



## Planning Committee

Report of Head of Planning and Building Control on 21 June 2021

Plans List Item Number: 6

### Reason for bringing to committee

Called in by Councillor Gurmeet Singh Sohal due to significant public interest.

### Application Details

**Location:** LAND TO REAR OF 5 AND 7 JESSON ROAD, WALSALL, WS1 3AY

**Proposal:** PROPOSED ERECTION OF 3 NO. DWELLINGS INCLUDING GARAGES AND INCORPORATING LANDSCAPING ON LAND AT REAR OF 5 TO 7 JESSON ROAD.

**Application Number:** 20/0745

**Case Officer:** Leon Carroll

**Applicant:** Ajon Properties Ltd

**Ward:** St Matthews

**Agent:** Lapworth Architects

**Expired Date:** 27-Aug-2020

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

**Time Extension Expiry:** 19-Nov-2020

### Recommendation

Refuse Permission



## Proposal

The proposal relates to the construction of three detached bungalow dwellings with integral garages on land to the rear of 5 to 7 Jesson Road along with access, landscaping and parking. Each of the dwellings has been designed with double fronted gable front elevations, and access to the development is proposed via a new access road located between Nos 5 and 7 Jesson Road, with a turning head within the site. Plot 1 is proposed to have four bedrooms whilst plots 2 and 3 would have three bedrooms.

## Site and Surroundings

The site comprises the domestic curtilages to the rear of No 5 and No 7 Jesson Road and the entire site is covered by a group Tree Preservation Order. Jesson Road is characterised by large detached dwellings with very long rear gardens on both the northern and southern side of the road, which is lined with mature trees.

## Relevant Planning History

10/1156/OL: Outline application (Considering layout, access and scale) for three detached dwellings with access between 5 & 7 Jesson Road. Refused 19/10/10  
Reasons for refusal: Loss of gardens due to piecemeal uncoordinated backland development; Overlooking; Loss of trees; Impact on protected species; Intensification of an inadequate access.

12/1251/FL: Proposed demolition of 7 Jesson Road and erection of 8no new houses, including garages and infrastructure. Refused 27/06/13

Reasons for refusal: Unacceptable backland development and erosion of established private gardens; Loss of trees; Impact on neighbour's amenity.

14/0847/FL: Proposed demolition of no. 7 Jesson Road and erection of 5no. new houses including garages, gardens and infrastructure. Refused 24/09/14

Reasons for refusal: Unacceptable backland development; harm to highway safety due to poor access.

Appeal dismissed 10/07/15.

18/0892 (7 Jesson Road): Two storey side and rear extensions and front porch. Approved 20/09/18

20/0876: Fell 4 conifer trees, and 1 unknown tree (as identified on the submitted sketch plan), in the rear garden of 7 Jesson Road. Grant Permission for Work(s) to Protected Trees 26/11/20

## 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 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 (para 55) 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.

### **National Planning Policy Guidance**

On **material planning consideration** the NPPG confirms- planning is concerned with land use in the public interest, so that the protection of purely private interests... could not be material considerations

### **Reducing Inequalities**

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

- age
- disability
- gender reassignment
- marriage or civil partnership (in employment only)
- pregnancy and maternity

- race
- religion or belief
- sex
- sexual orientation

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

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

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

### **Manual For Streets**

**Paragraph 6.8.9** Schedule 1, Part H of the Building Regulations (2000)<sup>17</sup> define locations for the storage and collection of waste. The collection point can be on-street (but see Section 6.8.11), or may be at another location defined by the waste authority. Key points in the Approved Document to Part H are:

- residents should not be required to carry waste more than 30 m (excluding any vertical distance) to the storage point;
- waste collection vehicles should be able to get to within 25 m of the storage point (note, BS 5906: 2005<sup>18</sup> recommends shorter distances) and the gradient between the two should not exceed 1:12.

**Paragraph 6.8.10** Based on these parameters, it may not be necessary for a waste vehicle to enter a cul-de-sac less than around 55 m in length, although this will involve residents and waste collection operatives moving waste the maximum recommended distances, which is not desirable.

**Paragraph 6.8.11** BS 5906: 2005 provides guidance and recommendations on good practice. The standard advises on dealing with typical weekly waste and recommends that the distance over which containers are transported by collectors should not

normally exceed 15 m for two-wheeled containers, and 10 m for four-wheeled containers.

### **Development Plan**

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

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

- GP2: Environmental Protection
- 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
- T1 - Helping People to Get Around
- T7 - Car Parking
- T8 – Walking
- T9 – Cycling
- T13 – Parking Provision for Cars, Cycles and Taxis

### **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
- TRAN5: Influencing the Demand for Travel and Travel Choices
- ENV1: Nature Conservation
- ENV3: Design Quality
- ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island
- ENV8: Air Quality
- MIN5: New Proposals for Mineral Development

### **Walsall Site Allocation Document 2019**

HC2: Development of Other Land for Housing  
EN1: Natural Environment Protection, Management and Enhancement  
EN3: Flood Risk  
T5: Highway Improvements

### **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
- DW4 Continuity
- DW5 Ease of Movement
- DW6 Legibility
- DW7 Diversity
- DW8 Adaptability
- DW9 High Quality Public Realm
- DW9(a) Planning Obligations and Qualifying development
- DW10 Well Designed Sustainable Buildings

## Air Quality SPD

- **Section 5 – Mitigation and Compensation:**
- Type 1 – Electric Vehicle Charging Points
- Type 2 - Practical Mitigation Measures
- Type 3 – Additional Measures
- 5.12 - Emissions from Construction Sites
- 5.13 – Use of Conditions, Obligations and CIL
- 5.22 - Viability

## Consultation Replies

**Highway Authority** – object on the grounds of poor visibility from the proposed access. Officers noted that similar proposals have been refused in the past and one case was dismissed on appeal when the Inspector assessed that the combination of the narrow access, restricted visibility and the proximity of the site to a nearby school combined to render the proposal unacceptable in terms of highway safety. Officers consider that despite justification provided by the applicant in the submitted Transport Statement and subsequent emails that the development cannot be carried out without harm to highway safety.

**Coal Authority** – No objection, standing advice recommended.

**Pollution Control** – No objection. Conditions are required to install ultra-low NOx boilers and electric vehicle charging points, and to control impacts during construction activities.



**Tree Officer** – There are some high amenity trees located within the site that will obviously be removed to accommodate infrastructure and buildings and, this aspect along with the pressure to severely prune or fell trees on the boundary, lead me to believe that there is an imbalance of tree removals, retention and replacement. The trees make a useful contribution to the amenity, aesthetic and landscape value of the area and I therefore recommend refusal of this application based on the impact on the protected trees and the lack of supporting information.

**West Midlands Fire Service** – No objection.

**Severn Trent Water** – No objection.

**Planning Policy** – Officers had no site specific comments but signposted relevant policies. Officers noted that the proposal will add to the supply of housing so can potentially be supported by NPPF paragraph 59, subject to detailed consideration of the potential impact on trees and the amenity of neighbouring properties.

## Representations

65 letters of objection were received from 44 addresses. Grounds for objection were as follows (officer comments in *italics*):

Matters addressed in the report:

- Not in keeping with surroundings/overdevelopment
- Impact on trees
- Highway safety
- Traffic congestion
- Impact on wildlife
- Loss of privacy

Other matters:

Precedent – *Whilst every development proposal must be judged on its own merits based on the relevant material considerations, the Planning Inspector dealing with the appeal against refusal in 2014 acknowledged that an approval of that scheme could set a precedent for other developments which would further erode the character of the area, resulting in a series of access drives along Jesson Road.*

## Determining Issues

- Principle of development
- Design, Appearance and Impact on Local Environment
- Residential Amenity
- Highway Safety
- Trees and Ecology
- Flood Risk
- Local Finance Considerations

## Assessment of the Proposal

## **Principle of Development**

The proposal would add to the supply of housing so could potentially be supported by paragraph 59 of the National Planning Policy Framework, subject to detailed consideration of the potential impact of the proposal on local character, trees and the amenity of neighbouring properties.

## **Design, Appearance and Impact on Local Environment**

The attractive character and appearance of Jesson Road derives from the spacious plots and traditional dwellings which face the tree lined street. The current proposal is of a smaller scale than previously refused schemes on this site but would still not be well connected with the surrounding streets, and would not have an active street frontage which is typical of the existing street scene and surrounding environs. Other culs-de-sac in the area, such as there are, have a more open relationship with their surroundings than the proposed development which would be accessed via a very narrow access road between the existing dwellings at 5 and 7 Jesson Road. The current application has failed to address the previous reasons for refusal in 2014 and the findings of the planning inspector at the appeal stage in 2015.

The proposed development would therefore be poorly related to the prevailing character of the area, and would represent inappropriate backland development which would erode the spatial characteristics of the large domestic gardens enjoyed by dwellings on both sides of Jesson Road. The bungalow style dwellings would also be at odds with the vast majority of dwellings on the street which are predominantly large two storey structures.

Whilst the proposed development would provide an adequate standard of amenity for its future occupants in terms of internal accommodation it is considered that the proximity of the existing mature protected trees to the private amenity space of plots 1 and 2 would provide unsatisfactory living conditions for the future occupants of those dwellings.

Furthermore the density, appearance and layout of the three bungalow dwellings would be out of keeping with its surroundings and would be contrary to saved policies GP2 and ENV32 of the Walsall Unitary Development Plan, policies, CPS4 and HOU2 of the Black Country Core Strategy and policies DW3, DW4 and DW6 of the Designing Walsall Supplementary Planning Document.

## **Residential Amenity**

A large number of objections were received from the occupants of nearby dwellings, including concerns that the proposal would result in a loss of privacy. The three proposed dwellings are all single storey, therefore existing and proposed boundary treatments are likely to provide some form of screening from overlooking of outdoor amenity spaces at neighbouring dwellings. The proposed dwellings are positioned



such that separation distances between windows in the development and windows in neighbouring dwellings are adequate to prevent overlooking and are in accordance with the requirements set out in Appendix D of the Designing Walsall Supplementary Planning Document. The proposed dwellings are single storey and therefore will not result in any significant additional overshadowing of neighbours or cause a loss of outlook. The proposal is therefore not considered harmful to the amenity of neighbouring occupants.

With regard to the amenity of future occupants of the development, it is noted that Plot 2 is located approximately 100m from the footway on Jesson Road. The submitted Transport Statement describes how Plots 1 and 3 are approximately 55m from the highway and argues that it would be inappropriate to design the access road and layout to accommodate a refuse collection vehicle purely for one of the three dwellings. However the requirements as set out in the Manual For Streets and in Part H of the Building Regulations specify that the maximum distances for refuse collection apply to the whole development. Whilst Building Regulations are separate legislation the application of the standards set out in Part H are a material consideration in the assessment of the proposed layout. It is also noted that the proposed dwellings are bungalows which may be more likely to be occupied by older residents. Consequently, the proposal will provide an unacceptable standard of amenity for the future occupants of Plot 2 due to the distance required to present waste and recycling bins for collection. The proposal is therefore contrary to saved policy GP2 of the Walsall Unitary Development Plan, policy ENV3 of the Black Country Core Strategy and policy DW5 of the Designing Walsall Supplementary Planning Document.

## **Highway Safety**

The most recent application for residential development of the site was refused on highway safety grounds, and an appeal to the planning inspectorate dismissed for the same reason. Jesson Road is characterised by large detached houses with wide frontages, and the road itself is lined with mature trees. Approximately 50m to the north west is a primary school. No 5 Jesson Road currently has a horseshoe shaped driveway with two accesses onto the highway. The three proposed dwellings are to be accessed via a narrow access drive between Nos 5 and 7 Jesson Road, and will join the highway in the approximate location of the easternmost driveway of No 5. The applicant has submitted a transport statement which has been considered by the highway authority who have advised that the justification therein does not outweigh their concerns. The proposed access would serve three dwellings rather than one, and this intensification of use, combined with poor visibility for vehicles using the access and pedestrians, cyclists and drivers on the highway are likely to be harmful to highway safety. Highway officers noted that at the beginning and end of the school day Jesson Road is extremely busy and there are a large number of vehicles parked at the side of the road, as parents arrive to drop off and collect pupils. The planning inspector in 2015 also raised concerns regarding this matter and concluded that taking all the above factors into consideration the development could not be carried out without having a detrimental impact on highway safety. Whilst the current proposal

would result in a net increase of three dwellings rather than four as proposed in 2014, the applicant has not been able to overcome the previous concerns and the proposal is unacceptable for the same reasons as before. The applicant's recent suggestion to reduce the number of bedrooms in each dwelling from 4 to 3 is not considered to overcome these concerns regarding highway safety.

## **Trees and Ecology**

The entire site is covered by a group Tree Preservation Order and the presence of mature trees on site has the potential to provide roosting opportunities for bats. The applicant has not submitted any form of ecological assessment. Saved policy ENV23 of the Walsall Unitary Development Plan requires all developers to ensure "the layout of all new development takes full account of existing features of value for wildlife or geology. Where loss or damage of existing features is unavoidable, the Council will require mitigation measures which adequately compensate for the features lost.

Policy ENV1 of the Black Country Core Strategy states "that adequate information must be submitted with planning applications for proposals which may affect any important habitat, species or geological feature to ensure that the likely impacts of the proposal can be fully assessed. Without this there will be a presumption against granting permission."

Saved policy ENV18 of the Walsall Unitary Development Plan states that "development will not be permitted if it would damage or destroy trees or woodlands protected by Tree Preservation Order".

Plots 1 and 2 have been situated close to boundaries where mature vegetation is located and this increases the impact that the trees have on the amenity spaces for each Plot. Plot 1 has a long narrow private amenity space to the rear, which faces north-west. It is therefore questionable whether this Plot complies with the requirements of Site Layout Planning for Daylight, which states at section 3.3.17 – "If ... an existing garden ... does not meet the above (half the garden should receive at least 2 hours of sunlight on March 21) ... then the loss of sunlight is likely to be noticeable".

Plot 2 has a private amenity space extending from northwest to northeast, and then to the southeast beyond the proposed patio. The southeast area is dominated by maturing trees on the southeast boundary of the development which will cast significant shade through the morning and early afternoon periods.

Plot 3 also has a small amenity space located to the northeast of the dwelling. There is a maturing Willow located adjacent to the boundary on the southeast side of the amenity space that will cast significant shade throughout the morning period and part of the early afternoon. There is also a maturing Silver Birch located off-site that will cast shade on the property for the same periods.

There are some high amenity trees located within the site that will obviously be

removed to accommodate infrastructure and buildings and, this aspect along with the pressure to severely prune or fell trees on the boundary, is considered to result in an imbalance of tree removals, retention and replacement. The trees make a useful contribution to the amenity, aesthetic and landscape value of the area and the proposal is therefore unacceptable based on the impact on the protected trees and the lack suitable justification for loss of trees.

It is considered that the proposal is likely to cause significant harm to protected trees and protected species therefore the proposal is contrary to saved policies GP2, ENV16, ENV18 and ENV23 of the Walsall Unitary Development Plan, policy ENV1 of the Black Country Core Strategy and the National Planning Policy Framework.

### **Flood Risk**

The site, which is in Flood Zone 1, is not in an area known for flooding and there are no watercourses nearby. It is therefore considered that the development would be acceptable in terms of flood risk if accompanied by an appropriate foul and surface water drainage scheme.

### **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 three new homes.

The Government has indicated that, for 2019-20, 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 2019-20 the total payments, taking account of completions over the last 4 years, are expected to amount to £2,911,601.

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 proposal represents inappropriate backland development which would fail to integrate with the existing pattern of development and would have an adverse impact on highway safety, trees and protected species.

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**

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal, and with previous similar proposals, and discussing those with the applicant. Unfortunately, it has not been possible to resolve those matters within the timescale allocated for the determination of this planning application. However, the Local Planning Authority has clearly set out, within its report, the full details of the harm identified within the reasons for refusal – which may lead to the submission of a more acceptable proposal in the future. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.

## **Recommendation**

Refuse Permission

## **Reasons for Refusal**

1. The proposal represents inappropriate backland development which would cause harm to the character and amenity of the local area, would erode the spatial characteristics of the existing site and would be poorly related to its surroundings in terms of design, density and layout, contrary to saved policies GP2 and ENV32 of the Walsall Unitary Development Plan, policy CSP4, ENV3 and HOU2 of the Black Country Core Strategy, SAD Policy HC2, policies DW3, DW4 and DW6 of the Designing Walsall Supplementary Planning Document and section 12 of the National Planning Policy Framework.
2. The proposal would, by reason of inadequate visibility from the proposed vehicular access to the site, cause significant harm to the highway safety of drivers, cyclists and pedestrians contrary to saved policies GP2, T10 and ENV32 of the Walsall Unitary Development Plan and policy TRAN2 of the Black Country Core Strategy.
3. The application as submitted provides insufficient information which has prevented its proper consideration by the Local Planning Authority. In particular, the application fails to provide relevant information relating to protected species which may be affected by the development. The proposal is therefore contrary to saved policies GP2 and ENV23 of the Walsall Unitary Development Plan, policy ENV1 of the Black Country Core Strategy, SAD Policy EN1 and paragraph 175 of the National Planning Policy Framework.
4. The proposal would result in the loss of a number of trees of high amenity value, and would result in future pressure to lop or fell protected trees on site due to perceived threat. The proposal is therefore contrary to saved policies GP2, ENV16 and ENV18 of the Walsall Unitary Development Plan.
5. The proposed development would provide an unacceptable standard of amenity for the future occupants of Plot 2 due to the distance required to present waste and recycling bins for collection. The proposal is therefore contrary to saved policy GP2 of the Walsall Unitary Development Plan, policy ENV3 of the Black Country Core Strategy, SAD Policy HC2, and policy DW5 of the Designing Walsall Supplementary Planning Document.

## **END OF OFFICERS REPORT**