetation growth along the boundary wall is disturbing masonry loosening brickwork and vulnerable to dropping onto 206 Old Birchills*
  - *The method of demolition of buildings at the Caparo site has not considered stability and made them vulnerable to movement*

- *The demolition of buildings at the Caparo site and abandoned drainage system means increased levels of water are likely to enter the ground on the Caparo site*
- *Groundwater on the Caparo site contains elevated levels of contaminants which are potentially hazardous to public health*
- *A means of intercepting and collecting any contaminated ground water flows needs to be installed*

## **Determining Issues**

- Principle of Development
- Means of Access
- Scale of Development
- Relationship to surrounding properties
- Ground Conditions (pollution/coal/limestone/flood risk)
- Ecology
- Impact on Heritage Assets
- Provision for affordable housing and open space
- Local Finance Considerations

## **Assessment of the Proposal**

### **Principle of Development**

The principle of redevelopment for residential purposes has previously been accepted by Planning Committee in their resolution to grant permission in 2012.

BCCS policy CSP1 seeks to create a network of regeneration corridors to provide for strategic local employment and new homes. This site would contribute towards provision of new homes. Policy HC1 of the emerging SAD allocates the site for residential development.

Residents are concerned there is no need for new housing in the area. Nevertheless the Development Plan relies on the Council to allocate land to deliver new homes and this proposal will contribute towards that provision.

The site is a vacant brownfield site that is in a highly sustainable area.

The principle of residential development of the site is supported.

### **Means of Access**

The means of access to the site is via Green Street with a secondary emergency access via Rayboulds Bridge. The Transport Assessment demonstrates the site is highly sustainable and the proposals will cause no significant highway safety concerns. It does acknowledge that there will be additional traffic and this will be safely accommodated including proposed alterations to the highway in Old Birchills to create a right turn lane and some adjustment to the traffic signals timing on Old Birchills/Green Lane/ Hospital Street. A TRO is also proposed to prevent on-street parking at the Green Street access. Other measures to encourage sustainable means of travel are included such as appointing a

Travel Plan Co-Ordinator to help implement the proposed Travel Plan and by providing pedestrian/cycle links and cycle storage.

Whilst there will be cumulative impacts of additional traffic on Junction 10 of the M6 these are accommodated as part of the planned major highways scheme for the area.

Despite residents' concerns about increased traffic congestion in the area the proposals have taken into consideration the cumulative impact and the access arrangements will not have severe impacts on the surrounding highway network.

The access is 5.5m wide which is acceptable provided that the emergency access is available. Transportation officers accept this arrangement. Works to provide highway improvements will be secured by a S278 Highways Agreement.

The pedestrian access onto Miner Street will improve access for residents to the wider transport network (bus/cycle routes) without allowing additional vehicles to utilise this access onto Miner Street, which is already heavily congested.

On the basis of the above the proposals have demonstrated how the access can accommodate routes into the site that link with existing networks and comply with the NPPF and BCCS policies CSP5, TRAN2, TRAN4, TRAN5 and saved UDP policies GP2 and T10.

### **Scale of Development**

The proposals indicate up to 252 dwellings, which equates to a density of 38 dwellings per hectare. Paragraph 122 of the NPPF advises planning decisions should support development that makes efficient use of land taking account of the need for different forms of housing, local market and viability, availability and capacity of the infrastructure and services and the scope to promote sustainable travel modes. This scale of development in terms of this density proposed is considered appropriate at this sustainable site.

Consideration of the scale of development includes the size of the development, including the height, width and length of each proposed building. Whilst the layout is not for consideration as part of this outline application the scale of the buildings indicated in supporting documents and suggested heights of between 2 to 4 storeys is considered acceptable and allows provision of a mixed development to take account of the surrounding context.

This accords with the principles of the NPPF and BCCS policies CSP4 and HOU2 and saved UDP policies GP2, ENV32 and H3.

### **Relationship to surrounding properties**

This outline application does not consider layout although supporting documents demonstrate how a layout may be accommodated on site. In the circumstances matters of consideration as to how the development will relate specifically to individual surrounding properties cannot be determined at this stage and will be a reserved matter for later consideration. Nevertheless the indicative layout demonstrates that minimum separation distances between dwellings both within and surrounding the site can be achieved.

There are existing industries on the opposite side of the canal and near the entrance to the site that will have a potential to impact on the future occupiers at the site in terms of noise, disturbance and air quality. Pollution Control officers have recommended conditions to ensure amenities are protected.

Neighbour concerns regarding the safety of the partially demolished buildings on site and potential for damage to private property by falling debris, water seepage and contamination is a civil matter between the applicant and neighbouring occupiers. Although the buildings about the adjacent Listed Buildings site they do not form part of the Listing. Other matters raised in terms of required details of levels, boundary treatments and drainage will be matters for consideration at reserved matters stage and conditioned accordingly.

It is considered that the redevelopment of the site for residential purposes is more in keeping with the character of the surrounding area and will offer an improvement both environmentally and visually to surrounding occupiers. This accords with saved UDP policies GP2, ENV32 and H3.

### **Ground Conditions (pollution/coal/limestone/flood risk)**

#### *Pollution*

Recent intrusive ground investigations have been carried out to determine the level of contaminants on site and proposals for a remediation strategy to mitigate any harmful effects. This will include provision of ground gas mitigation measures, further geotechnical advice to inform foundation design, methods of handling asbestos and eradicating Japanese Knotweed, provision of clean cover to residential gardens and methods for remediation of hydrocarbons. Pollution Control officers are satisfied that a suitable remediation strategy can be agreed by condition. Neighbour concerns regarding potential for contaminants to enter the groundwater or affect neighbouring properties will be addressed by appropriate mitigation and remediation. In terms of noise officers agree with the noise assessment recommendation for provision of acoustic glazing and ventilation and sound attenuation where required. A condition is recommended to control the impacts of remediation, engineering and construction works through a Management Plan to be secured by condition. There will also be a requirement for electric vehicle charging points and low NOx boilers in order to reduce emissions and accord with the Air Quality SPD. With these safeguarding measures in place the proposals will accord with BCCS policies ENV7 and ENV8 and saved UDP policies GP2, ENV10 and ENV14 and Air Quality SPD.

It is recommended that permitted development for extensions, garden buildings, hardstanding and boundary treatments at any new dwellings is removed given the ground contamination issues and inevitable requirement for gas protection measures.

#### *Coal*

The Coal Authority have identified that the coal mining legacy across the site poses a risk to the proposed development and further intrusive investigations are necessary. They recommend a condition to secure the intrusive investigations and appropriate mitigation and subject to this provision have no objections. The proposals thereby accord with saved UDP policies GP2 and ENV14.

### *Limestone*

The site is partly within the Limestone Mine Consideration Zone. This affects the part of the site nearest to Green Street and includes the access, the former Caparo car park (not within the application site) and adjacent boat yard. The indicative layout provided in the supporting documents suggests there will be no new buildings or structures within this area but may include a water attenuation feature. The comments of the Structures officer will be updated at committee.

### *Flood Risk*

The site is in Flood Zone 1 with low risk of fluvial and tidal flooding and low risk of flooding from other sources. In order to ensure the proposed development does not have an adverse impact and increased flood risk elsewhere sustainable drainage of surface water and foul drainage is proposed with appropriate attenuation. The Flood Risk officer is satisfied that these measures are achievable and a condition recommended to secure such measures. This accords with BCCS policy ENV5 and saved UDP policy ENV40.

### **Ecology**

An up to date ecological appraisal has been carried out by a qualified specialist. This identifies habitats and species present on site. The appraisal confirms limited potential for common amphibians, badgers are not currently resident on site, no evidence of roosting bats as the buildings on site have negligible potential to support roosting bats and trees have low potential to support roosting bats, no reptiles were recorded on site, nesting birds should be safeguarded. Japanese Knotweed is also present on site.

Precautionary measures during site clearance are recommended to protect all species including a review for new evidence of badger activity no less than 3 months prior to commencement of works, precautionary felling of trees, sensitive lighting, avoidance of vegetation removal during bird nesting season (Sept-Feb) and a Method Statement for removal of vegetation detailing best ecological practice. If works to the canal become necessary a survey and assessment for water voles and white-clawed crayfish should be undertaken prior to any works commencing.

On this basis the ecology should not pose a constraint to development on site subject to conditions as recommended in the ecological appraisal. This is in accordance with BCCS policy ENV1 and saved UDP policy ENV23 and SPD Conserving Walsall's Natural Environment.

### **Impact on Heritage Assets**

The site adjoins Walsall Locks Conservation Area and Old Birchills Tollhouse and former Boatman's Rest Listed Buildings.

The redevelopment of this derelict site for residential purposes and remediation works to deal with contamination on the site are considered to offer an improvement to the area and will have a positive impact on the adjacent Heritage Assets.

Both Listed Buildings have recent consents for conversion to residential premises (see planning history). The neighbouring occupier of the Listed Buildings is concerned about how the proposals may impact on these Heritage Assets as the application site is at a higher ground level and they have concerns for safety/security of the property and method of demolition of the buildings and potential contamination and water seepage from the site

that abuts the Listed Buildings curtilage. These matters are addressed earlier in the report as detailed matters subject to reserved matters approval but conditions are recommended to secure appropriate measures.

### **Provision for affordable housing and open space**

Under the terms of policies DEL1 and HOU3 of the BCCS and SPD Affordable Housing the proposal triggers the need for provision of affordable housing. Provision of 25% would equate to the need for 63 units. This would comprise a mix of social rent and shared ownership units to be secured by a S106 Agreement. Whilst the Committee previously approved a lower level of affordable housing (14%) for the site given the lapse of time since the application was originally considered a current review of policies has been undertaken.

Under the terms of policies DEL1 of the BCCS and policies GP3 and LC1 of the UDP and SPD: Urban Open Space the proposal triggers the requirement for a contribution towards provision of urban open space. This would be based on the number of overall bedrooms, which is not known at this time as the layout is not for consideration. However, based on the policy requirements a contribution should be secured by a S106 Agreement in accordance with the levels of contribution highlighted in the SPD Urban Open Space.

The 2012 committee resolution included for contributions towards Education provision and junction improvements (and any excess towards open space). Education have not responded to the consultation response. In the circumstances, it is assumed there is no provision required for Education purposes. In terms of junction improvements, the proposals include for junction improvements at Old Birchills to be secured through a S278 Agreement and conditioned on any approval.

The developer has provided a new Viability Assessment highlighting that the viability of the scheme is such that nil affordable housing can be provided. Also that no other contributions can be secured for the site given the abnormal costs for this contaminated site with mining and limestone legacy issues. The developers have identified a profit margin of just 13.11% (-0.9% if 25% affordable housing is required). The Viability Assessment is currently being reviewed by the District Valuation Office and by an independent surveyor at Lambert, Smith Hampton. Comments will be updated at committee.

It is recommended that measures for affordable housing and urban open space provision are secured by a S106 Agreement unless the District Valuation Officer or independent surveyor concur with the developer that the development would not be viable were such obligations to be secured.

Neighbouring occupiers are also concerned that properties would be difficult to sell as the area has a poor reputation.

### **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 up to 252 new homes.

The Government has indicated that, for 2018-19, 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. In 2018-19 the total payments, taking account of completions over the last 4 years, are expected to amount to £3,637,301.

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**

The principle of redevelopment for residential purposes has previously been accepted by Planning Committee in their resolution to grant permission in 2012 and the site is allocated for residential development in the emerging Site Allocation Document. The proposal is supported in principle and accords with BCCS policy CSP1 and HC1 of the emerging Site Allocations Document.

The means of access will cause no significant highway safety concerns and measures to improve the access are proposed and other measures to encourage sustainable means of travel are included. The proposals have demonstrated how the access can accommodate routes into the site that link with existing networks and comply with the NPPF and BCCS policies CSP5, TRAN2, TRAN4, TRAN5 and saved UDP policies GP2 and T10.

This scale of development in terms of this density proposed is considered appropriate at this sustainable site and the scale of the buildings indicated in supporting documents and suggested heights of between 2 to 4 storeys is considered acceptable and allows provision of a mixed development to take account of the surrounding context. This accords with the principles of the NPPF and BCCS policies CSP4 and HOU2 and saved UDP policies GP2, ENV32 and H3.

This outline application does not consider layout although supporting documents demonstrate how a layout may be accommodated on site. Nevertheless the indicative layout demonstrates that minimum separation distances between dwellings both within and surrounding the site can be achieved to protect residential amenities. Pollution Control officers have recommended conditions to ensure amenities are protected from surrounding industry.

Neighbour concerns regarding the safety of the partially demolished buildings on site and potential for damage to private property by falling debris, water seepage and contamination is a civil matter between the applicant and neighbouring occupiers. Other concerns are matters for consideration of reserved matters.

It is considered that the redevelopment of the site for residential purposes is more in keeping with the character of the surrounding area and will offer an improvement both environmentally and visually to surrounding occupiers. This accords with saved UDP policies GP2, ENV32 and H3.

Potential harmful effects from pollution are addressed through safeguarding measures to be secured through conditions in accordance with BCCS policies ENV7 and ENV8 and saved UDP policies GP2, ENV10 and ENV14 and Air Quality SPD.

The coal mining legacy can similarly be addressed by requirement for appropriate intrusive investigations and mitigation to be secured through conditions in accordance with saved UDP policies GP2 and ENV14. Limestone matters will be addressed prior to commencement of any development. Flood Risk can be appropriately mitigated against in accordance with BCCS policy ENV5 and saved UDP policy ENV40.

Ecology should not pose a constraint to development on site subject to conditions as recommended in the ecological appraisal. This is in accordance with BCCS policy ENV1 and saved UDP policy ENV23 and SPD Conserving Walsall's Natural Environment.

The redevelopment of this derelict site for residential purposes and remediation works to deal with contamination on the site are considered to offer an improvement to the area and will have a positive impact on the adjacent Heritage Assets in accordance with saved UDP policy ENV29.

Provision for affordable housing and urban space will be secured by a S106 Agreement unless the independent valuer confirms the scheme is unable to provide for such given the viability of the scheme.

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 up to 252 new homes.

Taking into account the above factors it is considered that the application should be recommended for approval.

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

#### **Approve**

Officers have spoken with the applicant's agent and in response to concerns raised regarding coal mining issues and highway matters amended plans and supporting information has been submitted which enable full support to be given to the scheme.

### **Recommendation**

Grant permission subject to conditions and a S106 Agreement to secure affordable housing and urban open space unless the independent valuation confirms that the viability of the scheme would not allow for such. Delegate to the Head of Planning, Engineering & Transportation subject to no new representations following publicity of amended plans and subject to any necessary amendments to conditions to address consultee responses and to resolve the viability regarding the potential S106 Agreement.

### **Conditions and Reasons**

To follow.

Economy and Environment, Development Management

## Planning Committee

Report of Head of Planning, Engineering and Transportation on 04-Oct-2018

**Plans List Item Number: 2.**

**Reason for bringing to committee: Called in by Councillor Burley on the grounds of requiring delicate judgement**

**Location:** FORMER LANE ARMS PH, 169 WOLVERHAMPTON ROAD WEST, BENTLEY

**Proposal:** ERECTION OF 12 NO. THREE BED HOUSES WITH ASSOCIATED PARKING AND LANDSCAPING

**Application Number:** 17/1377

**Applicant:** Sanman Properties

**Agent:** Lapworth Architects

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

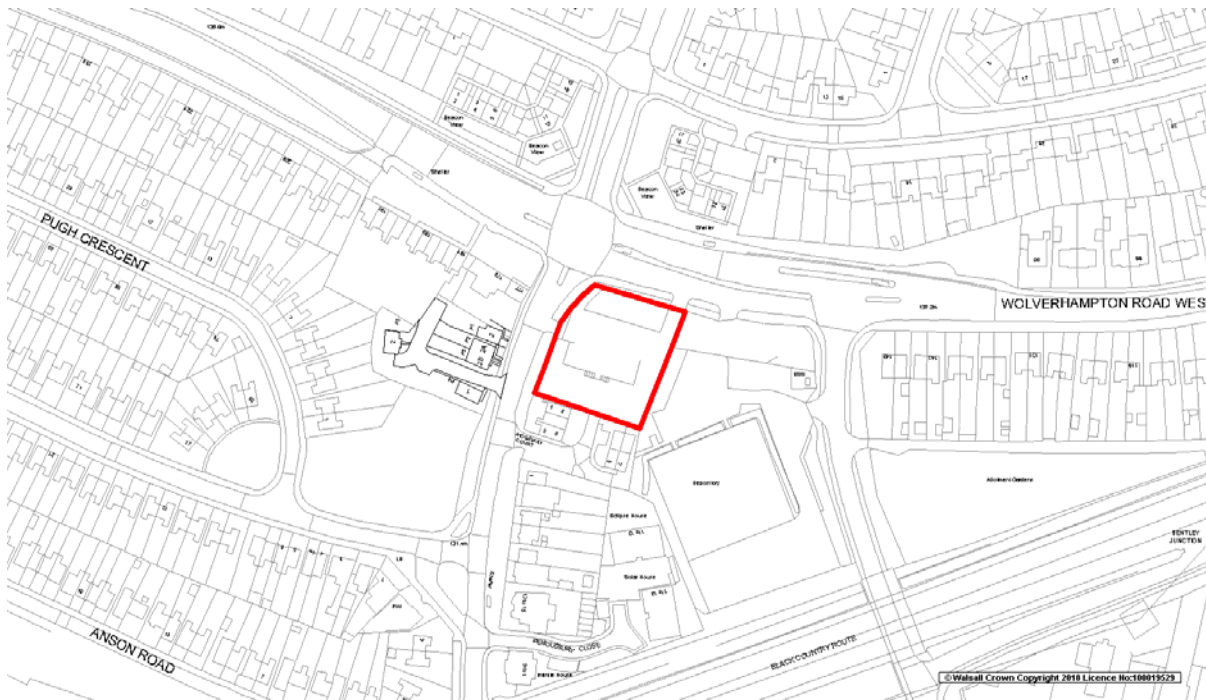
**Case Officer:** Paul Hinton

**Ward:** Bentley And Darlaston North

**Expired Date:** 16-Jan-2018

**Time Extension Expiry:**

**Recommendation Summary:** Refuse



## Proposal

This application seeks planning permission for the erection of 12 no. three bedroom houses on the site of the former Lane Arms Public House. The public house was demolished some years ago. Eight terraced houses are proposed fronting Wolverhampton Road West and four terraced houses would front Bentley Road North. These four houses would each have a front single vehicle driveway. A vehicle access drive with secure gate is proposed to the south of the site leading to a sixteen space car park at the rear of the houses.

The houses would be identical in appearance being 2.5 storey with front facing casement dormer window. Architectural detailing include stone detailing around windows and doors. Side facing windows and dummy (tax) windows are proposed to the side elevations of the houses fronting Wolverhampton Road West. Each house would have a rear garden 12m in length and 54sqm in area.

The following information has been submitted in support of the application:

### *Design and Access Statement*

- The development of this site will help bring vitality to the town, increase activity on the streets thereby improving community safety and employment opportunities.
- The application site is a vacant underused plot which has the potential to accommodate residential units and address housing need in the area.

### *Noise report*

- Front facing windows will need to be Rw33
- Rear facing windows will need to be Rw30
- All habitable rooms on the roadside elevation will need to be provided with acoustic trickle vents.
- Roadside boundary to gardens of plots 5 and 12 should have solid barrier fencing a minimum of 2m in height.

### *Coal Mining Risk Assessment*

- Further on-site investigation works are required to locate possible coal mine workings beneath the development site and any required mitigation/stabilisation works.

### *Transport Statement*

- Census data shows 36% of households do not own a car, 41% own one car.
- Using these figures the average number of cars that may be owned by residents of 12 dwellings in this part of Walsall calculates as 11 cars.
- TRICS suggest the public house would have generates 50 trips (two way) on a weekday, which increased to 100 trips (two way) at the weekend.
- For 12 houses this would generated less than 10 trip in a peak hours and slightly more than 50 trip over the course of a typical weekday.
- It is not proposed for a refuse wagon to enter the site car park.
- Bus service 37 connects Willenhall with Walsall with buses every 20minutes. Bus stops are located nearby.

### *Tree Report*

- G1 lime trees to the west are category B (trees considered for retention) with more than 40 years life expectancy.
- G2, Cherry, Sycamore, Poplar to the south are category B trees with more than 40 years life expectancy.
- G3 Lime trees to the east are category B trees with more than 40 years life expectancy.
- Tree 1, Rowan to the north is category B tree with more than 40 years life expectancy.
- Tree 2, Whitebeam to the north is dead and should be removed.
- Tree 3 Whitebeam to the north is category B tree with more than 40 years life expectancy.

## **Site and Surroundings**

This is a 0.24 hectare site on the corner of Wolverhampton Road West and Bentley Road North. To the southern boundary are houses on Ridgeway Court, to the east boundary is the former Jump Nation Trampoline centre that recently received planning permission for a health and fitness centre. Also to the east boundary and facing Wolverhampton Road West is a former petrol station site that has been cleared. Across the dual carriageway to the north are residential properties. Across Bentley Road North are four residential properties in the final stages of construction.

There is a local shopping parade 68m walking distance along Wolverhampton Road, with a further convenience store 112m walking distance to the south along Bentley Road North. There are bus stops along Wolverhampton Road, 60m and 86m walking distance away. Bentley Local Centre is 390m walking distance away.

The northern part of the site is generally flat, with a set of steps towards the southern part of the site where the ground levels drop by 2.33m.

The site is subject to tree preservation order 14/2009, protecting all of the trees within the site.

## **Relevant Planning History**

12/0451/PD - Prior notification for the demolition of fire damaged building. Approved 30/4/12.

## **Relevant Policies**

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

[www.gov.uk/guidance/national-planning-policy-framework](http://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 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**

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. 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.

On **consultation** the NPPF makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs. Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days. Statutory consultees should be aware of the risk that, should they fail to respond within a specified time period, a local planning authority may proceed to decide the application in absence of their advice.

### **Local Policy**

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

### **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
- 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
- WM5: Resource Management and New Development

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- GP3: Planning Obligations
- GP5: Equal Opportunities
- GP6: Disabled People
- 3.6 and 3.7: Environmental Improvement
- 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
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- ENV34: Public Art
- ENV40: Conservation, Protection and Use of Water Resources
- JP1: New Employment Sites
- H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings
- 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
- LC1: Urban Open Spaces
- LC8: Local Community Facilities

## **Supplementary Planning Document**

### **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
- 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

Appendix D: 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. The requirement to design longer rear gardens to reflect an area's character is applicable and the guidelines should not mean to be the maximum achievable distances.

Numerical Guidelines for Residential Development identifies privacy and aspect distances between dwellings including 24m separation between habitable windows for two storeys and above (this standard will be applied more robustly at the rear than across roads at the front), 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.

### **Open space, sport and recreation**

- OS1: Qualifying Development



- OS2: Planning Obligations
- OS3: Scale of Contribution
- OS4: Local Standards for New Homes
- OS5: Use of Contributions
- OS6: Quality and Value
- OS7: Minimum Specifications
- OS8: Phasing of On-site Provision for Children and Young People

### **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

### **The Equality Act 2010**

Sets out nine protected characteristics which should be taken into account in all decision making:

- 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 Act imposes a Public Sector Equality Duty “PSED” on public bodies which imposes a duty 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 EA 2010 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.

## Consultation Replies

**Highways** – objects. The proposed direct frontage accesses to Plots 1 to 4 are problematic in that it would effectively create a dropped kerb access about 22 metres wide in total. The access points to Plots 1 and 2 are too close to the main access point and could cause confusion/conflicts between motorists turning in and out of the accesses and other road users.

**Tree Officer** – objects. The removal of a high amenity value group of 8 lime protected trees fronting Bentley Road North, removal of a protected Cherry and Silver Birch Tree to the south, in this locality, will be detrimental to the long-term amenity, aesthetic and landscape value of the area. There is insufficient room to provide appropriate replacement planting. The removal of the other protected trees could be supported in principle but there is an imbalance of tree removal and replacement.

**Coal Authority** – no objection subject to use of a condition requiring intrusive survey due to the risk from coal mining legacy.

**Pollution Control** – no objection subject to the use of recommended conditions in regard to ground contamination, incorporation of electric vehicle charging points and measures to control noise, dust and flying debris during construction.

**Community Safety** – historical crime issues at the site. Car park is isolated and should be gated and lit. Access gates to the side should also be secured.

**Police Crime Reduction Officer** – recommends securing measures are used to windows and door locks, pedestrian communal gates, access control to the car park and lighting to the car park,

**Flood Risk Officer** – Drainage design should demonstrate that there is a sufficient safe means of disposing of surface water. It should also demonstrate that the site is safe for the 1:100 year plus climate change storm event, and that the flood risk to any third party is not increased as a result of the proposed development.

**Severn Trent Water** – no objection subject to use of recommended drainage condition.

**Fire Services** – no objection.

**Waste Management** – no objection to collecting bins from the main road.

**Clean and Green** – no comments received.

## **Representations**

Surrounding occupiers notified by letter, site notice displayed and advertised in local newspaper.

One letter has been received welcoming development of the site.

## **Determining Issues**

- Principle of development
- Impact upon the character and appearance of the area
- Impact upon residential amenities
- Impact upon protected trees
- Drainage and flood risk
- Highway Safety
- Reducing inequalities
- Planning obligations
- Local Finance Considerations

## **Assessment of the Proposal**

### **Principle of development**

This is a longstanding vacant site within a sustainable location. Whilst saved UDP policy LC8 looks to protect local community facilities which includes public houses. The public house was demolished some time ago and therefore the policy is no longer required. The principle residential in this location is accepted and contributes to removing a vacant site.

### **Impact upon the character and appearance of the area**

The proposed houses are of a scale and appearance that would integrate into the character of the area. Although the Council considers there is an improved housing layout that would benefit the locality, on balance, the proposal would address this corner location and would have a positive impact by removing a vacant site.

### **Impact upon residential amenities**

The proposed houses by virtue of their layout would provide sufficient amenity for future occupiers. Each habitable room has outlook and access to natural light. Whilst the 55sqm rear garden spaces are smaller than the 68sqm as guided by Designing Walsall SPD, they meet the 12m length guidance and are acceptable in this instance. In addition Bentley Recreation Ground Urban Open Space is 300m walking distance away. While there is drop in ground levels of around 1.3m between proposed plots 5-12 and 1-4, the 12m garden length ensures overlooking is not significant.

The site is within a high-risk area as defined by the Coal Authority due to historic coal mining in the area. The Coal Mining Risk Assessment confirms an intrusive survey will be required to establish the precise ground conditions and to inform whether any mitigation measures are required. The Coal Authority agree to this approach, which can be secured by a condition, that meets the six tests.

With regard to land contamination, no specific details of ground conditions at the site are available. Historic mapping shows part of the proposal is located on the site of a public house and car park. Activities formerly carried out at the site are likely to have resulted in localised ground contamination. In addition the proposal is located adjacent to the site of the former save petroleum filling station which has historically been a source of ground contamination from petroleum products. Finally the proposal is located within 250 meters of a known gassing landfill site known as Anson Road. The applicant will need to undertake appropriate investigation in order to assess the extent of the ground contamination at the site and inform of any remedial measures that may be required. This can be secured by condition that meets the six tests.

While the noise survey makes recommendations for glazing levels and trickle vents, Pollution Control do not raise any noise impact concerns. The glazing levels could be secured via a safeguarding condition meeting the six tests.

The layout would not give rise to any loss of amenity to the existing neighbouring properties from the proposed layout.

To protect the amenity of adjoining occupiers during construction, a construction management plan would be required and could be secured by condition that meets the six tests.

Given concerns about crime and disorder in the location, the Police recommend security measures, notably access control measures to the vehicular and pedestrian gates and window and door standards which can be secured by condition that meets the six tests. The submitted boundary plan includes 2m high brick wall with 0.3m trellising to the exposed boundaries, which can be secured by a condition meeting the six tests. No details in regard to access control measures of the shared parking court and two shared alleyways have been provided. In the absence of such measures the development would undermine the quality of life and community cohesion and give rise to a fear of crime.

To ensure the development does not have an adverse impact upon local air quality in the long term electric vehicle charging points would be required for the parking for each property. This requirement can be secured by condition that meets the six tests.

There is a 2.33m change in ground levels between the northern and southern boundaries of the site defined by a step down to the previous beer garden at the south. This is addressed by having a raised patio to plots 5-12 with a sloping rear garden. Plots 3-4 step down from Wolverhampton Street West by 1.3m, with plots 1-2 stepping down a further 1m with the access road to the side. This would ensure a satisfactory relationship within the street and the neighbouring houses. Full ground level details are required to confirm the precise detailing including any retaining structures. This could be required by a planning condition.

### **Impact upon protected trees**

There are 26 protected trees on the site that contribute to softening the hard landscaping of the area – the adjacent traffic junction accommodates 18 lanes of traffic in total. In addition to their visual amenity benefits, the trees contribute to mitigating the effects of air quality at this 18 lane vehicle junction. The trees will also contribute to minimising surface water runoff and local ecology. The proposed development seeks to remove all of the

trees and in compensation a replacement planting scheme has been submitted. This scheme would provide 12 replacement heavy standard and extra heavy standard trees plus 674 ornamental shrub planting. Ornamental shrub planting cannot be considered mitigation for the loss of the trees.

Saved UDP policy ENV18 explains that development will not be permitted if it would destroy trees protected by a Tree Preservation Order unless the removal of the trees would be in the interests of good arboricultural practice; or the desirability of the proposed development significantly outweighs the amenity value of the trees. Where development is permitted which involve the loss of trees, developer will be required to provide appropriate planting of commensurate value secured via a S106 contribution.

Policy NE9 of Conserving Walsall's Natural Environment SPD states where trees are unavoidably lost, the Council will seek compensatory planting. The level of compensatory provision should be commensurate with that lost and should be provided at a ratio of 5 for 1 where mature healthy trees in a visually prominent position are to be removed.

Whilst the Tree Officer objects to the current layout, they do not object to the principle of the development.

The better protected trees on site, and those most desirable for retention, are the 8 Lime trees on the Bentley Road North frontage and the Silver Birch and Cherry adjacent nos. 1 and 2 Ridgeway Court. The remainder of the protected trees on site are of lesser value but still provide a reasonable degree of amenity and screening to be considered in the overall design and its impact. All of the 26 trees are proposed to be removed.

The eight lime trees on the Bentley Road North frontage and Cherry and the Silver Birch adjacent nos. 1 and 2 Ridgeway Court have a high amenity value, their removal, in this locality will be detrimental to the long-term amenity, aesthetic and landscape value of the area. While 12 replacement trees are proposed this is at lesser number than the 26 to be removed and they are proposed in locations where there is insufficient space for the trees to develop in the long-term and they are in locations where there would be pressure to remove or severely prune them in the future. Accordingly the compensatory planting would not be commensurate with the amenity value of the ones to be removed.

It is recognised that the site needs to be redeveloped and discussions with the applicant and agent have taken place for some time. Discussions have considered an alternative layout that retains a number of protected trees, whilst accommodating 12 houses on the site. The applicant has requested that the application be determined as submitted.

The loss of the protected trees would have an immediate detrimental impact upon the visual amenities of the area, contributing to mitigating air quality and surface run-off to the detriment of the local environment. The proposed compensatory planting would not be sufficient to outweigh the harm in either the short or long term.

### **Drainage and flood risk**

The site is not within a flood risk area or within proximity of any water courses. Full drainage details would be secured via a condition meeting the six tests.

## **Highway Safety**

The application proposes 21 parking spaces for these 12 houses, four spaces direct from Bentley Road North for plots 1-4 and a parking court for 17 vehicles also accessed from Bentley Road North. Saved UDP policy T13 would seek a maximum of 24 parking spaces. Given the proximity to the local bus stops that have frequent services to Walsall and Wolverhampton this level of parking would be acceptable in the circumstances.

Highways object to the application on the following grounds.

The proposed Bentley Road North direct frontage accesses for plots 1 to 4, together with the main site access to the rear parking court would, effectively, create a continuous dropped kerb access of about 22 metres in total. The excessive length of the multiple accesses is likely to raise pedestrian safety concerns as it gives the impression of vehicular priority over the footways and would leave no safe position or refuge for pedestrians to wait whilst vehicles manoeuvre in/out of parking spaces and the car park access. In addition dropped kerbs tend to encourage vehicles to park on the footway, blocking the footway and pushing pedestrians into the roadway and the path of oncoming vehicles. This proposed design is considered contrary to the safe and satisfactory operation of the accesses and to highway safety.

The access points to plots 1 and 2 are considered too close to the main access point to the rear parking court and is likely to cause confusion and conflicts between motorists turning in and out of the accesses onto and off the main road and other road users, particularly as the site is within close proximity of a busy signalised junction, contrary to the safe and satisfactory operation of the access points.

Whilst it is recognised, the site needs to be redeveloped; discussions with the applicant and the agent have progressed for some time to find a satisfactory conclusion. It is considered that an alternative 12 house layout that provides a safer access (and retains a number of protected trees) could be accommodated on the site. The applicant has requested that the application be determined as submitted.

## **Reducing inequalities**

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.

In this case there is a 22 metre drop kerb along the frontage of Bentley Road North which may not only cause confusion to drivers and/ or lead to pavement parking and blockage but also, as an extended dropped kerb, will put people with guide dogs and certain neurological disorders at a disadvantage by being unable to determine where parking ends and traffic commences. Therefore people with protected characteristics would be disadvantaged by the development contrary to the requirements of the Equality Act 2010.

## **Planning obligations**

This development triggers the Council's policies in regard to contributions towards Urban Open Space.

The applicant explains that due to viability issues, they are unable to provide a financial contribution. The applicant has submitted a viability assessment that is currently being considered by the District Valuer. For Open Space, a development of this size within this

ward, a qualifying contribution (defined by Urban Open Space SPD) of £24,948.00 would be sought towards open space improvements in the neighbourhood.

The District Valuer has confirmed that in this case seeking this contribution in full would make the scheme unviable. Sensitivity testing has been undertaken which concludes the scheme would be able to accommodate £4000 of contribution before it becomes unviable (taking account of a reasonable profit return for the development). This is a vacant brownfield site within a sustainable location, which provides the opportunity for 12 new dwellings. In the interests of trying to bring the site forward for redevelopment it is recommended, in the circumstances, that the full financial contributions towards Open Space not sought, but a contribution of £4000 is sought and to be secured by a S106 agreement to make the development acceptable in planning terms.

Due to the above objections on the grounds of loss of trees and highway safety any refusal of the application would also need to include the absence of this contribution. Taking account of the limited amenity space provision and the loss of trees, the on-site amenity value would be mitigated against by improvements within local areas of urban open space.

In the absence of any contribution, the proposal would exacerbate the pressure on existing urban open space in this locality to the detriment of local urban open space.

### **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 12 new homes.

The Government has indicated that, for 2018-19, 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. In 2018-19 the total payments, taking account of completions over the last 4 years, are expected to amount to £3,637,301.

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**

In weighing the key material considerations, consultee and neighbour responses against the national and local planning policies and guidance, it is considered that the proposed development would be contrary to the policies of the development plan in that it would have an unacceptable impact upon the visual amenities of the area by removing all of the 26 protected trees. Due to the limited space around the development it fails to provide sufficient opportunities for sustained compensatory planting to mitigate against the loss.

The proposed direct frontage accesses to plots 1 to 4 together with the main site access to the rear parking court would create a continuous dropped kerb access that gives vehicular priority over the footways and would leave no safe position or refuge for pedestrians to wait whilst vehicles manoeuvre. The access points to plots 1 and 2 are considered too close to the main access point to the rear parking court and is likely to cause confusion and conflicts between motorists turning in and out of the accesses onto and off the main road and other road users, particularly as the site is within close proximity of a busy signalised junction.

The absence of access control measures to the shared parking court and two shared alleyways would undermine the quality of life and community cohesion and give rise to a fear of crime.

In the absence of any off-site contribution, the proposal would exacerbate the pressure on existing urban open space in this locality to the detriment of local urban open space.

Taking into account the above factors it is considered that the application should be recommended for refusal. The development is considered to be contrary to the aims and objectives of the National Planning Policy Framework, policies CSP4, TRAN1, TRAN2 and ENV3 of the Black Country Core Strategy and saved policies GP2, GP3, GP5, GP6, 3.6, ENV18, ENV32, T13 and LC1 of the Walsall Unitary Development Plan, policy NE9 of Conserving Walsall's Natural Environment and

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

Officers have worked with both the applicant and his agent explaining the constraints of the site and suggesting ways of addressing those. Officers consider that there is an alternative way of developing the site for 12 houses that would retain a number of protected trees and provide a safer development in highway terms. The applicant has requested for the application to be determined as currently presented.

### **Recommendation**

#### **Refuse**

### **Reasons for Refusal**

1. The development would result in the loss of 26 protected trees which would have an unacceptable impact upon the visual amenities of the area. The proposed replacement 12 trees would not provide sufficient commensurate short or long term amenity to compensate for the loss. In addition due to the lack of space the proposed planting is unlikely to flourish in the long-term. Accordingly the development is contrary to the aims and objectives of the National Planning Policy Frameworks policies CPS4 and ENV3 of the Black Country Core Strategy, saved policies GP2, 3.6, ENV18 and ENV32 of the Walsall Unitary Development Plan and policy NE9 of Conserving Walsall's Natural Environment.



2. The proposed direct frontage accesses to plots 1 to 4 onto Bentley Road North, together with the main site access to the rear parking court would, effectively, create a continuous dropped kerb access of about 22 metres in total. The excessive length of the multiple accesses is likely to raise pedestrian safety concerns as it gives the impression of vehicular priority over the footways and would leave no safe position or refuge for pedestrians to wait whilst vehicles manoeuvre in/out of parking spaces and the car park access. This is considered contrary to the safe and satisfactory operation of the accesses and to highway safety. Accordingly the proposal is contrary to the aims and objectives of the National Planning Policy Framework, policies TRAN1 and TRAN2 of the Black Country Core Strategy and saved policies GP2, GP5, GP6 and T13 of the Walsall Unitary Development Plan. In addition, the length of the dropped kerb will lead to confusion and lack of safe space and differentiation between pedestrian and traffic contrary to guidance on incorporating equalities into development schemes and contrary Equalities Act 2010.
3. The access points to plots 1 and 2 are considered too close to the main access point to the rear parking court and is likely to cause confusion and conflicts between motorists turning in and out of the accesses onto and off the main road and other road users, particularly as the site is within close proximity of a busy signalised junction. The access arrangement would be contrary to the safe and satisfactory operation of the access points. Accordingly the proposal is contrary to the aims and objectives of the National Planning Policy Framework, policies TRAN1 and TRAN2 of the Black Country Core Strategy and saved policies GP2 and T13 of the Walsall Unitary Development Plan.
4. The absence of any access control measures to the shared parking court and two alleyways compromises the safe use of these vulnerable areas undermining the quality of life and community cohesion of future and adjoining residential occupiers. Accordingly the proposal is contrary to the aims and objectives of the National Planning Policy Framework, policy ENV3 of the Black Country Core Strategy and saved policies GP2 and ENV32 of the Walsall Unitary Development Plan.
5. The proposed development will lead to an unacceptable demand on urban open space within the locality, exacerbated by the loss of trees and limited on site amenity space provision. In the absence of any off-site contribution the proposal is therefore contrary to the aims and objectives of saved policies GP3 and LC1 of the Walsall Unitary Development Plan and the Council's Urban Open Space Supplementary Planning Document.



## Planning Committee

Report of Head of Planning, Engineering and Transportation on 04-Oct-2018

**Plans List Item Number: 3.**

**Reason for bringing to committee:** Called in by Councillor Hussain on grounds of derelict and eyesore site and the applicant has been engaging with officers for a resolution

**Location:** 1, HOPE STREET, WALSALL, WS1 3RG

**Proposal:** DEMOLITION OF EXISTING BUILDING AND ERECTION OF TWO NEW BUILDINGS INCLUDING RESTAURANT AND TWO SHOPS ON THE GROUND FLOOR AND SIX FLATS ON THE UPPER FLOORS.

**Application Number:** 17/0938

**Applicant:** Hope & Barons Ltd

**Agent:** Mr Stan Ceney

**Application Type:** Full Application: Major Mixed Use Classes

**Case Officer:** Paul Hinton

**Ward:** St Matthews

**Expired Date:** 01-Nov-2017

**Time Extension Expiry:** 11-Oct-2018

### Recommendation Summary: Refuse



## Proposal

This application seeks planning permission for the demolition of this existing two storey property and the erection of a two storey building on the corner of Hope Street and Caldmore Road (referred herein as building A). A restaurant would be provided at ground floor and two no. 2 bedroom flats at first floor. Building A would have the same roof and eaves height as the adjoining neighbour at no. 113 Caldmore Road. There would be separate accesses to the restaurant and flats from Caldmore Road. The restaurant would have a tradition shop front facing both Caldmore Road and Hope Street. The existing forecourt facing Caldmore Road would be retained.

At the rear of the site and next to the end terrace house at 5 Hope Street a three storey building is proposed (referred herein as building B). The ground floor of the building is proposed to be used for two shops with traditional shop front and access from Hope Street. An internal bin store is proposed. The first and second floors with shared access from Hope Street are proposed to include four no. 1 bedroom flats. A shared yard for the restaurant, shops and flats between both blocks would contain a bike shed. The yard would be enclosed by a 1.6m high fence.

The following information has been submitted in support of the application:

### *Design and Access Statement*

- Existing building has no roof, with all internal floors and partitions dangerous.
- Project will provide a better alternative to the existing site and provide many positive benefits for the site and the wider community.
- Public transport is within 10 minute walking distance.

### *Transport Statement*

- There are at least four public car parks within 5 minutes of the site.

The application has been amended since its original submission.

## Site and Surroundings

This long-standing derelict mid-late C19 locally listed building at the corner of Caldmore Road and Hope Street, was formerly used for leather-goods manufacture with an industrial return frontage to Hope Street. Caldmore Local Centre is directly opposite (to the west) and includes a mix of A1, A2, A3, A4 and A5 uses. Directly to the north are residential uses, with the application adjoining the house at no. 113 and its rear garden. Part of this boundary is shared with a residential garage court. To the east are a row of terraced houses fronting Hope Street. These houses have no off-street parking. Across Hope Street to the south are terraced houses with two resident permit holders' car parks. The northern side of Hope Street is single yellow line. The area is characterised by two storey buildings.

There are two public car parks at St. Michael Street (80m walking distance) and Mount Street (103m walking distance) and that serve this local centre. The nearest bus stop is on Caldmore Road 80m walking distance away. Caldmore Road is one way and includes time limited on street parking.

## Relevant Planning History

None relevant.

## Relevant Policies

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

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

On **consultation** the NPPF makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs. Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days. Statutory consultees should be aware of the risk that, should they fail to respond within a specified

time period, a local planning authority may proceed to decide the application in absence of their advice.

## **Local Policy**

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

## **Black Country Core Strategy**

- CSP2: Development Outside the Growth Network
- CSP4: Place Making
- DEL1: Infrastructure Provision
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- CEN1: The Importance of the Black Country Centres for the Regeneration Strategy
- CEN2: Hierarchy of Centres
- CEN5: District and Local Centres
- CEN6: Meeting Local Needs for Shopping and Services
- CEN7: Controlling Out-of-Centre Development
- CEN8: Car Parking in Centres
- TRAN1: Priorities for the Development of the Transport Network
- TRAN2: Managing Transport Impacts of New Development
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV8: Air Quality

## **Saved Unitary Development Plan**

- GP2: Environmental Protection
- GP5: Equal Opportunities
- GP6: Disabled People
- 3.6 and 3.7: Environmental Improvement
- ENV10: Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV28: The 'Local List' of Buildings of Historic or Architectural Interest
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- ENV40: Conservation, Protection and Use of Water Resources
- S1: Definition of Town Centre Uses
- S2: The Hierarchy of Centres
- S5: The Local Centres
- S6: Meeting Local Needs
- S7: Out-of-Centre and Edge-of-Centre Developments
- S10: Hot Food Take-Aways, Restaurants and Other A3 (Food and Drink) Outlets
- H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings
- T1 - Helping People to Get Around
- T7 - Car Parking
- T10: Accessibility Standards – General

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- 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

## Supplementary Planning Document

### 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
- NE10 – Tree Preservation Order

### Designing Walsall

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character
- DW4 Continuity
- DW6 Legibility
- 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

### Emerging Policy

Site Allocations Document

Policy SLC1: Local Centres – boundaries are tightly drawn to concentrate investment.

Development on edge of centre will only be permitted if they cannot be accommodated

within the centre boundary, are of an appropriate scale and is well integrated into the centre. This policy can be afforded substantial weight

## National Planning Practice Guidance

### *Ensuring the vitality of town centres*

- It is for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission).
- If there are no suitable sequentially preferable locations, the sequential test is passed.

## Consultation Replies

**Highways** – objects. Transport Statement fails to justify the proposed development, fails to demonstrate it has sufficient parking to meet the needs of the development and fails to demonstrate how existing unauthorised parking on Caldmore Road frontage forecourt will be controlled.

**Planning Policy** – objects. [The applicant has provided no evidence as to why the investment cannot be accommodated within the centre.](#)

**Pollution Control** – insufficient information to support this application. Either the Application should be refused or the Applicant be requested to provide the additional information in regard to acoustic mitigation and, flue and odour extraction system.

**Environmental Health** – the applicant has failed to demonstrate how adverse impact of noise and odour emanating from the restaurant can be mitigated.

**Housing Standards** – the fire escape for the bedrooms of Flat 2 are through the kitchen (high risk) room, access should not be through the kitchen.

**Police Crime Reduction Officer** – recommend the applicant seeks Secured by Design Accreditation.

**Fire Services** – no objection.

**Severn Trent Water** – no objection subject to use of recommended drainage condition.

## Representations

Site notice displayed and surrounding occupiers notified by letter.

One letter has been received objecting to the application on the following grounds:

- Enough food shops and shop in Caldmore, don't need any more.
- When all the restaurants are open and mosque in use there is no parking in Hope Street.



## Determining Issues

- Principle of use
- Impact upon the character and appearance of the area
- Relationship with surrounding occupiers
- Impact upon highway safety
- Local Finance Considerations

## Assessment of the Proposal

### Principle of use

The application site is across the road from Caldmore Local Centre and is therefore is an edge of centre location as defined by the NPPF.

The proposed 155qm A3 restaurant and two A1 retail shops (each of 31sqm and 44sqm), are defined as a main town centre use within the NPPF. The NPPF explains that main town centre uses should be located in town centres and then in edge of centre locations.

Saved UDP policy S1 defines town centre uses, saved UDP policy S5 explains the boundaries of local centres are drawn tightly to concentrate investment in these areas a policy requirement also repeated in the emerging Site Allocation Document policy SLC1 that can be afforded significant weight. Town Centre uses will only be considered on the edge of Local Centre, outside the defined boundaries if the development cannot be accommodated within the centre subject to being an appropriate scale and is well integrated into the centre. Saved UDP policy S10 directs restaurant to Town, District and Local Centres. BCCS Policy CEN6 explains small-scale local facilities of up to 200sqm will be permitted if it can be shown that five tests would be met, which are considered below:

*Scale and nature to meet a specific day-to-day need for a population within convenient, safe walking distance.*

Within Caldmore Local Centre is a mix of town centre uses including A1 and A3 uses which already serve a local need. The proposal is speculative with no end users identified to demonstrate a use not already catered for or could be provided as part of this proposal. The presence of existing restaurants and shops within the centre means the specific day-to-day needs of the population is already provided for.

*Local provision could not be better met by investment in a nearby centre*

The application has failed to demonstrate why the proposal could not be provided within the boundaries of the existing Local Centre. There are existing vacant units within the centre along Caldmore Green, Corporation Street and West Bromwich Street. In addition in regard to the 155sqm restaurant it may be more appropriate for investment of this scale to be directed towards Walsall Town Centre.

*Existing facilities that meet the day-to-day needs will not be undermined*

The provision of a further restaurant and two shops outside of the established local centre would undermined the existing facilities and investment within the centre to the potential detriment of the day-to-day needs of the local centre.

### *Sustainable access*

The site is within a sustainable location with bus stops and public car parks as well as being within walking distance of the local community.

### *Meets the specific needs of new housing development*

There have been no new large scale residential developments in the area that would require the new local facilities, beyond what can be catered for within the existing local centre.

Accordingly, the application does not meet the required BCCS CEN 6 five policy tests. The proposed town centre use in this edge-of-centre location would draw investment away from the existing local centre to the detriment of the vitality and viability of this established centre.

The proposed residential element of the proposal would be acceptable in principle subject to further issues discussed below being resolved.

### **Impact upon the character and appearance of the area**

Saved UDP policy ENV28 explains the Council will not grant planning permission for a development that proposes the demolition of a locally listed building. The building was locally listed due to its connections with the leather trade. The NPPF explains LPAs should require an applicant to describe the significance of any heritage assets affected by a development. No supporting information has been submitted with the application. A locally listed building is a non-designated heritage asset. The NPPF also explains that in weighing applications that affect non-designated heritage assets, a balanced judgment will be required having regard to the scale of loss and the significance of the heritage asset. While officers recognise the current appearance of this locally listed building, no evidence has been provided that demonstrates it is impractical to retain the building.

The NPPF says that developments should be sympathetic to local character and history and are visually attractive. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area. BCCS Policies CPS4, HOU2, ENV2, ENV3; UDP saved policies GP2, 3,6 and ENV32 and Designing Walsall Supplementary Planning Document, require development to be informed/influenced by their context and reinforce locally distinctive elements.

This is a mixed commercial and residential area defined by high density two storey properties. The existing building is derelict causing harm to the character and appearance of the area. Whilst the opportunity to develop the site is welcomed, however its redevelopment should take the opportunity to improve the character of the area.

The existing building forms part of a row of three identical properties with side gable end and stone detailing above and below the windows. The end building would be demolished and replaced with a building of the same width. This building (building A) seeks to replicate the window proportions and details albeit with a modern shop front at ground floor to the Caldmore Road elevation. The side elevation facing Hope Street, instead of a matching gable end, a hipped roof is proposed and the first floor windows are shallow compared to the elongated windows in the area. For these reasons the development fails to integrate into the area and provide sufficient architectural reference to the existing local listed building and would not enhance or improve the character of the area.

Hope Street ground levels rise heading east, with the two-storey gable end terraced houses forming a number of steps along the hill. The position of building B would be at the lower part of the hill and therefore a continuation of this characteristic would be a two storey building set lower than the neighbour at 5 Hope Street. Building B is proposed to be a three-storey building with a hipped roof, shallow wide windows with the upper floor windows immediately beneath the non-detailed eaves.

The architectural detailing of the houses this side of the road include tall and narrow windows with stone cills with a clear gap between the top of the windows and the eaves, brick headers above windows and doors and glazing panels above the front doors. These houses also have detailing to the eaves.

By virtue of the combination of the height of the proposal, the natural ground level along Hope Street, the shape and massing of the existing houses including their architectural detailing, it is considered that building B fails to integrate into the character of the area and take the opportunities to provide a visually attractive design that improves or enhances the character of the area.

### **Relationship with surrounding occupiers**

The proposed restaurant would abut an existing house at 113 Caldmore Road. No opening days or times have been confirmed at this time for the proposed uses. Two flats would be above the restaurant and food preparation areas. Typically restaurants are for the gathering of people and are usually open late into the evening. In this case 25 tables (102 covers) are proposed. The restaurant use has the potential to generate significant noise for neighbouring residential uses. In addition the cooking element of the building has the potential to create noise and odour for neighbouring residential uses. The existing neighbour at 113 Caldmore Road and the flats above would be directly affected by these activities. Whilst the proposed shops have no proposed opening hours, due to their nature, the sale of goods to visiting members of the public also has the potential to give rise to noise and disturbance to the proposed flats above. No acoustic attenuation or odour control information has been provided.

Both Environmental Health and Pollution Control raise concerns about the strong potential for noise disturbance to residential units from activities within the restaurant/shop elements whilst explaining, the close proximity of residential properties, there is a strong potential for odour complaints by residents from the restaurant. Due to this it is essential for detailed measures to be provided prior to the determination of any application. Whilst the applicant has been asked for this information, none has been provided at the time of writing this report. In the absence of any detailed mitigation measures the Council cannot be certain that the proposal would not adversely harm existing and proposed residential occupiers.

Building A is proposed to extend 1.6m further to the rear than the blank rear gable to 113 Caldmore Road. This projection would not cause a loss of light or outlook to no. 113. There would be an 8.5m gap between building A and B that ensures sufficient natural light is provided to the garden of no. 113. Rear facing habitable windows are proposed to both building A and B, due to the orientation and distance these windows would not result in a significant overlooking of neighbouring properties. The rear windows of building B would overlook a residential garage court. The front facing windows would face the street, increasing natural surveillance without causing any additional harm.

Designing Walsall SPD seeks to provide 20sqm of usable amenity space per flat. While there is a yard between buildings A and B, there is no direct access to this area from the flats and the area is shown to be shared by the commercial element. Therefore, limited weight can be given to the usability of this space as private amenity space. The applicant has failed to demonstrate alternative amenity provision to the detriment of residential amenity.

### **Impact upon Highway safety**

No off-street parking is provided as part of the application. Therefore staff and customers from the 25 table (102 covers) restaurant, two shops and occupiers of the six flats are reliant on parking on-street or using the local bus service (route 4 has regular services between Walsall and West Bromwich between 6.33 and 19.46 Monday to Saturday with less frequent Sunday travel).

There are two public car parks at St. Michael Street (80m walking distance – 34 spaces) and Mount Street (103m walking distance – 34 spaces) serving this local centre.

The Highways Authority object to the planning application. In terms of saved UDP policy T13 the development as a whole would require 27 off-street parking spaces. None are proposed. A Transport Statement has been provided but is lacking in detail, simply explaining there are car parks within 5 minutes of the site. This document fails to justify the proposed development in terms of its parking needs, accessibility and any sustainability credentials.

While there are two public car parks in close proximity with a total capacity of 78 spaces, these serve the local centre as a whole. This out of centre development requires 27 parking spaces, putting a burden on the use of these existing well used local centre car parks and as a result customers are likely to park on-street to the detriment of the existing local centre and existing local residents. Even taking into account the site's edge of local centre position and access by public transport, the nature of use is likely to give rise to the majority of access by car. The streets surrounding the site are already subject to high parking demand, as demonstrated by the extensive parking restrictions on the local streets and residents permit car park adjacent. It is considered that the quantum and mix of the development without any parking of its own, will only increase this pressure and exacerbate existing parking issues, to the detriment of existing residents and businesses and the operation of the local highways

In addition the application has failed to demonstrate how the existing unauthorised parking on the Caldmore Road frontage forecourt area will be controlled as access is via the existing tactile pedestrian crossing point onto a road junction, contrary to highway safety.

The proposal would result in an increased amount of traffic within the local residential streets and competition for use of the existing on-street parking spaces and potential for indiscriminate parking to contrary to the free flow of traffic in the area which would have a severe impact and result in highway safety implications. The Highways Authority object to the planning application.

## **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 six new homes.

The Government has indicated that, for 2018-19, 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. In 2018-19 the total payments, taking account of completions over the last 4 years, are expected to amount to £3,637,301.

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**

In weighing the key material considerations, consultee and neighbour responses against the national and local planning policies and guidance, it is considered that the proposed used would be contrary to the policies of the development plan in that this edge-of-centre proposal would detract investment away from Caldmore Local Centre to the detriment of the vitality and viability of the centre. The proposal would result in the unjustified loss of a locally listed building and proposes a design that fails to integrate into the character of the area.

The application has failed to demonstrate existing and proposed residential occupiers would not be adversely effected by the proposed commercial uses by virtue of noise, disturbance and odour. For the proposed six flats the application fails to provide sufficient private amenity space.

Further the proposal fails to provide a sufficient level of off-street parking to meet the needs of the development that could result in an increase of on-street and indiscriminate parking in the area contrary to the free flow of traffic.

Taking into account the above factors it is considered that the application should be recommended for refusal. The development is considered to be contrary to the aims and objectives of the National Planning Policy Framework, policies CEN6, TRAN1 and TRAN2 of the Black Country Core Strategy, saved policies GP2, 3.6, 3.7, ENV10, ENV28, S3, S5, S6, S10, T7, T10 and T13 of the Walsall Unitary Development Plan, policy SLC1 of the emerging Walsall Site Allocations Document and supplementary planning document Designing Walsall.

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

Officers have been liaising with the applicant's agent since the application was validated in August 2017, sharing the above concerns and detailed consultee responses. In this instance the scheme has not been amended to address these concerns.

## **Recommendation**

### **Refuse**

## **Reasons for Refusal**

1. The application has failed to justify and demonstrate that this town centre use development, within an edge of centre location, meets a specific need day-to-day need and that local provision could not be better met by investment in Caldmore Local Centre or Walsall Town Centre. The proposal has the potential to draw trade and investment away from Caldmore Local Centre to the detriment of the local centre. Accordingly the development is contrary to the aims and objectives of the National Planning Policy Framework, policies CEN5, CEN6 of the Black Country Core Strategy and saved policies S2, S3, S5, S6, and S10 of the Walsall Unitary Development Plan and policy SLC1 of the emerging Walsall Site Allocations Document
2. The proposal would result in the loss of a locally listed building. The application has not been supported by any evidence that demonstrates that this non-designated heritage asset can no longer be retained. Accordingly the development is contrary to the aims and objectives of the National Planning Policy Framework and saved policy ENV28 of the Walsall Unitary Development Plan.
3. The proposed development would appear as an incongruous feature that does not adequately integrate with the street frontage. The proposal fails to provide continuity appearing unrelated to the surrounding development and as a consequence it would cause harm to the character and appearance of the area. The application fails to take account of the context that defines the character of the area to the detriment of visual amenity. Accordingly the proposal is contrary to the aims and objectives of the National Planning Policy Framework, policies ENV2 and ENV3 of the Black Country Core Strategy, saved policies GP2, 3.6 and ENV32 the Walsall Unitary Development Plan and policies DW3 and DW4 of Supplementary Planning Document: Designing Walsall.
4. The application has failed to demonstrate how existing neighbouring residential occupiers and the proposed residential occupiers would be protected from noise, smell and disturbance as a result of the proposed restaurant and shops. Accordingly, the proposal is contrary to the aims and objectives of the National Planning Policy Framework, policy ENV3 of the Black Country Core Strategy, saved policies GP2, 3.6, 3.7, ENV10 and S10 of the Walsall Unitary Development Plan and appendix D of Supplementary Planning Document: Designing Walsall.
5. The application has failed to provide sufficient amenity space or justify the absence of amenity space for potential residential occupiers. Accordingly, the proposal is contrary to the aims and objectives of the National Planning Policy Framework, policy ENV3 of the Black Country Core Strategy, saved policies GP2, 3.6, 3.7, ENV10 and S10 of the Walsall Unitary Development Plan and appendix D of Supplementary Planning Document: Designing Walsall.

6. The application fails to provide sufficient off-street parking provision to meet the needs of the development that could result in an increase of on-street and indiscriminate parking in the area contrary to the free flow of traffic and which could give rise to highway safety issues. In addition, the existing forecourt is currently used for indiscriminate parking; the application has failed to demonstrate how the retained forecourt will be controlled to prevent this continuing. Accordingly the proposal is contrary to the aims and objectives of the National Planning Policy Framework, policies CEN6, TRAN1 and TRAN2 of the Black Country Core Strategy and saved policies GP2, S10, T7, T10 and T13 of the Walsall Unitary Development Plan.







## Planning Committee

Report of Head of Planning, Engineering and Transportation on 04-Oct-2018

**Plans List Item Number: 4.**

**Reason for bringing to committee: Called in By Councillor Follows**

**Location:** THE SNEYD, 67, VERNON WAY, BLOXWICH, WALSALL, WS3 2LU

**Proposal:** PROPOSED RE-DEVELOPMENT OF EXISTING FORMER CAR PARK TO PUBLIC HOUSE TO CONSIST OF THE ERECTION OF 3 NO. 5 BEDROOM DWELLINGS, INSTALLATION OF PUBLIC GREENWAY ROUTE, IMPROVEMENTS TO EXISTING BOUNDARY TREATMENTS AND LANDSCAPE WORKS.

**Application Number:** 17/0979

**Applicant:** Parbinder Kang

**Agent:** Jaspreet Bal

**Application Type:** Full Application

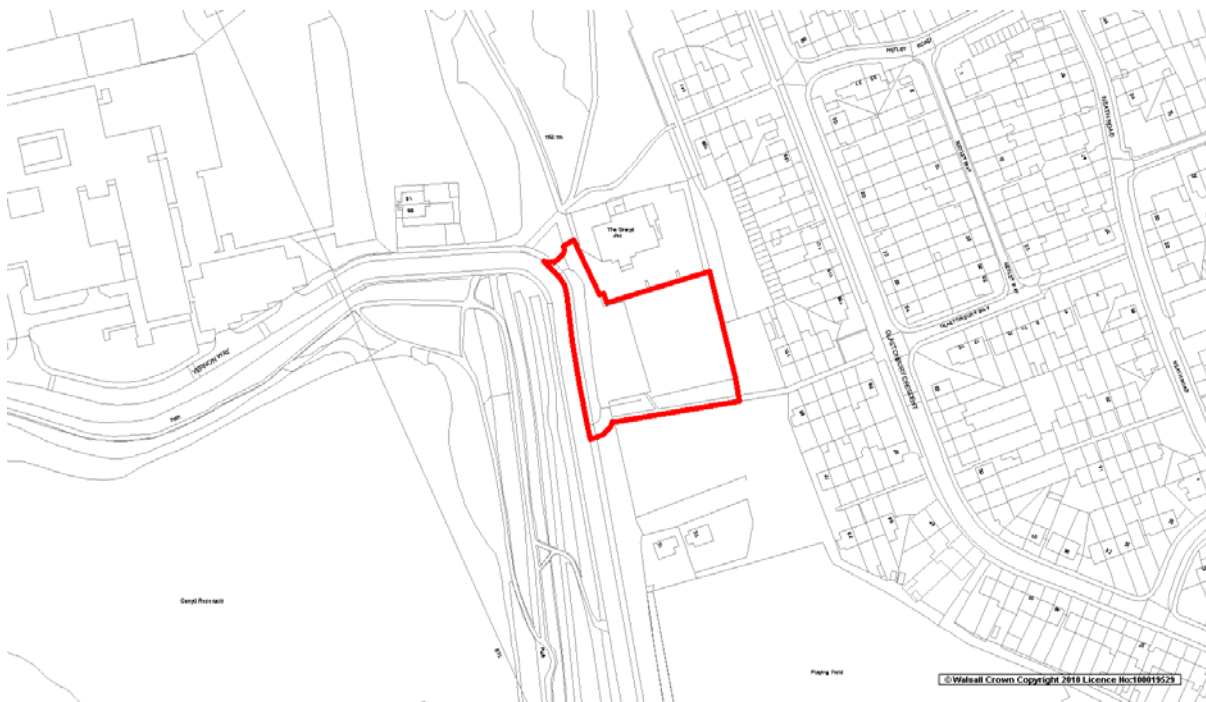
**Case Officer:** Stuart Crossen

**Ward:** Bloxwich West

**Expired Date:** 20-Sep-2017

**Time Extension Expiry:** 29-Mar-2018

**Recommendation Summary:** Refuse



## Updated Status

Councillor Follows has called the application in to Committee as it is considered that it is in the public interest to tidy a derelict site that is a nuisance to local residents.

Members resolved at March 22<sup>nd</sup> Planning Committee that planning application number 17/0979 be deferred for officers to discuss reasons for approval.

A report was published for committee on 7<sup>th</sup> June 2018 and the 7<sup>th</sup> July but was withdrawn from the agenda and deferred for consideration at these meetings. The report published on 7<sup>th</sup> June 2018 has been updated to reflect changes that the agent has made to the scheme which follows the status. Notwithstanding the positive changes the recommendation remains to refuse permission.

## Proposal

The application proposes to use an overspill parking area of an existing public house and replace it with 3 detached houses (4 were originally proposed). A single access point is proposed in the centre of the site with the road extending in front of the proposed houses.

The houses would be two storey traditional hipped roof designs with the loft space used for extra room. Each house would have a projecting front gable and the key measurements are:

- 9 metres wide
- 14.6 metres maximum depth
- 5 metres high to the eaves
- 7.6 metres high

Each house would have:

- Entrance Hall
- Single Garage
- Living Room
- WC
- Kitchen/Dining
- Utility
- 5no. Bedrooms, 2 with En-suite
- Family Bathroom
- Storage

Plots 1 and 3 would have two car parking spaces to the front, plot would have a single space and there are 4 non allocated spaces at the front of the site opposite plots 1 and 4.

Councillor Follows has called the application in to Committee as it is considered that it is in the public interest to tidy a derelict site that is a nuisance to local residents.

Members resolved at March 22<sup>nd</sup> Planning Committee that planning application number 17/0979 be deferred for officers to discuss reasons for approval.

An Ecology Report was submitted on the 3<sup>rd</sup> May 2018 which made the following recommendations:

- Bird and bat boxes should be installed in the buildings.
- Only cowled low lux lighting should be used on site.
- Appropriate precautionary measures are recommended, in case badgers enter the working areas at night.
- To ensure no newts, other amphibians or reptiles are harmed as a result of this development, it is recommended appropriate precautions should be taken during development;
- All retained hedges and trees should be treated in accordance British Standard BS5837 (2012) Trees in Relation to Design, Demolition and Construction – Recommendations, to ensure require adequate root protection fencing.
- Bird breeding season is between mid March and mid August, although certain species can breed outside these months and if breeding birds are found then work should cease and the advice of an ecologist sought. If clearance is undertaken within the bird breeding season then all site features should preferably be checked immediately prior to clearance by a suitably qualified ecologist.
- Following the built development there will be opportunities for enhancement of the site's ecological value by on site landscaping measures designed to encourage wildlife into the site, including native planting, bird and bat boxes on built structures.

An arboriculture assessment has also been submitted which has graded the majority of trees on site as being low quality. It proposes to retain the London Plane and recommends mitigation measures.

An amended site plan was received on the 31<sup>st</sup> August 2018 which reduced the numbers of houses to three.

Amended plans were received on the 18/09/18 which now include a separate footpath between the houses and the public highway.

## **Site and Surroundings**

The site is situated on the eastern side of Vernon Way near to the bend in the road. The site comprises a modern purpose built vacant public house and car park. The building is part single storey, part two storey with its main entrance on the southern elevation and has planning permission for the conversion into a house. The car park is the location for the proposed 4 houses.

The site is within the Green Belt with public open space to the north and North West, and an isolated pair of semi-detached houses further to the west. Immediately to the north is the former pub building, which does not form part of the application site boundary, there are two further isolated houses to the south. To the west on the opposite side of Vernon Way is the Sneyd Reservoir SINC. A vacant unused garage court to houses in Glastonbury Crescent sits to the west of the site.

A design and access statement has been submitted which provided the following key comments:

*The current condition of the site is not befitting for a 'Green Belt' site. The derelict and remote nature of the site has provided a neglected site which has been subject to dumping grounds, fly tipping and ASB occurring regularly on the site.*

*The proposal will encourage and propose openness and elements of public green spaces that will improve connectivity and visual permeability through and around the site. Existing links will be improved to encourage public activity along the greenway.*

*The locations of the dwellings have been set back toward the eastern edge of the site deliberately to create a focal point to the existing Maple Tree within the site.*

*In accordance with the Local Authority's vision for the proposed greenway which runs along the western edge of the site (within the former car park area), we have proposed a greenway runs along Vernon Way and connects into the landscape to the north.*

*Refuse collection will be in the form of wheelie bin collection in accordance with the Local Authority Waste Management Strategy. Residents will place wheelie bins along the footpath to the front edge of each plot for collection by refuse vehicle.*

## **Relevant Planning History**

BC24756P, extensions and alterations to pub, flat and car park, GSC 24-04-89

BC28324P, Demolition of existing pub and erection of new pub, flat and car park, GSC 04-04-90

BC28325P, outline for residential development, refused 04-04-90

BC32178P, display of illuminated signs, GSC 19-02-91

17/0152 - First floor extension and change of use of vacant pub to 6 bed dwelling. GSC 12-Apr-2017

## **Relevant Policies**

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

[www.gov.uk/guidance/national-planning-policy-framework](http://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**

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- **NPPF 9 – Promoting sustainable transport**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**
- **NPPF 13 – Protecting Green Belt land**
- **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. 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.

On **consultation** the NPPF makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs. Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days. Statutory consultees should be aware of the risk that, should they fail to respond within a specified time period, a local planning authority may proceed to decide the application in absence of their advice.

### **Local Policy**

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

### **Black Country Core Strategy**

- CSP4: Place Making
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- TRAN2: Managing Transport Impacts of New Development
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- ENV1: The Boundary of the Green Belt

- ENV2: Control of Development in the Green Belt
- ENV3: Detailed Evaluation of Proposals within the Green Belt
- ENV10: Pollution
- ENV11: Light Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV15: Forest of Mercia
- ENV16: Black Country Urban Forest
- ENV17: New Planting
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings
- T4 - The Highway Network
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis
- LC5: Greenways

## **Supplementary Planning Document**

### **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
- 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

The **Equality Act 2010** (the ‘EA 2010’) 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 Act imposes a Public Sector Equality Duty “PSED” on public bodies which imposes a duty 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 EA 2010 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.

## Consultation Replies

**Strategic Planning Policy** – Objection, very special circumstances not demonstrated.

**The Coal Authority** – No objection subject to conditions for further intrusive site investigation condition.

**Transportation** – No objections subject to conditions for hard surfacing, footway crossing and dropped kerbs.

**Severn Trent** – No objections

**Public Rights of Way** – Details of boundaries, boundary treatment and motorcycle barriers are required.

## New Consultation Replies

**Tree Officer** - The tree officer will provide comments prior to planning committee.

**Transportation** – Supports the proposed footpaths subject to them being hard surfaced which can be conditioned.

## Representations

None

## New Representations

Objection on the grounds that a children's play park is preferred.

## Determining Issues

- Principle of residential development and impact on the openness of the Green Belt
- Character and appearance of the surrounding area
- Residential amenity
- Tree Protection
- Access and parking
- Greenway Provision
- Coal mining
- Safety and security of future occupiers
- Site of special scientific interest

The report has been updated to take account of recent policy changes receipt of an Ecological Report

## Assessment of the Proposal

### Principle of development and impact on the openness of the Green Belt

NPPF Paragraph 133 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence.

NPPF Paragraph 134 sets out the five purposes of the Green Belt, these being:

- *to check the unrestricted sprawl of large built-up areas;*

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The Green Belt here forms a clear boundary to the Mossley Estate

- *to prevent neighbouring towns merging into one another;*

The Green Belt here separates Bloxwich from New Invention but is only 500m wide, including the motorway corridor, so is highly sensitive to development that might reduce this gap

- *to assist in safeguarding the countryside from encroachment;*
- *to preserve the setting and special character of historic towns; and*
- *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*

NPPF Paragraph 143 states that inappropriate development should not be approved except in very special circumstances.

NPPF Paragraph 144 states that a local planning authority should regard the construction of new buildings as inappropriate in Green Belt, with a limited list of exceptions. One of these is limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it (as set out in NPPF paragraph 80) than the existing development.

The proposal is to construct 3 new dwellings on the former garden and parking area to the pub. As the site is currently not developed, the proposal would have a greater impact on openness of the greenbelt and therefore is in direct conflict with NPPF Paragraph 145 and also saved Policy GP2: Environmental Protection as it would represent inappropriate development only acceptable if very special circumstances can be proved.

Very special circumstances are, by definition, circumstances that are unusual or which happen rarely. Issues of fly-tipping and anti-social behaviour whilst undesirable, are not very special circumstances to justify housing in the green belt. The majority of existing buildings in the Green Belt are isolated and the converted public house is not particularly remote or different to many other properties on the edge of the urban area. Indeed, there are two other dwellings to the south of the application site on Vernon Way which have been in place for a number of years which have not seen development within their grounds to address the concerns highlighted.

The Councillor's reasons put for calling the application before planning committee are; matters of fly-tipping and anti-social behaviour, which are associated with the visual appearance of the area. Whilst these concerns are noted, the principle of the Green Belt allocation is to focus the location of development into sustainable locations notably within the built up area and to encourage regeneration. It is not a policy, which seeks to preserve the attractiveness of a location for example like an Area of Natural Beauty or a Conservation Area. Accordingly, little weight can be given to the arguments in favour of improving the appearance of the site when considering harm to the Green Belt. The key consideration in this instance is the harm to the openness and whilst fly –tipping is a transitory problem, this can be addressed through the Council's enforcement legislation to address any short-term harm. The creation of four new dwellings will result in a permanent intrusion to the landscape which will be detrimental to the openness of the Green Belt.

The Council has a Strategic Housing Land Availability Assessment

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(SHLAA) which was published in December 2017 and demonstrates sites that are considered to be deliverable over the next 5 years and beyond from that date. The release of green belt should be through the development plan process.

The question of impact on views is not material to the question of whether a proposal is inappropriate in the Green Belt. A development does not even have to be visible to harm green belt openness. There has been recent case law (High Court [R (Boot) v Elmbridge Borough Council [2017] where it was held (in the case of a new sports stadium in the Green Belt) that a development cannot “preserve” the openness of the Green Belt when it causes harm to openness. In this instance the site would be visually prominent being next to a public right of way.

Whilst it is recognised that the applicant has scaled back the scheme by reducing it from 4 to 3 houses, this still represents inappropriate development in the green belt and there are no very special circumstances for allowing the development. There is now also a need to incorporate an additional hard-surfaced path for the development to meet the Equality Act 2010. It should also be recognised that notwithstanding the amount of soft landscaping on the site plan the reality will be that residents will wish to bring boundary fences, domestic paraphernalia (sheds/kids toys/garden structures/cars/caravans/trailers etc all of this would also impact on the openness of the green belt. For these reasons on balance, it is considered, that it is not possible to demonstrate very special circumstances in this case, even taking account of the grounds suggested by the Councillor and that such a scheme would not meet any of the exceptions set out in NPPF paragraph 145. Accordingly, no material planning weight can be applied to the proposed very special circumstances. These concerns have been shared with the agent.

### **Character and appearance of the surrounding area.**

The NPPF says that decisions should respond to local character, it is proper to seek to promote or reinforce local distinctiveness, address the integration of new development into the, built environment. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character. BCCS Policies CSP4, HOU2, ENV2, ENV3; saved policies GP2, 3,6 and ENV32 of the UDP and Supplementary Planning Document Designing Walsall, require development to be informed/influenced by their context and reinforce locally distinctive elements. Plot sizes and built density will relate to their local context.

The local character of the application site is predominantly defined by the existing pub car park green belt and open space. The public house has been converted into a large single house. The pubs conversion to a single house was considered that its appearance or harm to the openness of the Green Belt is not significantly greater to the previous pub. This single large property does not define the character of the area which is more rural than urban in form.

Although the proposal would in part be seen against the existing development in Glastonbury Crescent to the rear, the prevailing character is the rural character of Vernon Way. The existing density of Glastonbury Crescent is 47dph, the density of the proposal is 9dph. Although BCCS Policy HOU2 refers to achieving a minimum density of 35dph this is subject to instances where higher densities would prejudice green belt, historic character and local distinctiveness. In this instance, it is considered the immediate character of Vernon Way is defined by freestanding properties including the public house, the two

dwellings to the south and the property to the west and not clusters of houses, which collectively have a density of approximately 1 dwelling per hectare. Although an improvement to the original scheme, the proposal is still a higher density than the local character and would therefore be considered to be inappropriate in this instance.

### **Residential amenity**

The proposed dwellings are approximately 25.0m away from the side elevation of 101 Glastonbury Crescent and approximately 44.0m away from the rear elevation of 109 to 119 Glastonbury Crescent to the rear. The northern plot is also 20m away from the public house.

Taking into account the standards in the Council's adopted Designing Walsall SPD, it is considered that the proposed dwellings will not have an impact on neighbouring amenity levels.

### **Tree Protection**

It is noted that there is a protected London Plane ref 27/2008 to the front of the site. The applicants are proposing to incorporate this into the development, and an arboricultural assessment has now been undertaken. Mitigation measures are proposed and replacement planting, however no landscape details have been provided.

### **Pollution Control**

Pollution Control requires the applicant to undertake appropriate investigation in order to assess the extent of any ground contamination at the site and inform of any remedial measures that may be required.

Concerning air quality, Walsall Council has recently adopted a Supplementary Planning Document (SPD) setting out guidance on minimising air quality impacts, in particular the requirements for promotion of alternative travel choices. As part of Section 5, 'Minimising Unacceptable Air Quality Impacts through Mitigation and Compensation', the SPD states that 'as a minimum, new developments should include the provision of electric vehicle charging points' (Type 1). To allow future residents a readily available infrastructure to switch to environmentally sustainable transport in the future and having regards to the SPD, it is recommended that the Applicant make provision for future electric vehicle charging points. This could be conditioned if the scheme were to be approved.

Conditions could also be used to control construction impacts upon neighbouring residential premises and the highway and are therefore recommended and could be attached if the application was acceptable in all other respects.

### **Access and parking**

Highways Officers have raised no objections, requiring further details and cross sections of the proposed road and parking areas. It is considered that this information could be conditioned and any required changes would not raise any new material considerations due to the relationship between the development and surrounding development.

In addition since the previous planning committee the Government has recently withdrawn the Local Transport Note relating to Spared Spaces and has called a moratorium on the design of all developments that encompass Shared Space areas as they are non-compliant with the Equality Act 2010, until further guidance on the matter is issued later

this year. Since the previous application an amendment has been submitted to include a path, however the surfacing is not clear and Highways have requested a condition to include a consolidated and drained hard surface if permission is granted.

### **Greenway Provision**

The application has raised a number of questions about the relationship between the proposal and the Greenway.

In principal though, the provision on a dedicated strip of land to the front of the site is welcomed in accordance with UDP saved policy LC5. The route though is severed by the proposed access into the site and, as it runs parallel to the existing pavement, is not considered to offer a substantial benefit to users of the Greenway. Whilst details of boundary treatment, motorcycles barriers and other engineering details could be dealt with by condition provided the application was acceptable in all other respects, the applicant has not provided details of measures to address part (c) of UDP policy LC5 which seeks to ensure appropriate maintenance arrangements are in place. Accordingly, little or no weight can be given to this aspect of the development.

### **Coal Mining**

The Coal Authority recommends that the LPA impose a Planning Condition should planning permission be granted for the proposed development requiring these site investigation works prior to commencement of development.

In the event that the site investigations confirm the need for remedial works to treat the areas of shallow mine workings to ensure the safety and stability of the proposed development, this should also be conditioned to ensure that any remedial works identified by the site investigation are undertaken prior to commencement of the development.

A condition would require prior to the commencement of development:

- \* The submission of a scheme of intrusive site investigations for approval;
- \* The undertaking of that scheme of intrusive site investigations;
- \* The submission of a report of findings arising from the intrusive site investigations;
- \* The submission of a scheme of remedial works for approval; and
- \* Implementation of those remedial works.

### **Site of special scientific interest**

The land immediately to the east of the site across Vernon Way, is identified as the Sneyd Reservoir SINC in the UDP. Saved policies ENV23: Nature Conservation and New Development and ENV33: Landscape Design requires a landscape plan to be approved prior to determination by virtue of the following locational criteria set out in policy ENV23.

- VIII. Within or adjacent to Local Nature Reserves, Sites of Special Scientific Interest, Sites of Importance of Nature Conservation, parks, cemeteries or public open spaces.
- IX. Within or adjacent to Green Belt, agricultural or open land.

Because changes to the character of the area and the visual impact on the Green Belt are considered to be of significant importance, it is felt that these matters should not be conditioned as they cannot be assessed as part of the application. So that the development minimises any potential impact on the character of the area landscaping is a

material consideration and the application fails to demonstrate that the existing countryside character of the area would be retained.

An Ecological Survey has been submitted which provides details of mitigation for potential loss of habitats as set out in the beginning of the report. ENV23 seeks habitat creation, enhancement and the implementation of other appropriate measures to encourage the conservation of wildlife.

The submitted report recognises the potential harm that the development would have on the SLINC and the countryside character of the area and for these reasons is considered to re-enforce officers concerns that the development would be detrimental to the Sneyd Reservoir SINC. In the absence of any detailed landscape proposals and enhancements the refusal reasons previously recommended remain the same.

### **Safety and security of future occupiers**

The proposed scheme is in a remote location, which has been subject to anti-social behaviour as confirmed by Councillor Follows. Whilst it is recognised, residential properties can bring a degree of natural surveillance to a location, it is considered in this instance, given the locational issues, this would put an undue strain on future occupiers, with them potentially becoming victims. Should all other matters of the development be acceptable, a planning condition for the development to be built to meet minimum-security measures including; windows, doors, alarms; boundary treatments; artificial lead and lighting would be imposed. This condition meets the Governments 6 tests for planning conditions

### **Other matters**

The case officer notes the call in reason and would like to clarify that the Council has enforcement powers to minimise any public nuisance at the site and that such issues do not constitute very special circumstances.

Officers have received a complaint with regards to the untidiness and appearance of the site. We have assessed the impacts and consider that there is a detrimental impact on the amenity of the area and the site is in breach of planning control. We have written to the owners to invite voluntary undertake works to tidy up the site and address the breach. If this is not successful then officers would seek to issue a formal notice under S215 to address the condition of the land.

It is the applicant's decision what type of development is proposed through a planning application there are no policy grounds in particular for supporting a children's play area here.

## **Conclusions and Reasons for Decision**

The proposal is contrary to paragraph 144 of the NPPF which regards such development as inappropriate. For the reasons outlined in the assessment the applicant has not provided very special circumstances and is a reason to refuse the application.

The proposed design, scale, density and mass is at odds with the character of the existing development in the area and is contrary to policy HOU2 of the UDP and a reason to refuse the application.

The level of amenity for occupants and its location 20 metres from the converted Public house is sufficient that all residents would receive adequate levels of light and that there would not be an overbearing impact.

Conditions can be attached to incorporate the mitigation and replacement planting proposed in the Arboriculture statement in accordance with Policy ENV18: Existing Woodlands, Trees and Hedgerows.

The access and parking subject to conditions as recommended would ensure satisfactory levels of parking and access for occupants and accords with UDP policies T7 and T13. Although the suggestion of a greenway to the front of the site is welcomed, the absence of any maintenance arrangements results in a conflict with Policy LC5 and therefore little or no weight can be attributed to this aspect of the development.

Conditions can be attached to mitigate for past ground mining works to safeguard the amenities of the area and to comply with UDP policy ENV14.

The potential domestic landscaping would be at odds with the existing open countryside character of the application site and no habitat improvements have been proposed as part of a landscaping plan contrary to the requirements of UDP policy ENV23 and is a reason to refuse the application. The absence of information on the impact on the protected Maple is also noted.

On balance therefore, it is considered that whilst there are some matters in support of the development notably, the delivery of four dwellings, these are significantly outweighed by the harm to the openness to the Green Belt that would be caused by the development for which no material planning grounds have been presented to establish very special circumstances as required by paragraph 89 of the NPPF.

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

The agent has received pre-application advice and has been made aware of the Council's position on the principle of the development, no further justification of very special circumstances has been provided. Notwithstanding this advice the agent has chosen to amend the scheme, reducing the number of houses in an attempt to reduce the impact on the openness and character of the green belt. These changes fall short of the policy requirements and as there is little if any potential to amend this scheme satisfactorily no further survey work or information has been requested or is required to make a decision.

### **Recommendation**

Refuse

### **Reasons for Refusal**

1. The development due to its location and layout would result in significant harm to the openness of the Green Belt being visually prominent from houses along Glastonbury Crescent in particular to which very special circumstances have not been justified to outweigh any harm to the openness of the Green Belt. For these reasons the proposal

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would be contrary to the aims and objectives of the National Planning Framework in particular policies 133, 134, 143, 144, 145, 146 and 147. The Black Country Core Strategy policy CSP2, Walsall's Saved Unitary Development Plan policies, in particular GP2, ENV2 and ENV32.

2. The design of the proposal would not integrate with the existing built development due to the higher proposed density which would be at odds with the surrounding built development along Vernon Way, contrary to the expectations of BCCS policy HOU2. For these reasons the proposal would be contrary to the aims and objectives of the National Planning Framework in particular policies 117, 122, 123, 129, 130 and 131. The Black Country Core Strategy, policies CSP4, HOU2 and ENV3, and Walsall's Saved Unitary Development Plan policies, in particular GP2, and ENV32.

3. The application lacks sufficient ecology information to be able to assess the character of the proposed development and its impact on the openness of the Green Belt as follows:

- Ecological value of some of the existing features.
- Any proposed effective retention of existing features.
- Any proposed landscape measures.

For these reasons the proposal would be contrary to the aims and objectives of the National Planning Framework in particular policies 170, 175, 176 and 177 The Black Country Core Strategy, policy ENV1 and Walsall's Saved Unitary Development Plan policies, in particular ENV23, ENV32, and ENV33 and The Supplementary Planning Document Conserving Walsall's Natural Environment'.

4. In the absence of an arboricultural report to consider the impact of the proposed development on the protected Maple tree For these reasons the proposal would be contrary to the aims and objectives of the National Planning Framework in particular policies 170, 175, 176 and 177 and contrary to saved UDP policy ENV18: Existing Woodlands, Trees and Hedgerows.

5. The proposal fails to include details of the proposed funding, management and maintenance of the greenway. For these reasons the proposal would be contrary to the aims and objectives of the National Planning Framework in particular policies 170, 175, 176 and 177 and contrary to saved policy LC5 (c) of Walsall's Unitary Development Plan.





Economy and Environment, Development Management

## Planning Committee

Report of Head of Planning, Engineering and Transportation on 04-Oct-2018

**Plans List Item Number: 5.**

**Reason for bringing to committee: Deferral from Planning Committee 12/07/2018**

**Location:** 83, MILTON STREET, WALSALL, WS1 4LA

**Proposal:** CHANGE OF USE FROM TRAVEL AGENTS TO HOT FOOD TAKEAWAY  
(RE-SUBMISSION OF 17/1634)

**Application Number:** 18/0398

**Applicant:** Ali Saqib

**Agent:** J T Design Partnership LLP

**Application Type:** Full Application

**Case Officer:** Mike Brereton

**Ward:** Palfrey

**Expired Date:** 24-May-2018

**Time Extension Expiry:** 12-Oct-2018

**Recommendation Summary:** Grant permission subject to conditions



## Proposal

Planning Committee of 12<sup>th</sup> July resolved to defer this application to officers to negotiate a suitable alternative scheme.

Additional supporting information has since been submitted by the applicant in an effort to address the previous recommended refusal reasons. These are considered in the report below.

This application is a re-submission following a previous refusal to change the use of the application property at ground floor from Travel Agents (A1) to a Hot Food Takeaway (A5).

The opening hours would be 11:00am to 22:30pm Monday to Saturday.

## Site and Surroundings

The application site is a two storey terraced property within Palfrey Local Centre and situated at back of pavement fronting Milton Street. The immediate locality is a mix of small convenience and retail uses along with a Hot Food Takeaway at No.77 (Caspian Pizza). Further hot food takeaways are present along Milton Street at No.73 (Pearl Fish Bar & Kebab House), No.69 (Khans Fish Bar, Pizza & Kebab House) and No.67 (Big Bite, burgers etc). Residential flats exist at first floor above shops and takeaways.

Palfrey Infant School at rear is opposite the application site across Sun Street and Palfrey Community Centre is 20m to the south along Milton Street.

## Relevant Planning History

### **Application Site:**

17/1634 - Change of Use from Travel Agents to Hot food takeaway. Refused 23/03/2018 for the following reasons (summarised):

- 1. The addition of a further hot food takeaway in this location has the potential to result in additional harm to the amenities of nearby residents, particularly to those occupying flats above the application site and nearby properties. This application fails to demonstrate any necessary mitigation measures relating to the external extraction equipment and the proposal is considered has the potential to result in cumulative impacts on residents' amenity regarding noise and disturbance.*
- 2. There are a number of hot food takeaways already present within the locality. The proposed addition of a further takeaway in this location is considered would detract from the overall vitality and variety of this Local Centre.*
- 3. The proposed flue would be largely visible in the street scene and would be the only one visible along the roof line in the immediate locality. This is considered would be incongruous and would result in harm to the visual amenity and character of the area.*

### **No.85 Milton Street:**

BC56324P - Change of use to hot food take-away. Refused 07/11/2000 for the following reasons:

#### **For the following reasons:-**

- 1 The premises are located on a busy road (that is a bus route) and close to bus stops, a pedestrian crossing and a school. Customers would expect to be able to park close to the door of the takeaway, and no off-street car parking spaces can be provided at the front of the premises for customer use. The proposals will increase the demand for car parking provision at the site. Waiting restrictions exist on Milton Street directly adjacent the premises such that no waiting is allowed between 8am and 6pm. There is a small area of limited waiting (1Hr) on the opposite side of Milton Street but there is already over-demand for these spaces. The proposals are therefore likely to lead to increases in illegal car parking on Milton Street in restricted areas and may also lead to car parking adjacent to bus stops or near to the pedestrian crossing. For the above reasons, it is the view of the Local Planning Authority that the development is likely to be detrimental to the free flow and safety of traffic and pedestrians contrary to policy 7.2 in the adopted Walsall Unitary Development Plan.
- 2 It is the view of the Local Planning Authority that the proposed takeaway would have a significant detrimental environmental impact on nearby flats above the shops (prejudicial to property improvements undertaken under the City Challenge programme), on users of the street, and on the area generally for the following reasons:
  - i) the proposed takeaway would generate noise and disturbance from the arrival and departures of customers during sensitive hours of the day, particularly late in the evening,
  - ii) The use would generate smells and odours from the cooking process which would have a detrimental impact (while the effects can be reduced by filtration equipment etc. they cannot, in the view of the Local Planning Authority, be eliminated).

The proposal is therefore contrary to policies 3.6, 3.7 and S11 of the adopted Walsall Unitary Development Plan.

### **Relevant Policies**

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

[www.gov.uk/guidance/national-planning-policy-framework](http://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 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 12 – Achieving well-designed places**

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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. 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.

On **consultation** the NPPF makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs. Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days. Statutory consultees should be aware of the risk that, should they fail to respond within a specified time period, a local planning authority may proceed to decide the application in absence of their advice.

### **Local Policy**

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

### **Black Country Core Strategy**

- CSP4: Place Making
- CEN5: District and Local Centres
- CEN6: Meeting Local Needs for Shopping and Services
- TRAN2: Managing Transport Impacts of New Development
- ENV3: Design Quality

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- ENV10: Pollution
- ENV32: Design and Development Proposals
- S1: Definition of Town Centre Uses
- S2: The Hierarchy of Centres
- S3: Integration of Developments into Centres
- S5: The Local Centres
- S6: Meeting Local Needs
- S10: Hot Food Take-Aways, Restaurants and Other A3 (Food and Drink) Outlets
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

## Supplementary Planning Document

### Designing Walsall

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character

### Consultation Replies

**Pollution Control** – Concur with previous recommendations made by Environmental Health.

**Environmental Health** – No objection subject to conditions regarding extraction, noise, no deliveries outside of the opening hours, storage/disposal/containment of waste and instillation of a grease trap.

**Local Highway Authority** – Previously no objection and recommended refuse area at rear and restriction of building at rear not to be used as part of application.

### Representations

2 x objections have been received on the following grounds:

- Too many hot food takeaways in area already;
- Fumes, smoke and smells;
- Unhealthy food (*this is not a material planning consideration*); and
- Traffic issues (*this was considered in previous application to be acceptable*);

A further objection was received but the provided address of 101a Milton Street could not be verified despite requests from officers and no further response was received. Limited weight can be given to this objection.

6 x letters of support have also been received from the local community on the following grounds:

- Re-opening a vacant unit is supported; and
- Variety of food choice welcomed.

### Determining Issues

- Whether this application overcomes previous refusal reasons.
- Other material considerations

### Assessment of the Proposal

**Whether this application overcomes previous refusal reasons.**

***1. The addition of a further hot food takeaway in this location has the potential to result in additional harm to the amenities of nearby residents, particularly to those occupying flats above the application site and nearby properties. This application***

***fails to demonstrate any necessary mitigation measures relating to the external extraction equipment and the proposal is considered has the potential to result in cumulative impacts on residents' amenity regarding noise and disturbance. This application is contrary to UDP Policies GP2, ENV10 and S10.***

The applicant has explained that nearby hot food takeaways close between 11:00pm and 12:00am of an evening and has offered to close this proposed hot food takeaway at an earlier time of 10.30pm in an effort to minimise impacts to residents' amenity.

Furthermore, the applicant has since provided a detailed specification of a high odour control extraction system along with anti-vibration mounts to further help minimise impacts on residents' amenity.

Overall, on balance these improvements are considered would help to minimise impacts on residents' amenity and help to minimise cumulative impacts arising.

These measures would be secured by condition which meet the 6 tests for conditions, plus the proposal accords with NPPF2 & NPPF8 and Saved UDP Policies GP2, ENV10 and S10.

***2. There are a number of hot food takeaways already present within the locality. The proposed addition of a further takeaway in this location is considered would detract from the overall vitality and variety of this Local Centre and no clear local need has been demonstrated. This application is contrary to NPPF 2 and UDP Policy S4.***

The applicant has proposed to operate at an earlier start time of 10:00am, with doors opening at 11:00am to enable a level of activity and lighting to be visible at the application unit frontage and explains this proposal would bring a vacant unit back into use which currently has a permanently closed appearance with closed roller shutter.

Overall, on balance this is considered would help to achieve an improved active frontage to the benefit of the local centre and is acceptable.

The opening times would be secured by condition which meet the 6 tests for conditions, this application accords with NPPF7 (formerly NPPF2) and Saved UDP Policy S4.

***3. The proposed flue would be largely visible in the street scene and would be the only one visible along the roof line in the immediate locality. This is considered would be incongruous and would result in harm to the visual amenity and character of the area.***

The external extraction flue has been re-positioned from the front to the rear elevation of the application building. Whilst the flue would still be at least 1metre above the highest part of the building and may still be visible in the street, it is considered repositioning from the buildings ridge to the rear of the building, would reduce its prominence.

A condition which meets the 6 tests for conditions, requiring the flue to be finished in black weatherproof material further assists in this instance to reduce its prominence. It is considered the repositioned flue is acceptable and minimises the harm to the character of the area.

In summary, this application has overcome refusal reason 3.

### **Other material considerations**

Further conditions would be included regarding extraction, noise, delivery hours, waste / refuse storage, exclusion of building at rear (off Sun Street) and grease trap as recommended by Environmental Health, Pollution Control and Local Highway Authority in the interest of safeguarding nearby neighbours / occupiers amenity, highways safety and the satisfactory operating of the proposed use. These conditions meet the 6 tests for conditions.

### **Conclusions and Reasons for Decision**

In assessing this application against neighbour and consultee comments and local and national planning policy and guidance, it is considered the proposal has overcome all previous refusal reasons and would not result in any significant additional harm to the character or appearance of the area, to the vitality and variety of the centre or to neighbours amenity.

This application meets the policies set out in this report and is acceptable subject to the recommended safeguarding conditions.

Taking into account the above factors it is considered that the application represents sustainable development and should be recommended for approval.

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

#### **Approve**

The applicant has overcome all previous refusal reasons as set out in this report and the proposal can be supported.

### **Recommendation**

Grant Permission Subject to Conditions

### **Conditions and Reasons**

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. This development shall not be carried out other than in conformity with the following approved documents and plans: -

- Block Plan. Deposited 29/03/2018
- Location Plan. Deposited 29/03/2018
- Design and Specification for Extraction Ventilation System (30<sup>th</sup> July 2018). Deposited 02/08/2018
- Planning Statement. Amended deposited 02/08/2018

- Supporting Letter (JT Design Partnership – 02/08/2018). Deposited 02/08/2018
- Proposed Ground Floor Plan and Layout (JMD 60-03). Amended deposited 18/05/2018

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).

3a. Prior to the hereby approved A5 Hot Food Takeaway first coming into use a grease trap shall be installed to prevent entry into the public sewerage of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents.

3b. The grease trap shall thereafter be retained for the life of the development.

Reason: To safeguard the amenities of the occupiers of the adjoining premises and the wider area, to ensure the satisfactory functioning of the development and to comply with saved UDP Policies GP2 and S10.

4. Prior to the hereby approved A5 Hot Food Takeaway first coming into use a secure covered refuse area shall be provided at the rear of the application site and thereafter retained for the life of the development.

Reason: To safeguard the amenities of the occupiers of the adjoining premises and the wider area, to ensure the satisfactory functioning of the development and to comply with saved UDP Policies GP2 and S10.

5a. Prior to the hereby approved A5 Hot Food Takeaway first coming into use the extraction system as shown on 'Design and Specification for Extraction Ventilation System (30<sup>th</sup> July 2018)' deposited 02/08/2018, shall be installed and shall also include the following:

- i. Be finished in black weatherproof material intended not to peel or flake from the substrate;
- ii. Where attached to any wall or other structural building elements, use appropriate vibration isolation mounting systems and ductwork be de-coupled from fans and motor units; and
- iii. Noise from the extraction system shall be designed and operated to achieve a Noise Rating of NR 40 dB one metre from the window of any habitable room.

5b. The extraction system shall be retained for the life of the development.

Reason: To safeguard the amenities of the occupiers of the adjoining premises and the wider area, to ensure the satisfactory functioning of the development and to comply with saved UDP Policies GP2 and S10.

6. The hereby approved development shall not operate, or accept or despatch deliveries, outside the hours of 11:00am to 22:30pm Monday to Saturday.

Reason: To define the permission, safeguard nearby occupiers amenity and accord with Saved UDP Policies GP2 & S10.



7. No Hot Food Takeaway Use (A5) shall operate at any time from the detached building (shown on the submitted Block Plan deposited with the Council on the 29/03/2018) located within the application site at the rear of the application building or be accessed from Sun Street at any time.

Reason: To define the permission, safeguard nearby occupiers amenity and accord with Saved UDP Policies GP2 & S10.

### **Notes to applicant**

#### **Environmental Health**

The main activity at these premises is such that Walsall Council Environmental Health would enforce the requirements of Food Safety and Hygiene (England) Regulations 2013 and relevant European Community Regulations and Health and Safety at Work etc. Act 1974. The premises is required to comply with the requirements of this legislation and the application should consult with Environmental Health regarding legal requirements.

#### **Adverts**

This permission does not grant consent for any signs or advertisements, illuminated or non-illuminated for which a separate application may be required under the Town and Country Planning (Control of Advertisements) Regulations 2007 or subsequent legislation.





## Planning Committee

Report of Head of Planning, Engineering and Transportation on 04-Oct-2018

**Plans List Item Number: 6.**

**Reason for bringing to committee: Significant Neighbour Interest**

**Location:** LAND BETWEEN 35A AND 37 PORTLAND ROAD, ALDRIDGE, WALSALL, WS9 8NU

**Proposal:** VARIATION OF CONDITION 2 OF PLANNING PERMISSION 16/0169 (AS VARIED BY PERMISSION 17/1698) TO INCREASE HEIGHT OF ROOF BY 1 METRE TO 9 METRE.

**Application Number:** 18/0963

**Applicant:** Mr Peter Dhillon

**Agent:** Mr Maurice Cotton

**Application Type:** Section 73: Removal or Variation of Condition(s)

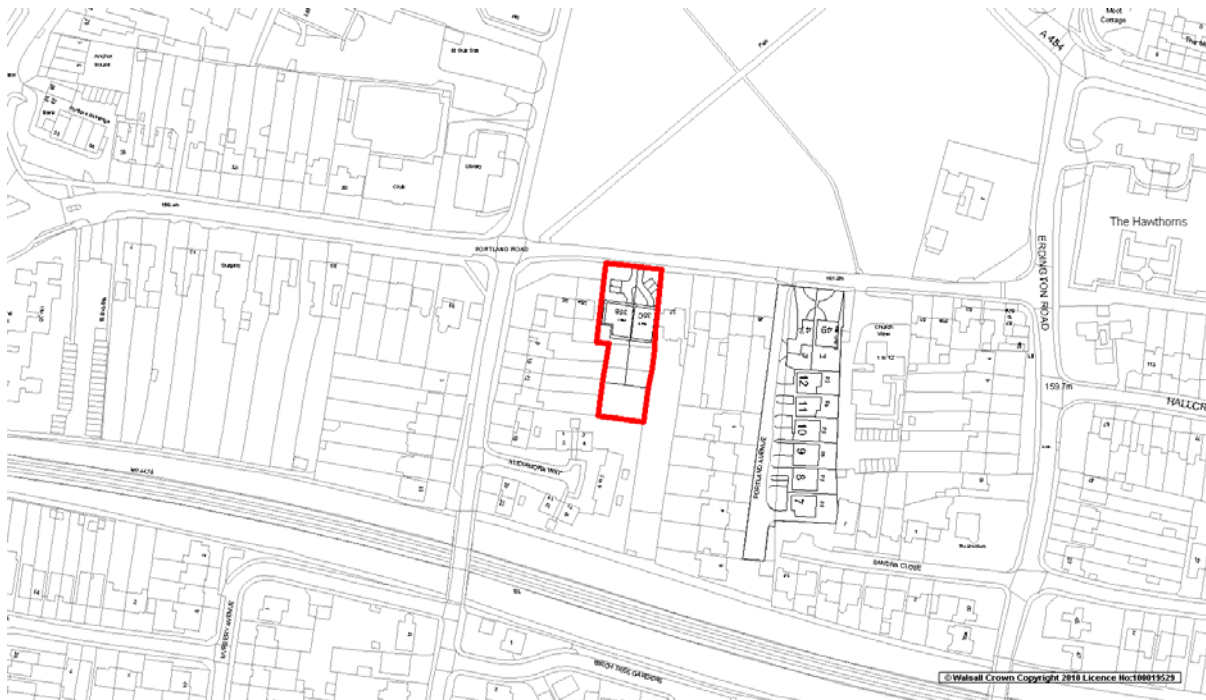
**Case Officer:** Stuart Crossen

**Ward:** Aldridge Central And South

**Expired Date:** 05-Oct-2018

**Time Extension Expiry:**

**Recommendation Summary:** Grant permission subject to conditions



## Proposal

The proposal is for Variation of condition 2 of planning permission 16/0169 to allow the increase in height by 1m of plot 2.

The proposal follows a previous approval for Variation of condition 2 of planning permission 16/0169 to allow the increase in width by 1.35m of plot 2 and repositioning of plot 1 West by 1.35m.

The original approval proposed a detached houses each comprising an integral garage, kitchen, hall, w/c and lounge/dining rooms at ground floor with 4 bedrooms (two with en-suite) landing and bathroom at first floor. They are proposed to be clad in render with UPVC windows and concrete tiled roofs. This application proposes an amendment to plot one to include a snug on the ground floor where part of the garage was, the remaining element and garage doors would be retained to provide storage and on the first floor there would be an additional store. The rear elevation at ground floor proposes to replace the previously approved rear facing ground floor windows and French doors with a wide concertina glass door.

The fronts of the dwellings are positioned broadly in line with the adjacent dwellings 35A and 37 Portland Road. Plot 1 is an L shaped building and is 11.5m wide by 12.5m long (the shorter section is 8m long). This plot was positioned 2.2m away from the boundary with 35A Portland Road, this application proposes to reduce the gap by 1.4 metres to 800mm. Plot 2 was 8m wide and this application proposes to increase the width to 9.2m, it would remain 12.5m long and be positioned 1.2m away from the boundary with 37 Portland Road. Both houses are 4.5m to the eaves and 8m to the ridge of the roof. This is marginally higher than the roof of 35A and marginally lower than the roof of 37 Portland Road. There is a gap of 1.2m between the dwellings. Plot 1 has a small gable on the front elevation and wider gable on the rear, Plot 2 is an entirely gable design house.

There is a combined central access off Portland Road at the front of the site with each plot having its own driveway branching off with three parking spaces to plot 1 (an additional space from the previous scheme) and two parking spaces to plot 2 coupled with their garage space provides for 3 off-street parking spaces.

The site is 0.14 hectares which equates to a density of 14 dwellings per hectare.

At the time of the site visit both plots were nearly completed.

## Site and Surroundings

The formally vacant site is on the southern side of Portland Road and was formally occupied by a block of 8 x 1 bed flats within a two storey pitched roof block set on the same building line as the properties either side. A number of mature trees are situated within the site and there is a hedge along the boundary of Portland Road.

The site is within the Aldridge Conservation Area and the opposite side of the road forms the boundary of the Aldridge district centre. The Croft urban open space is situated to the north on the opposite side of Portland Road. This is mostly maintained grass with

pathways through and mature trees. A pair of 1960's semi detached facing brick houses (35 and 35a) sits immediately to the west of the site, each with a single storey side garage. To the east is a large detached rendered 1930's house with single storey side pitched roof garage (37). To the rear (south) of the site is a two storey block of flats off Alexandra Way.

## Relevant Planning History

16/0169 - The building of 2 no. Detached houses. – GSC 27/04/16  
16/0077 - English Oak Tag No. 979 to fell to ground level – Consent granted 25/02/16.  
14/1590/FL - Erection of a pair of 4 bed semi detached houses – GSC 09/01/15.  
08/1408/CA - Demolition of 35b Portland Rd - Approved 06/01/09.

## Relevant Policies

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

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

On **consultation** the NPPF makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs. Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days. Statutory consultees should be aware of the risk that, should they fail to respond within a specified time period, a local planning authority may proceed to decide the application in absence of their advice.

### **Local Policy**

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

### **Black Country Core Strategy**

- CSP1: The Growth Network
- CSP2: Development Outside the Growth Network
- CSP3: Environmental Infrastructure
- CSP4: Place Making
- HOU2: Housing Density, Type and Accessibility
- TRAN1: Priorities for the Development of the Transport Network
- TRAN2: Managing Transport Impacts of New Development
- TRAN5: Influencing the Demand for Travel and Travel Choices
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV7: Renewable Energy
- WM5: Resource Management and New Development

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV17: New Planting
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV29: Conservation Areas
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- ENV40: Conservation, Protection and Use of Water Resources
- H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings
- T4 - The Highway Network
- T7 - Car Parking
- T8 – Walking
- T10: Accessibility Standards – General
- T13: Parking Provision for Cars, Cycles and Taxis

## **Supplementary Planning Document**

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

- Development with the potential to affect species, habitats or earth heritage features
  - NE1
  - NE2
  - NE3
- Survey standards
  - NE4
- The natural environment and new development
  - NE5
  - NE6
- Development with the potential to affect trees, woodlands and hedgerows
  - NE7
  - NE8
  - NE9
  - NE10

### **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

**Policies are available to view online:**

#### **Legislation:**

- **Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990**
  - **Section 72(1) General duty as respects conservation areas in exercise of planning functions**

#### **Other Policy/guidance:**

- Conservation Principles Policies and Guidance for the Sustainable Management of the Historic Environment: English Heritage (2008) Historic environment Good practice Advice Notes 2, and 3.

## **Consultation Replies**

**Transportation** – No comments

**Pollution Control** – No comments

## **Representations**

5 objections have been received from 3 households on the following grounds:

- The planning department are not doing their job properly
- Applicant was told at the last planning committee that the height of the building could be higher than 35 but not 37, it is now higher and he has broken the condition.
- Out of character due to the height which is out of proportion
- Has already felled a tree
- Disregarding the planning rules should result in the roof being lowered.
- Building regulations should have stopped the progress of the unauthorised building work.

## **Determining Issues**

- Design and Layout and Impact on the Conservation Area
- Impact on the Amenities of the Surrounding Occupiers

The following determining issues were considered in the previous application and the amendments to this scheme raise no new considerations in this regard.

- Principle of Residential Development
- Parking, Access and Highway Safety
- Impact on Trees and Natural Environment
- Local Finance Considerations
- The conditions were updated in the previous decision to reflect the discharge of conditions application.

## **Assessment of the Proposal**

### **Design and Layout and Impact on the Conservation Area**

The 1m height increase is considered would not have any detrimental impact on the existing street-scene. It is recognised that the ridge height is higher than number 37, with the roof sloping away from number 37. It is, not uncommon for houses in an established location, to have varying roof heights especially in an area with a mix of traditional houses designs with front or side main gable roof designs.

The previous application considered the potential harm to the Conservation Area and these amendments raise no new considerations in this regard.

### **Impact on the Amenities of the Surrounding Occupiers**

The increase in roof height by 1 metre would not result in any significant loss of light or overbearing impact to justify refusal. The nearest house to the rear is over 45 metres away.



### **Other Issues raised through consultation.**

- *The planning department are not doing their job properly*

The planning department does not design or submit planning applications, as the planning department is required to assess each application on its own merits with the local and national planning policies.

- *Applicant was told at the last planning committee that the height of the building could be higher than 35 but not 37, it is now higher and he has broken the condition.*

The planning committee minutes did not record this. There's no planning justification in this instance for such a stipulation, as the above assessment concludes.

- *Has already felled a tree*

This was a separate matter which is not relevant to the assessment of this application.

- *Disregarding the planning rules should result in the roof being lowered.*

The planning system allows planning permission to be obtained retrospectively at the applicants own risk. Whilst the Council does not support every retrospective application, which can result in applicants removing or modifying unauthorised buildings, in this instance, the Council is able to support the changes.

- *Building regulations should have stopped the progress of the unauthorised building work.*

Building regulations is a separate third party legislation, not part of the planning legislation. It is the applicant/owners responsibility to ensure their development accords with their planning permission whilst meeting the building regulations.

### **Conclusions and Reasons for Decision**

The proposal is considered to cause 'less than substantial' harm to the Conservation Area and the amendments raise no new concerns in this regard. The design is not significantly different to the previous approval to justify refusal and is considered compatible with UDP policy ENV32.

The relationship between the proposal and neighbouring houses is considered acceptable that the proposals would have no adverse impact on the amenities of the adjoining occupiers and complies with policy GP2 and Designing Walsall SPD.

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

Officers have confirmed to the agent that the submission is valid and have not requested any amendments to fully support the scheme.

## Recommendation

Grant Permission Subject to Conditions

## Conditions and Reasons

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. This development shall not be carried out other than in conformity with the following plans and documents: -

- Location Plan received 05/02/16
- Site Plan (A100) received 05/02/17
- Amended Proposed Ground Floor Plan (A101 rev B) received 22/12/17
- Amended Proposed First Floor Plan (A100 rev C) received 22/12/17
- Amended Proposed Elevations 1 (A105 rev B) received 20/09/18
- Amended Proposed Elevations 2 (A106 rev B) received 20/09/18
- External Dimensions (A400) received 22/12/17
- Survey (7762/1) received 05/02/16
- Planning Statement prepared by Cotton Surveys received 05/02/16

*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).

3. The development shall be completed with the approved discharge of conditions details 16/0169 and retained as such.

*Reason:* To ensure the development is provided with satisfactory means of drainage and to reduce the risk of flooding and pollution. Drainage is below ground infrastructure that needs to be resolved before construction of any new dwellings is commenced.

4. The development shall be implemented in accordance with the agreed materials; walls shall be rendered off-white in colour, roof tiles shall be grey Marley Duo and the windows shall be pale grey UPVC and thereafter retained as such.

*Reason:* To ensure the materials throughout the development harmonise with those in the surrounding vicinity.

5a. Prior to the first occupation of the development hereby approved a landscaping scheme, including all boundary treatments, shall be submitted to and approved in writing by the Local Planning Authority.

5b. The landscaping scheme shall be completed in accordance with the approved details before the development is first occupied. All planting shall be maintained for a period of 3 years from the full completion of the scheme. Within this period any trees, shrubs of plant which dies, 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 Conservation Area.

6a. Prior to the occupation of the development, full engineering details of the required widening of the public footway across the entire site frontage to 2 metres together with any modifications to the existing dropped kerb access to align with the new access point as necessary, shall be submitted to and approved in writing by the Local Planning Authority.

6b. Prior to the first occupation of either dwelling on the development, the footway widening and dropped kerb works shall be fully implemented in accordance with the approved details and to the satisfaction of the Highway Authority

*Reason:* To improve the current substandard footway width and accessibility to the site, in accordance with UDP Policy GP2, T1, T5 and to highway safety and in accordance with DfT Manual for Streets guidance.

7a. The remedial measures as set out in the Ground Investigation Report dated June 2012 and submitted as part of discharge of conditions application 16/0169 shall be implemented prior to occupation.

7b. If during the undertaking of the construction of the approved development unexpected ground contamination not identified by the submitted Ground Investigation Report is encountered development shall cease until the Ground Investigation Report has been amended to address any additional remedial or mitigation works required and agreed in writing by the Local Planning Authority.

7c. 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. (see Note for Applicant CL3)

*Reason:* To ensure safe development of the site and to protect human health and the environment.

8a. Prior to the first occupation of either dwelling on the development, the parking areas and vehicle manoeuvring space shall be fully consolidated, hard surfaced and drained so that surface water run-off from these areas does not discharge onto the highway or into any highway drain.

8b. The frontage parking areas shall thereafter be retained and used for no other purpose.

*Reason:* To ensure the satisfactory completion and operation of the development and in accordance with UDP Policy GP2, T7 and T13.

9. Notwithstanding the Town & Country Planning (General Permitted Development) Order 2015 (or succeeding orders), any future boundary treatment across the site frontage shall provide a 2.4m x 3.4m pedestrian visibility splay at each access point, within which no planting or structure exceeding 600mm in height above footway level will be permitted.

*Reason:* To ensure adequate pedestrian/vehicle inter-visibility at the access points in the interests of highway safety.

10. Prior to the occupation of the development details of replacement tree planting at the front and rear of the site shall be submitted to and approved in writing by the local planning authority. Details shall include species, size, location and quantity. The trees shall be planted within 12 months of the commencement of the development. If within a period of 12 months from the date of planting any tree is removed, destroyed or dies then another tree of the same species and size shall be planted in the same position.

*Reason:* To safeguard the future of the trees following completion of the development and to ensure the satisfactory appearance of the development.

11. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 2015 (or succeeding orders), no development within Schedule 2, Part 1, Classes B and C (roof alterations and additions) shall be carried out to either dwelling.

*Reason:* To protect the residential amenities of adjoining occupiers and character of the area.

12. No 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 only take place between the hours of 08.00 to 18.00 Monday to Fridays and 08.00 to 14.00 on Saturdays. No plant, machinery or equipment associated with such works shall be started up or operational on the development site outside of these permitted hours.

(\* Bank and Public holidays for this purpose shall be: Christmas Day; Boxing Day; New Year's Day; Good Friday; Easter Monday; May Day; Spring Bank Holiday Monday and August Bank Holiday Monday)

*Reason:* In order to safeguard the amenities of the surrounding occupiers.

#### **Note for applicant - Contaminated Land**

**CL2:** When making assessments of any contaminants identified as being present upon the land, considering their potential to affect the proposed land use and deciding appropriate remediation targets regard should be had to the advice given in CLR 11 Model Procedures for the Management of Land Contamination, The Contaminated Land Exposure Assessment (CLEA) model (Latest Version), Science Report – SC050021/SR3 Updated technical background to the CLEA model and Science Report – SC050021/SR2 Human health toxicological assessment of contaminants in soil 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.

**CL3:** 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.

**Note for applicant – highways**

1. The attention of the applicant is drawn to the need to keep the highway free from any mud or other material emanating from the application site of any works pertaining thereto.
2. The applicant will be expected to either enter into an agreement under S38 of the Highways Act 1980 with the Highway Authority or other appropriate dedication agreement and Road Opening Permit from the Highway Authority for all works within the existing public highway and footway widening works. For further advice please contact Highway Development Control Team on 01922 655927.



Economy and Environment, Development Management

## Planning Committee

Report of Head of Planning, Engineering and Transportation on 04-Oct-2018

**Plans List Item Number: 7.**

**Reason for bringing to committee: Significant Community Interest**

**Location:** 19, GREENSLADE ROAD, WALSALL, WS5 3QH

**Proposal:** TWO STOREY AND SINGLE STOREY REAR EXTENSION, REAR DORMER WINDOW, CONVERSION OF GARAGE TO STUDY AND NEW DROPPED KERB

**Application Number:** 18/0593

**Applicant:** Mr Jaswinder Singh

**Agent:** Mr Mukesh Mistry

**Application Type:** Full Application:  
Householder

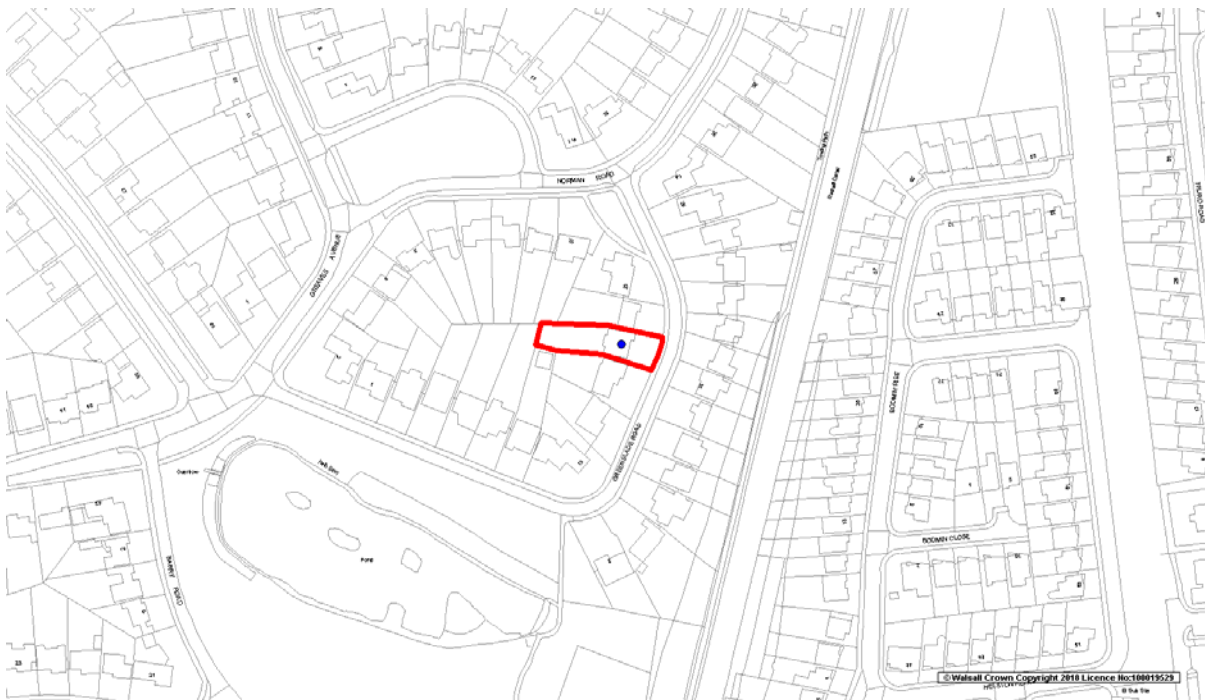
**Case Officer:** Helen Smith

**Ward:** Paddock

**Expired Date:** 14-Jul-2018

**Time Extension Expiry:** 11-Oct-2018

**Recommendation Summary:** Grant permission subject to conditions



## Status

The 9<sup>th</sup> August Planning Committee deferred this application to enable the applicant to provide an amended drawing to show the replacement of the garage door with a window. This has been received and consulted on. The report has been updated accordingly and the recommendation remains as previously set out.

## Application Details

This is a previously extended 1960's detached house with a plain and simple design which is located within a residential area. The street scene consists of similar detached houses and bungalows a number of which have previously been extended.

Greenslade Road ground levels gradually rise in a northerly direction. The application house rear elevation faces across rear gardens serving houses on Greenslade Road, Greaves Avenue and Norman Road.

This proposal is for the following additions and alterations;

### Two Storey Rear Extension

- 3 metres deep
- 8 metres wide
- Gable roof with ridge line as high as the ridgeline of the host dwelling
- Eaves height to match the height of the existing eaves of the host dwelling
- Increase the total number of bedrooms from 7 to 8
- Enlarge lounge at ground floor

### Single Storey Rear Extension

- Extends 2.5 metres further rearwards than the proposed two storey rear extension
- Gable roof
- 2.5 metres high to the eaves
- 3.8 metres high to the ridge
- Provide a dining area

### Rear Dormer Window

- 4.3 metres deep
- 1.5 metres high
- 6.6 metres wide
- Flat roof design
- 0.9 metres above the roof eaves of the host dwelling
- 0.1 metre below the ridge height of the host dwelling
- Enlarge an existing loft bedroom
- Two side facing roof lights
- Set in 2.7 metres from the roof edge nearest to 21 Greenslade Road
- Set in 2 metres from the roof edge nearest to 17 Greenslade Road



### Dropped Kerb

- New dropped kerb to serve the existing in/out driveway as one of the accesses does not have a dropped kerb
- There is a services manhole cover in the footpath which appears to be British Telecom

### Additional Alterations

- The existing garage would become a study
- Garage door would be replaced with a window

There is off-street parking for at least three vehicles on the front driveway. The loft space is already converted to habitable rooms and consequently it was considered a bat survey would not be required in this instance.

The neighbouring houses include;

### 17 Greenslade Road

This house is to the south of the application house and is a bungalow with front and rear facing dormer windows. The application house has a higher ground level than no. 17.

No. 17 has a ground floor utility room window near to the shared side boundary with the application house and a dormer window at first floor, which serves a bedroom. There is mature planting along the shared boundary between the application house and no. 17.

### 21 Greenslade Road

No. 21 sits to the north of the application house and has a ground floor dining room window with a bedroom above near to the shared boundary with the application house. The rear two-storey elevation of this neighbouring house sits 3.5 metres forwards of the rear elevation of the application house.

### 14 & 16 Greenslade Road

These houses face across Greenslade Road towards the front elevation of the application house across a separation distance of 32 metres.

### 6 Greaves Avenue

There would be a habitable room window-to-window separation distance of 82 metres.

## **Relevant Policies**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728643/Revised\\_NPPF\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728643/Revised_NPPF_2018.pdf)

The 2018 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 12 – Achieving well-designed places**

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. 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.

On **consultation** the NPPF makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs. Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days. Statutory consultees should be aware of the risk that, should they fail to respond within a specified time period, a local planning authority may proceed to decide the application in absence of their advice.

## **Local Policy**

### **Black Country Core Strategy**

- CSP4: Place Making
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- ENV32: Design and Development Proposals
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

## **Supplementary Planning Document**

### **Designing Walsall**

- DW3 Character
- Appendix D

It is considered in this case that the relevant provisions of the BCCS, Walsall's saved UDP policies and Conserving Walsall's Natural Environment and Designing Walsall SPDs are consistent with the NPPF.

Policies are available to view online: [http://cms.walsall.gov.uk/planning\\_policy](http://cms.walsall.gov.uk/planning_policy)

## Relevant Planning History

14/0653/FL – Proposed amendments to planning application 13/1453/FL for first floor rear extension, loft conversion with three rear dormer roof extensions and four front roof lights (resubmission of 14/0318/FL) – refused permission 18/06/14 and a subsequent appeal was dismissed because of the design of three proposed rear dormers (appeal reference no. APP/V4630/D/14/2222770).

The Inspector considered that the proposed three rear dormers of different designs lacked cohesion resulting in a cluttered and unbalanced rear elevation. The introduction of a rear dormer was considered by the Inspector to not necessarily be harmful.

14/0318/FL – Proposed amendments to planning application 13/1453/FL for first floor rear extension, loft conversion with three rear dormer roof extensions and two front roof lights – refused 4/4/14 because of the poor design of three proposed rear dormer additions.

13/1453/FL – Proposed first floor rear extension – GSC 21/01/14

03/0156/FL/H4 - Two storey extension and conservatory to the rear – GSC 2/7/03

## Consultation Replies

**Transportation** – No highway objections subject to the inclusion of a planning condition in respect of a proposed dropped kerb (*works on the highway require highway consent and fall outside the scope of planning legislation*).

**Canal and River Trust** – No comments

## Representations

*Officers' comments in italics*

Objections have been received from four neighbours on the following grounds;

- Overdevelopment
- Yet another application for this house (*the Council is required to assess each planning application it receives on its own merits*)
- A similar planning application was previously refused on the grounds of overdevelopment and they presume this decision would still stand

- Impact on sunlight at 21 Greenslade Road
- Fence between no. 19 and 21 has not been repaired for 10 years (*this is a civil matter between neighbours and not a material planning consideration*)
- A shadow drawing has been provided by the neighbours at 21 Greenslade Road to illustrate the potential impacts of this development on light
- Land level is approximately 2 metres higher than 8 Norman Road and 6 metres higher than some houses on Greaves Avenue resulting in overlooking
- Proposed changes would set a precedent for future extensions and would change the character of the estate for ever (*planning applications are determined on the merits of the individual case without setting a precedent*).
- Increased parking on the road which will cause difficulty getting off their drive (*the proposal meets Council's UDP saved policy T13 required parking standards and Highways officers have no objections to the proposal on highway safety grounds*)
- We do not want under any circumstances any dormer with windows in the roofs of houses on our estate (*this would be unreasonable particularly as national government provides permitted development allowances for roof extensions to most houses*)
- Dormer window would look straight down into the centre of the lounge at 8 Norman Road removing privacy the occupiers have enjoyed for 38 years
- A neighbour has provided details of an alternative position for the dormer window (*the local planning authority is required to determine proposals as presented*)

## Determining Issues

- Design of Extension and Character of Area
- Amenity of Nearby Residents
- Parking
- Conclusions

## Assessment of the Proposal

### Design of Extension and Character of the Area

Views of the dormer and rear extension from Greenslade Road and other public vantage points would be limited. There would be views of the roof-scape from the rear gardens of adjacent dwellings and the proposed dormer would be viewed against the backdrop of the existing roof of the host dwelling which is considered in this instance would limit the visual impacts of this proposed development.

The change of the existing garage door to a window is considered to be a minor change to the appearance of the dwelling house and would have little additional impact on the character of the area.

### Amenity of Nearby Residents

The proposed rear dormer would be set within the existing roof and away from each gable end of the house. It is considered that the dormer not reduce the amount of daylight to neighbouring properties.

21 Greenslade Road sits to the north of the application house, with the initial plans being amended to take account of this orientation. The proposed two and single storey rear extensions would be set in 3.6 metres from the shared side boundary with 21. This is considered would avoid the rear extension having an overbearing impact or loss of light on neighbour's amenity at no. 21.

The neighbour at 21 Greenslade Road has provided a shadow drawing to demonstrate the likely impacts of the extension on neighbours existing light and amenity at different times of the day and year. Whilst the application sits to the south of no. 21 it was noted during a site visit to number 21, that the existing rear elevations of no. 21 are already shaded because of mature planting along the rear garden boundary between no's 19 and 21. The proposal is considered would not significantly worsen the amenity enjoyed by no. 21 and will accord with policy.

17 Greenslade Road sits to the south of the application house and it is considered this orientation would limit the impacts of this development on neighbours' existing light.

The proposed extensions meet the separation distances recommended in Designing Walsall SPD, Appendix D and considered would not cause any significant harm to the residential amenities of neighbouring properties in terms of outlook, privacy or daylight.

The proposed rear extensions meet the Council's 45 degree code, as referred to in Appendix D, in relation to the adjacent houses 17 and 21 Greenslade Road. This advice is the Council's tool to guide development and planning applications in relation to neighbour's light and outlook.

Whilst the residential application property has previously been extended, it sits within a 51 metres long and 12 metres wide plot. The remaining open space around the dwelling house is sufficient to prevent the proposal from being considered an overdevelopment of the site.

Two previous planning applications (14/0318/FL and 14/0653/FL) were refused permission on the grounds that the proposed rear dormers 3 metres deep and planning application (14/0653/FL) at 5.4 metres (14/0653/FL) were oversized and top heavy.

This proposal is for a single dormer rather than three as previously proposed and the Planning inspector considered in the subsequent planning appeal that the proposed triple dormer design was unacceptable but that the introduction of a rear dormer would not necessarily be harmful. It is necessary for the Local Planning Authority to consider each planning application on its own merits rather than apply a general approach.

The remaining rear garden length would be 24 metres at the application house. The facing habitable room window-to-window distances from the proposed rear dormer and rear extension to neighbouring houses would exceed the 24 metres separation distance, which is the Council's minimum recommended separation distance between facing habitable room windows as referred to in Designing Walsall SPD Appendix D.

The two side facing roof lights are high level and angled upwards to limit any overlooking of neighbours' properties. A safeguarding condition requiring the windows to be obscurely glazed can be imposed, to mitigate any perceived overlooking that meets the 6 tests.

Windows in the proposed rear extension and dormer would be angled in relation to houses fronting Greenslade Road to the south-west and Norman Road to the north-west, which would limit overlooking and impacts on privacy even taking the difference in land levels into account.

### **Parking**

UDP saved policy T13 Parking requires the provision of three off-street parking spaces to serve a dwelling with four or more bedrooms. There is space to accommodate three off-street parking spaces on the frontage taking into account the loss of the garage parking space.

The existing drive is an 'in/out' driveway with only one dropped kerb and Highways have requested a planning condition is included to require the applicants to install a second dropped kerb. These works to the highway to facilitate the in/out access are considered to meet the 6 tests for conditions within the national planning policy guidance.

## **Conclusions and Reasons for Decision**

The key material planning considerations, neighbour comments and consultee responses have been weighed in assessing the planning application. The proposal is considered accords with the aims and objectives of relevant national policies and guidance, Council policy and guidance and on balance is considered to be acceptable. The proposed conditions are considered to meet the 6 tests within the national planning policy guidance. There are no objections from significant consultees and the community interest that has been expressed is considered to not outweigh the recommendation to approve.

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

Officers have spoken with the applicant's agent and in response to concerns raised regarding the depth of the proposed single storey extension and the scale of the rear dormer, amended plans have been submitted which enable full support to be given to the scheme.

## **Recommendation**

Grant permission subject to conditions

## **Conditions and Reasons**

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: This development shall not be carried out other than in conformity with the following approved plans: -

- Location Plan, deposited 09/05/18
- Block Plan as Proposed, deposited 09/07/18
- Existing and Proposed Plans and Elevations, drawing no. 201813/1C deposited 20/08/18

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).

3. Prior to the first use of the proposed development hereby approved the proposed additional access onto the highway shall be implemented and thereafter retained.

Reason: In the interests of highway safety

4: The walls and roof of the extension shall comprise facing materials that match, in size, colour and texture as 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.

Reason: To ensure the satisfactory appearance of the development and to comply with saved policy ENV32 of Walsall's Unitary Development Plan.

5: Notwithstanding the details submitted, the side facing roof lights opposite the side boundaries with 17 and 21 Greenslade Road will be obscure glazed to Pilkington's Level 4 privacy standard or equivalent and retained as such thereafter.

Reason: To safeguard the amenities of the occupiers of adjacent premises and to comply with saved policy GP2 of Walsall's Unitary Development Plan.

6: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or succeeding Orders, no additional side facing windows or doors, other than as shown on the deposited plans, shall be installed in any part of this development.

Reason: To safeguard the amenities of the occupiers of adjoining premises and to comply with saved policy GP2 of Walsall's Unitary Development Plan.

### **Notes for Applicant**

1. The attention of the applicant is drawn to the need to keep the highway free from any mud or other material emanating from the application site of any works pertaining thereto.
2. Any alterations to the existing adopted highway to create an additional access shall be carried out in accordance with statutory requirements. The developer is required to contact Walsall Council Traffic Management Team on 01922 654675 to discuss the access works and obtain the required licence and approval to carry out works in the highway.







# Planning Committee

**Plans List Item Number: 8.**

## Proposal

Retrospective planning consent is sought for a single storey side extension and single-storey rear extension and associated raised patio area.

The side extension is a flat roofed design as a replacement garage and washroom, measuring 2.5m wide, 9m deep and 3.8m tall.

The rear extension is a brick built and flat roofed in design, and replaced an existing rear conservatory. It measures 7.8m wide, 6.3m deep and 3.2m high. There is a large glazed opening on the rear elevation which accesses, raised terrace, which is a maximum of 0.6m above ground level and 3.7m deep 7.8m wide and has a stepped access down to remainder of the garden.

This application for retrospective planning consent to retain the rear single storey extension, side single storey extension and raised garden terrace, follows an Enforcement investigation. The applicants had applied for and got approved a single storey rear extension measuring 6.2m in depth as part of the larger home's prior notification process. They considered that the extension they then constructed accorded with this approval.

The Council's investigation however concluded that the height of the extension did not accord with the approved dimensions and was in fact 0.2m higher. Furthermore, as the time limit to complete the works under this type of application had passed they could not retrospectively undertake works to conform to the prior approval. Furthermore, a raised terrace was added to the end of the extension without planning consent and a single storey side extension erected which is above the permitted development height parameters and needs consent.

On that basis the owners have sought to apply for retrospective planning permission for the retention of the extensions as built and for the terrace with adjustments.

## Site and Surroundings

The application house is a traditional design with a hipped roof and front gable projection above double curved bay windows. The house faces onto the A461 of the Strategic Highway Network and is in the Green Belt. The line of properties on this side of the road are a mixture of detached and semi-detached bungalows and houses but there is generally space between them although no regular pattern to the gaps.

The neighbouring house number 86 is a very similar original design to the application house with the two-storey part built to the shared boundary and space at first floor level on the other side of the house.

Number 90, the neighbour on the left (north) is a bungalow with a steeply pitched roof that is built to within approximately 0.3 metres of the two-storey side gable wall of the application house and is the full width of the plot. There is a 2.45m wide and deep conservatory adjacent to the application site and then a single storey dining room extension. This property is set approx. 0.8m below the application property.

There is open Green Belt land on the other side of the road at the front of the house and to the rear.

## Relevant Planning History

14/1178/FL Two storey side extension. Refused 24.10.14 on the following grounds:

- 1. The mass of the first floor extension, completely in filling the gap to the side of number 86 Lichfield Road is considered would be contrary to policy as the closure of the gap would be out of keeping with the character of the area (which is one of space around the dwellings) and would harm the openness of the Green Belt.*
- 2. The design of the extension (as shown on the front elevation plan) with a parapet wall at first floor level is considered would not be compatible with the existing house. The proposed extension would add a new gable which would complete with the original curved bays taking the emphasis away from this original main feature and would not be subservient to the existing house. The large arched window would not match with existing windows creating a feature that would be at odds with the original design.*
- 3. The closure of the gap between the side of the application house and the side of number 86 would create a terracing effect out of keeping with the character of the area which would be exacerbated by the fact that there is no gap on the other side of the house next to number 90 Lichfield Road and would result in a solid block of development from the boundary between the numbers 92 and 90 up to the first floor gap to the side of number 86 Lichfield Road. This is considered would have a detrimental impact on the street scene.*

It was also dismissed at appeal on the 19<sup>th</sup> February 2015.

15/0763/PAHPD (Prior notification for a large home extension) Rear single storey extension: 6.2m deep; 3m high flat roof. Prior Approval not required 5.8.15. All works carried out pursuant to Schedule 2 Part 1 (Class A.1 (g)) must be completed by 30<sup>th</sup> May 2016.

Enforcement Case E17/0376 Erection of extensions which exceed PD height allowances which established the side garage is too tall and the rear extension exceeds the dimensions of the prior notification.

## Relevant Policies

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

[www.gov.uk/guidance/national-planning-policy-framework](http://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 12 – Achieving well-designed places**
- **NPPF 13 – Protecting Green Belt land**

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. 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.

On **consultation** the NPPF makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs. Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days. Statutory consultees should be aware of the risk that, should they fail to respond within a specified time period, a local planning authority may proceed to decide the application in absence of their advice.

### **Local Policy**

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

### **Black Country Core Strategy**

- CSP4: Place Making
- ENV1: Nature Conservation
- ENV3: Design Quality

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- ENV1: The Boundary of the Green Belt
- ENV2: Control of Development in the Green Belt
- ENV23: Nature Conservation and New Development
- ENV32: Design and Development Proposals
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

### **Supplementary Planning Document**

## Designing Walsall

- DW3 Character
- Appendix D

It is considered in this case that the relevant provisions of the BCCS, Walsall's saved UDP policies and Designing Walsall SPD are consistent with the NPPF.

## Consultation Replies

None

## Representations

One letter of objection from neighbouring property on the following grounds:

- Scale of the rear extension doubles the ground floor of the house overshadowing other extensions in the area.
- Extension exceeds permitted development allowances
- Loss of afternoon and evening light
- Concerns of structural safety.
- Loss of views from dining room, conservatory and second bedroom.
- Design is not in keeping with greenbelt
- Sets a poor precedent
- Raised patio is 105cm high offering intrusive views into property and resulting in loss of privacy
- The design is poor and contrary to policy ENV32.

## Determining Issues

- Design of Extension and Character of Area
- Amenity of Nearby Residents
- Impact on the Green Belt
- Parking
- Conclusions

## Assessment of the Proposal

### Design of Extension and Character of Area

The single storey side extension is built up to the boundary of the adjacent premises as per the original side garage and is characteristic of the pattern of development in this area. The height of the extension is higher than usually expected for a side extension and in that respect is not characteristic of adjacent premises. However, the height is not sufficient to cause an issue of terracing. This was one of the issues with the previously refused two storey side extension proposed at this property. Given that all the properties are not uniform in design and scale, it is considered that the side extension does not create an incongruous feature within the street scene and is therefore acceptable in design terms

and complies with local policies ENV3 of the BCCS, saved policy ENV32 of the Walsall UDP and guidance in Designing Walsall.

The single storey rear extension is a large addition to the property and not considered to be disproportionate, given the large footprint to the dwelling and the substantial nature of the garden to accommodate the extension. The design as a flat roofed extension is an appropriate design and does not detract from the character and appearance of the area and complies with local policies and guidance.

### **Amenity of Nearby Residents**

The single storey rear extension complies with the 45-degree code when measured from the midpoint the nearest habitable window at 86 Lichfield Road, given their existing extension and the gap to the rear extension currently being considered. It is considered that the extension as built does not have a detrimental impact on the amenities of occupiers of this property in terms of loss of light and outlook and does not have an overbearing impact.

The rear extension fails to comply with the 45-degree code in relation to the neighbouring property 90 Lichfield Road and its nearest habitable room window. The extension breaches the 45 degree code by 2.5m. The 45 degree code has been applied to the rear conservatory as a habitable room as defined within the policy. The applicant's agent, has indicated that the policy should not be applied to this conservatory but applied to the adjacent dining room window. The current rear extension would therefore comply with the 45 degree policy if measured from this position.

The Council's 45 degree policy is clear on what type of rooms it is applied to and there is no justification within the policy for when you do not apply it to a conservatory.

In addition to breaching the policy, it should be noted that the neighbouring property is set approx. 0.8m lower than the application site and the extension is right up to the shared boundary. The orientation of the properties, with the extension south west of the rear elevation of no. 90, further exacerbates the issues and means that the rear extension, impacts on the light to no. 90 particularly during the afternoon and evening.

It should be noted that the previous prior approval cannot now be implemented as the time period for the works to be completed has expired and therefore the scale of that extension cannot be considered a fall-back position by which to offset the impact of this development. Permitted development allowances for a detached house would allow for a 4m deep extension, which is greater reduction to the depth of the extension than compliance with the 45-degree code policy and therefore does not offer any mitigation in the consideration of the impacts.

Given the above, it is considered on balance that the position, length and relative height of the extension has an adverse impact on the amenities of the occupiers of No. 90 in terms of loss of light, outlook and has an overbearing impact. The proposal would benefit the applicant by providing additional living accommodation. However, this would be a wholly private benefit that would not be sufficient to outweigh the harm to that has been identified or the resultant development plan conflict.

The proposal also includes a raised terrace off the end of the rear extension. This is set 1.5m from the boundary with no. 86 and is considered to not have a detrimental impact in terms of overlooking or loss of privacy.

The terrace is against the boundary with no. 90 and given the height difference of 0.8m, the boundary fence is only 1m in height from the top of the terrace and does not offer sufficient screening to afford an acceptable level of privacy to the occupiers of no. 90. To raise the boundary treatment by 0.8m would create an excessively high boundary to no. 90 and exacerbate issues of loss of light as set out above in relation to the rear extension.

The owners have sought to create a 1.5m wide raised planting bed on the terrace with a planting scheme of plants at least 0.5m in height. This will act in two ways to limit the impact of overlooking and loss of privacy by moving people away from the shared boundary and providing a softer planted screening between. It is considered this is an acceptable means to overcome the concerns and if all other matters were acceptable, this could be conditioned that would meet the Governments 6 tests, to be completed within 3 months of the consent and retained thereafter.

### **Impact on Green Belt**

The floor area of the rear extension is approximately 48m<sup>2</sup> and when the previous conservatory (which appears to be the only addition to the original footprint) has been deducted would result in additions of approximately 37% in relation to the floor area of the original house. This is considered would not result in disproportionate additions and would comply with both national and local Green Belt policies.

## **Conclusions and Reasons for Decision**

Whilst there is no objection to the retention of the side extension and the impacts of the rear terrace could be mitigated through the implementation of a planting bed, and controlled by condition.

The retention of the rear extension would have a materially detrimental impact on the living conditions of occupiers of no. 90 Lichfield Road, with respect to loss of light, outlook and overbearing impact. In consequence it conflicts with the 45 degree code policy, saved UDP policy GP2, the NPPF and guidance in Designing Walsall SPD, which taken together expect new development to achieve a high standard of amenity for existing and future users and, specifically, resist development that would have an unacceptable adverse effect to the living conditions of nearby property.

The proposal would benefit the applicant and his family, by providing additional accommodation. However, this would wholly be a private benefit that would not be sufficient to outweigh the harm that has been identified or the resultant development plan conflict.

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**

### **Refuse**

Officers have spoken with the applicant's agent and held a meeting with the applicant and agent and in this instance are unable to support the proposal. Amendments to the development have been proposed to overcome these objections, but the applicant is unwilling to agree to amendments to the extension as it has been built.

## **Recommendation**

Refuse

## **Reasons for Refusal**

The retention of the rear extension would have a materially detrimental impact on the living conditions of occupiers of no. 90 Lichfield Road, with respect to loss of light, outlook and overbearing impact, by virtue of the rear extensions excessive length, height and orientation, directly adjacent to the shared boundary with 90 Lichfield Road. In consequence it conflicts with the saved UDP policy GP2, the NPPF and Designing Walsall SPD including annex D the 45-degree code policy.





# Walsall Council

Economy and Environment, Development Management

## Planning Committee

Report of Head of Planning, Engineering and Transportation on 04-Oct-2018

**Plans List Item Number: 9.**

**Reason for bringing to committee: Call in by Councillor Rasab**

**Location:** 145, WALHOUSE ROAD, WALSALL, WS1 2BE

**Proposal:** FIRST FLOOR SIDE EXTENSION, FRONT GROUND FLOOR EXTENSION AND FRONT LEAN TO CANOPY ACROSS THE FRONT ELEVATION.

**Application Number:** 18/0699

**Applicant:** Mr Imran Anwar

**Agent:** Mr Stan Ceney

**Application Type:** Full Application:  
Householder

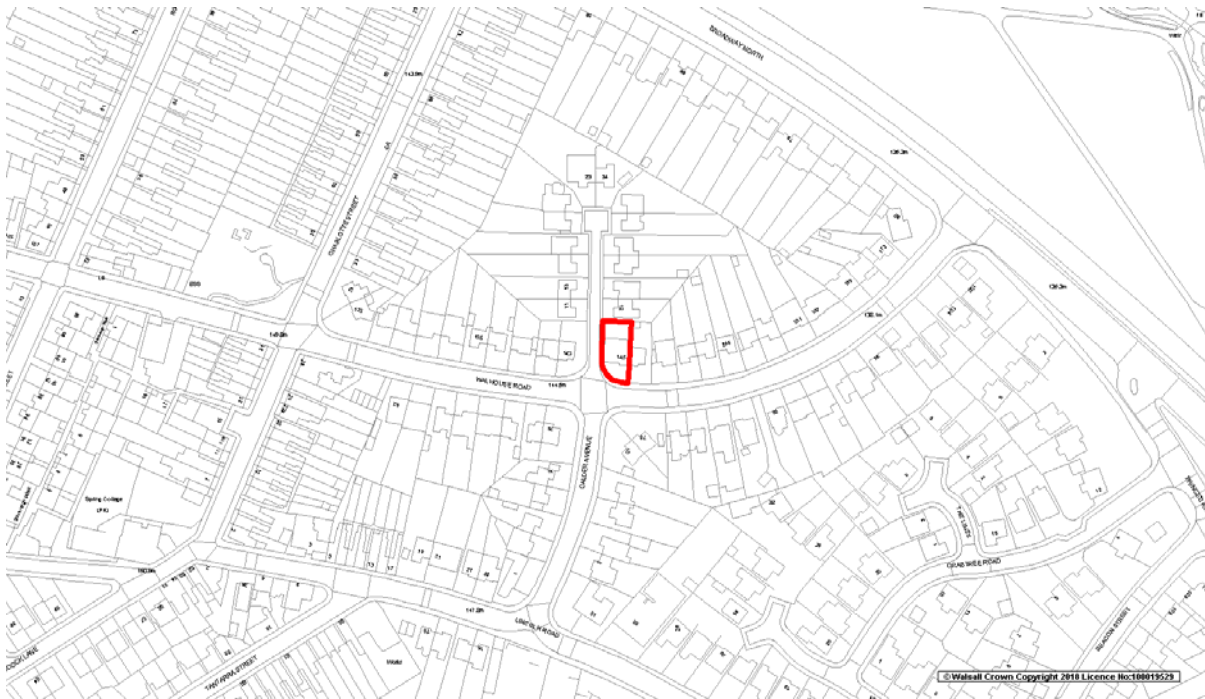
**Case Officer:** Helen Smith

**Ward:** Paddock

**Expired Date:** 13-Aug-2018

**Time Extension Expiry:** 08-Oct-2018

**Recommendation Summary:** Refuse



## Proposal

Councillor Rasab considers this application requires delicate judgment by the Planning Committee in respect of the proposed design of this proposal.

## Site and Surroundings

The application house is a semi-detached property located in a prominent corner position at the junction with Calder Avenue. The area has a residential character consisting of a mix of detached and semi-detached properties of varying design.

The front elevations of houses on Calder Avenue, to the rear of the application house, are in line with the first floor side elevation of no. 145.

This proposal includes the following additions;

### First Floor Side Extension

- 3.3 metres wide
- Set back 0.7 metres from the existing first floor front elevation of the host dwelling
- In line with the existing first floor rear elevation
- Hipped roof with a 0.3 metres lower ridge line than the host dwelling
- Two additional bedrooms (total number of bedrooms would be five)
- Would extend forwards of the first floor front building line on Calder Avenue by 3.3 metres
- Set in 1 metres from the highway on Calder Avenue

### Front Ground Floor Extension

- Front entrance porch
- 1 metre deep
- 2.5 metres wide

### Front Lean to Canopy

- Canopy roof across
- Between 2 and 2.4 metres high

The neighbouring houses include;

### 147 Walhouse Road

This is the adjoining semi to the application house and sits to the east of no. 145. 147 Walhouse Road which has ground and first floor habitable room windows near to the shared rear boundary with the application house. The front elevations of no's 145 and 147 face south.

## 12 Calder Avenue

No. 12 Calder Avenue sits to the rear and is perpendicular to shared rear boundary with the application house. This neighbouring house has a blank side elevation with a door at ground floor and front facing habitable room windows.

## 143 Walhouse Road

No. 143 Walhouse Road is located to the west and on the opposite corner to the application house. This property ground and first floor side facing habitable room windows which are separated by a distance of 13.2 metres to the two storey rear extension.

## **Relevant Planning History**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728643/Revised\\_NPPF\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728643/Revised_NPPF_2018.pdf)

The 2018 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 12 – Achieving well-designed places**

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. 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.

On **consultation** the NPPF makes clear that statutory consultees should provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs. Where statutory consultation is required, statutory consultees are under a duty to respond to consultations within 21 days. Statutory consultees should be aware of the risk that, should they fail to respond within a specified time period, a local planning authority may proceed to decide the application in absence of their advice.

## Local Policy

### Black Country Core Strategy

- CSP4: Place Making
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

### Saved Unitary Development Plan

- GP2: Environmental Protection
- ENV32: Design and Development Proposals
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

## Supplementary Planning Document

### Designing Walsall

- DW3 Character
- Appendix D

It is considered in this case that the relevant provisions of the BCCS, Walsall's saved UDP policies and Conserving Walsall's Natural Environment and Designing Walsall SPDs are consistent with the NPPF.

Policies are available to view online: [http://cms.walsall.gov.uk/planning\\_policy](http://cms.walsall.gov.uk/planning_policy)

## Relevant Planning History

### 145 Walhouse Road

15/1514 – Part Retrospective - Two Storey rear extension and single storey side extension (amendment to 15/0416/FL) – granted subject to conditions 21/12/15

15/0416/FL - Rear two storey extension and pitched roof over existing side extension - granted permission subject to conditions 21/08/15

14/0036/FL - Ground floor extension to rear and side - granted permission subject to conditions - 27/2/14

08/1349/FL - Two storey side and single storey rear extension, refused permission on the grounds that the design was over prominent and out of keeping with the street scene on 1/10/08

08/0144/FL - Two storey side and single storey rear extension - refused permission on the grounds that the design was over prominent and out of keeping with the street scene on 18/3/08

## 76 Walhouse Road

15/1874 – Two storey front and side extension – granted subject to conditions 4/3/16. This proposal differs from the application house as this extension is set in 3.6 metres from the highway.

### **Consultation Replies**

**Transportation** – No highway objections

**Pollution Control** – No objections

### **Representations**

None

### **Determining Issues**

- Character of Area
- Design of Extension
- Amenity of Nearby Residents
- Parking
- Conclusions

### **Assessment of the Proposal**

#### **Character of the Area**

The existing first floor sidewall of the application house follows the 'building line' of the Calder Avenue houses which provides an open aspect to this junction and views into and out of Calder Avenue, notwithstanding the existing single storey side extension. The proposed first floor extension would encroach upon this open aspect, substantially blocking the views into and out of Calder Avenue to the detrimental impact of neighbour's amenity, local users of the streets, local amenity and the street scene.

It is considered, the large expanse of blank wall facing Calder Avenue and only 1 metre from the back of the footway, creating a pinch point that is considered would become oppressive and overbearing to users of Calder Avenue exacerbating the detrimental impact on the locality, the street scene, plus neighbours and local users of the street. This would not accord with the local character of the area and is considered would harm the amenity and character of the area.

Whilst removing the first floor side extension would overcome the LPA's concerns of the impact on Calder Avenue, it is considered, that setting the proposed first floor wall nearest to Calder Avenue in from its current position by a minimum of 2 metres would go some-way to mitigating against the harm. Should everything else be acceptable, it is considered a condition requiring this set in could be imposed that meets the 6 tests of making the development acceptable in planning terms.

The 2015 planning approval for a similar extension to 76 Walhouse Road, however the side elevation of the approved first floor extension was set in 3.6 metres from the highway which is a wider (2.6 metres) distance than this proposal being considered.

Planning permission was refused twice in 2008 for similar two storey side extensions at the property, on the same grounds to the present concerns. These refusal reasons have not been overcome by the current planning application.

### **Design of Extension**

The proposed hipped roof design and rendered exterior finish are considered would reflect the design of the host dwelling. The proposed lower ridge height and first floor front elevation set back of 0.7 metres would create an extension that appears subservient to the host dwelling. It is considered that the proposed extension would relate to the original dwelling and the proposed design is acceptable if all other matters are satisfactory.

The Councillor Rasab has not clarified if the call-in is in support of or have concerns with the proposed design of this proposal so officers are unable to comment further on this aspect. Should planning committee wish to approve the extension, planning is concerned with land use in the public interest, so that the protection of purely private interests cannot be a material consideration. Consequently, applicants personal circumstances would not outweigh the harm to the environment, as the harm will outlast any personal circumstance.

### **Amenity of Nearby Residents**

The proposed extension would sit on the opposite side of the application house to the adjoining semi, 147 Walhouse Road. As this proposal would not extend any further forwards or rearwards than the existing house it is considered this proposal would have a limited impact on neighbours' existing light and amenity at no. 147.

The 13.2 metres separation distance between side facing habitable room windows in 143 Walhouse Road, across Calder Avenue, to the blank side elevation of the proposal is considered would have a limited additional impact on neighbours' amenity as the extension would be viewed within the outline of the existing dwelling.

The blank side elevation of 12 Calder Avenue faces the rear elevation of the application house across a separation distance of 12 metres. The proposed angled relationship between the front elevation of no. 12 and the proposed extension along with the separation distance are considered would result in the proposal having little additional impact on neighbours' outlook, light and privacy.

### **Parking**

There is space on the frontage of the property for two parking spaces and a third space, to meet the requirements of UDP saved policy T13 Parking can be provided in the rear garden. There is an existing dropped kerb to provide vehicle access onto the rear garden and a planning condition can be included to require the provision of a hard-surfaced parking area in the rear garden with sustainable drainage if approved.

## Conclusions and Reasons for Decision

The scale of this proposal is considered to be unacceptable in this prominent location, whilst the development meets the Council's guidance in relation to neighbours' amenity it is considered that the impact of this proposal on the existing street scene would be harmful and detrimental to the character of the area. The proposal would benefit the applicant by providing additional living accommodation. However, this would be a wholly private benefit that would not be sufficient to outweigh the harm to the environment that has been identified or the resultant development plan conflict.

It is considered this proposal would not accord with the local character of the area and would harm the appearance of the street scene, contrary to BCCS policies CSP4, ENV2 and ENV3, UDP saved policies GP2 and ENV32 and DW3 of Designing Walsall SPD

## Recommendation

Refuse

## Reasons for Refusal

1. The proposal is considered would harm the existing open aspect to the junction of Calder Avenue and Walhouse Road, notwithstanding the existing single storey side extension. The proposed first floor extension would encroach upon this open aspect, substantially blocking the views into and out of Calder Avenue to the detrimental impact of neighbour's amenity, local users of the streets, local amenity and the street scene. It is considered, the large expanse of blank wall facing Calder Avenue and only 1 metre from the back of the footway, creating a pinch point that is considered would become oppressive and overbearing to users of Calder Avenue exacerbating the detrimental impact on the locality, the street scene, plus neighbours and local users of the street. This would not accord with the local character of the area and is considered would harm the amenity and character of the area. The proposal would therefore be contrary to the National Planning Policy Framework including paragraph no's 56, 57, 58, 63 and 64; The Black Country Core Strategy policies CSP4, ENV2 and ENV3 and Walsall's Unitary Development Plan, in particular saved policies GP2, ENV32 and DW3 of Designing Walsall SPD.