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|   |     |         |  |  |   |
|---|-----|---------|--|--|---|
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|    |     |         |  |  |  |
|----|-----|---------|--|--|--|
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**Economy and Environment, Development Management**

## **Planning Committee**

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 1.**

**Reason for bringing to committee:** Major Application and Significant Community Interest

**Location:** SITE OF FORMER MOXLEY TIP, MOXLEY ROAD, DARLASTON

**Proposal:** OUTLINE PLANNING APPLICATION FOR EMPLOYMENT DEVELOPMENT CONSISTING OF CLASS B2 (GENERAL INDUSTRIAL) AND CLASS B8 (STORAGE AND DISTRIBUTION) USES WITH ANCILLARY CLASS B1(A) (OFFICES) USE FOR UP TO A TOTAL OF 45,360 SQM (GEA) FLOOR AREA, WITH CAR PARKING AND SERVICING, INTERNAL ACCESS ROAD AND FOOTPATHS, GATE HOUSES, SUB-STATIONS, CHANGES TO GROUND LEVELS AND ENGINEERING WORKS, SMOKING SHELTERS, CYCLE STORAGE, LANDSCAPING, UNDERGROUND SERVICES, CCTV, LIGHTING AND BOUNDARY TREATMENT WITH ACCESS ONLY FOR CONSIDERATION AT THIS TIME AND ALL OTHER MATTERS RESERVED FOR LATER CONSIDERATION.

**Application Number:** 18/1233

**Applicant:** Parkhill Estates Limited

**Agent:** Mr Antony Harding

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

**Case Officer:** Paul Hinton

**Ward:** Darlaston South

**Expired Date:** 27-Dec-2018

**Time Extension Expiry:** 08-Feb-2019

**Recommendation Summary:** Grant planning permission subject to conditions and a S106 agreement to secure a full travel plan including review period and monitoring.



## Proposal

This is an outline planning application seeking permission to establish the principle of up to 45,360sqm of B2 (General Industrial) and B8 (Storage and Distribution) uses across the site, including ancillary offices with access the only detailed matter for consideration at this time of this former landfill site. Appearance, landscaping, layout and scale are reserved for latter consideration. Indicative layout and section drawings have been submitted suggesting how a development of this size may appear.

A Parameters Plan is submitted to support the application, demonstrating the maximum parameters of the proposed development, around two development zones.

Zone A – Maximum floorspace (GEA) 42,921 sqm (46200 sq.ft)

Zone B – Fronting Moxley Road maximum floorspace (GEA): 2439sqm (26250sq.ft)

The application proposes a new signalised road junction from the southern boundary of the site onto Moxley Road. In addition, the proposal includes existing highways infrastructure enhancements to Moxley Road by:

- Extending the two-lane westbound approach to Moxley gyratory.
- Widening of the entry to the gyratory to accommodate side by side HGV movements.
- Pedestrian crossing facilities at the signalised junction.
- Extend the shared footway/cycleway from the gyratory.
- Improvements to footpath Dar2.
- Implementation of a Travel Plan to reduce single occupancy car travel.

The application has been supported by the following information:

### *Design and Access Statement*

- Comprises the former Moxley Sand Beds Quarry. Tipping of waste commenced in 1940.
- It is anticipated that the buildings will combine manufacturing/assembly with associated ancillary office based functions and elements of storage.
- Any buildings or group of buildings will be tenant lead and accordingly to their bespoke needs.
- Development density will be in the range of 40%-45% of the site
- Car parking will be provided in line with the Council's standards and service yards and trailer parking will be designed with reference to the Freight Transport Association Guidelines and other appropriate directives.
- Landscaping will be included to soften the forecourt areas, provide structure to and describe routes through the estate and screen operational parts.
- Seeks to retain existing trees where possible.
- Proposed planting will enhance and reinforce the existing tree planting to provide screening and maximise bio-diversity.
- Landscape buffer planting to be proposed to northern, eastern and western boundaries with attenuation bunding where possible.
- Existing Public Right of Way along the eastern boundary will be improved by clearance and re-surfacing and installation of new boundary fencing with the involvement of the Council.

### *Planning Statement*

- Site was infilled with varied municipal waste to a maximum depth of approximately 25m at the centre of the site.
- The application includes three areas of land which are not currently under the ownership of the applicant, but notice has been served. These sites will be acquired either through purchase and/or use of Compulsory Purchase Order.
- A community public consultation event was held with 876 leaflets distributed to local residents and businesses in May 2018, emails to relevant stakeholders. In addition a website was created including the information that went on display at the exhibition.
  - As a result of a small number of concerns expressed over the proposed service yard orientated towards Sandwell Avenue, the scheme was revised.
- The Stage 1 Economic Development Needs Assessment to inform the review of the BCCS (May 2017) estimates that there may be an undersupply of overall high quality land of circa 380ha in the Black Country to 2036.
- There is a strategic shortfall if available high quality employment land within the Borough.
- Sustainable development provided by:
  - Will deliver up to 43,664 sqm of high end industrial, logistics and manufacturing floorspace by 2021.
  - Short term construction employment up to 250 temporary jobs
  - Long term operational employment and upskilling up to approximately 900 full time or equivalent jobs.
  - Enhancement of 11.29ha of poor quality previously developed land
  - Improved canal side scheme, landscaping and ecological improvements.

### *Transport Assessment September 2018*

- There are existing bus stops adjacent to the site and 50m to the east served by routes 30, 39 and 79 that provide regular services to Darlaston, Bilston, Wolverhampton and West Bromwich.
- Bradley Lane tram station is 1km to the south-east with eight services per hours to Wolverhampton and Birmingham.
- Footways of 1.5m-2m in width are provided both sides of Moxley Road with shared cycleways provided.
- Interrogation of collision records indicate that the development would not exacerbate any existing safety issues.
- Signalised junction would operate within capacity with a predicted maximum queue of 11 vehicles on the Moxley Road West arm that can be accommodated without queuing back to the gyratory.
- Improvements to the gyratory will improve capacity and safety of the Moxley Road entry to the junction.
- Footpath Dar2 will be improved to a specification to be agreed with the Council, likely to include resurfacing, lighting and improved boundary treatment.
- Predicted additional vehicle movements on a worse case scenario of full B2 use of 139 arrivals and 34 departures during the 8am-9am peak period and 31 arrivals and 144 departures during the 5pm-6pm peak period.
- Trip distribution across the network estimated to be:
  - A4444 Black Country New Road North – 40.2%
  - A41 Black Country New Road South – 34.3%
  - Moxley Road East – 14.7%
  - High Street West - 10.7%
- Most accessible junction on the strategic network is M6 Junction 10, 4.7km away and accessed via the Black Country New Road.
- The proposed junction is considered to operate within capacity including a high growth scenario and queues from the junction would not extend to the gyratory.
- Proposed development would only result in a marginal change in delay.
- During the am peak including high growth scenario the gyratory would operate within capacity.
- In the pm peak the gyratory would be at capacity without the development. The proposal would increase the delay at the junction, but not to a severe amount.
- Queues from the gyratory, are likely, at times, to extend beyond the proposed site access junction but the flows can be managed by linking the existing and proposed signals.

### *Transport Assessment Technical Note January 2019*

- 24 hour development flows:
  - Currently 15734 vehicle movements along Moxley Road, including 533 large goods vehicle traffic
  - Worst case scenario the proposal would increase this by 1845 vehicle movements, including 205 large goods vehicle traffic.
- A connection will be provided from Moxley Road linking to the canal towpath with full details to be agreed at a later stage.
- A 3m widen shared pedestrian cycle/track between the proposed access to the towpath and site access will be provided.



- West bound bus stop will need to be relocated. Transport for West Midlands have been consulted and have no principle issues, costs will need to be covered by the scheme.
- The vehicle access into the driveway adjacent to 139 Moxley Road has been considered, the design allows for infrequent vehicular access to this driveway. There is an all red stage on the signals which will allow egress from the driveway.

#### *Framework Travel Plan*

- Future occupier will appoint a Travel Plan Co-ordinator (TPC)
- The TPC will be appointed three months prior to the site's occupation and will be funded for five years beyond this point.
- Travel surveys will be undertaken annually for five years.
- Layout will provide:
  - Secure covered cycle parking
  - Welfare facilities e.g. showers, lockers
- A travel information pack will be prepared by the TPC for inclusion within employee induction packs.
- The following will also be provided:
  - Sustainable travel notice board in a prominent and accessible location,
  - Travel plan principle extend to visitors, modes should be made available on company's website or by employees inviting visitors to the site.
  - Cycling and walking strategy
  - Public transport strategy
  - Car share strategy
  - Business travel
  - Car sharing for business trips
  - Reducing the need to travel/travel outside peak hours
  - Tele/Video conferencing

#### *Coal Mining Report*

- Evidence of past underground mining, mine shafts and outcrops.

#### *Mining and Mineshaft Risk Assessment*

- Historic mine seam working is considered not to pose a stability risk to the surface
- Four supposed old abandoned mineshafts within the site:
  - Shafts 1 and 2 have been treated and are located 35m from the nearest proposed building.
  - Shaft 3 near the southwest corner of the site has not been treated but lies 40m from the nearest proposed building and 15m from proposed hardstanding.
  - Shaft 4 near the eastern boundary is over 50m from the nearest proposed building, although it would be under the apron of hardstanding. It has not been treated.
- Shaft 4 should be located and stabilised.
- Other known old mineshafts located beyond the side boundaries are not close enough to pose a potential stability risk to the proposed development or site generally.

#### *Flood Risk Assessment*

- The proposal is located within Flood Zone 1.
- The risk of flooding from fluvial sources, surface water, groundwater, sewers and artificial sources is considered to be low.
- Flood risk management measures will be put in place to ensure that the risk of flooding to areas downstream of the site is not increased as a result of the development.
- Surface water drainage strategy will mimic Greenfield rates,
- Surface water runoff will be discharged into the canal at a restricted rate with on-site attenuation with climate change allowance.
- Foul water flows will be discharged to the public sewerage network.

#### *Flood Risk Assessment addendum*

- While parts of the site boundary are in Flood Zones 2 and 3, all development will be on the former landfill cell. The area to be developed is 7m higher than the land in Flood Zone 3. Therefore site will be unaffected by and flooding exacerbated by climate change.
- Proposed retaining wall will not encroach into areas of Flood Zone 3 and there will be no development to the west of the retaining wall.

#### *Air Quality Assessment*

- The air quality over the site is acceptable for development.
- With traffic generated by the development, concentrations remain below the current air quality objective.
- Development traffic (including baseline up to 2023) will not have any adverse impacts on ambient air quality for existing dwellings.

#### *Noise Assessment*

- As only an illustrative layout at this time, full noise assessment not warranted until end user has been identified.
- Most appropriate action is to set maximum noise emission level from the site at the closest identified sensitive receptor.
- Sound level limits will be set to 10dB above BS8233:2014.
- Detailed assessment will be provided at the reserved matters stage.

#### *Pre-development Tree Survey*

- Identifies a number of A and B category trees around the perimeter of the site that should be able to be retained.
- Identifies C rated (low quality) and U rated (poor condition or dying) trees to be removed.
- A rated trees (sycamore, field maple, silver birch, wild cherry, hazel, purples leafed sycamore and acer) towards the front of the site are note to create significant grouping in amenity terms – these trees are proposed to be removed.
- A category London plane highway tree to be removed to accommodate proposed access.

#### *Economic Benefits Assessment*

- Estimated to generate up to 220 jobs per year during construction.
- Estimated to generate up to 1,030 jobs (on and off-site) during operation.
- Estimated to generate up to £57 million in GVA to the economy.

- Estimated cumulative income to local government over 20 years of up to £9.4 million.
- The proposed scheme is considered beneficial for the local economy.

#### *Health Impact Assessment*

- Development found to have a positive health effect.
- Designed to provide a high quality and health environment for future users
- Builds upon local green-infrastructure providing enhancement of biodiversity and recreation where possible.
- Provide a safe and healthy environment for employment
- Integrate with local transport and promote sustainable alternatives without negative impact to existing social and health infrastructure in the area.
- Meaningful contribution to addressing the shortfall of employment in the area.

#### *Badger Survey Report*

- No field signs of badger activity were recorded.
- A single sett was located but identified to be inactive.
- Parameters plan for the site demonstrated that the current inactive outlier sett will not be impacted as it is located within the landscape buffer.
- Prior to works an update badger survey is required.
- The Parameters plan provides wildlife corridors of woodland and scrub planting around the edges of the site which will ensure that should badger begin to use the area, connectivity is provided, as well as foraging and sett creation habitat.

#### *Bat Activity Report August 2018*

- First two of three bat activity surveys.
- Site of low to moderate quality for bats due to immature woodland and mosaic of scrub and bare ground.
- Bat foraging and commuting was observed within the site.
- No bat roosts within the immediate vicinity of the site.
- The site post development with the retention of linear landscape features and the provision of a wide buffer to the adjacent Walsall Canal it is anticipated that common pipistrelle will continue to use the site for foraging and commuting in the long term.

#### *Bat Activity Report January 2019*

- Third survey.
- Bat foraging and commuting was observed within the site.
- No bat roosts within the immediate vicinity of the site, but activity suggests roost within the local area.

#### *Preliminary Ecological Appraisal*

- Moorcroft Wood LNR is ecologically connected to the site via the Walsall Canal. Retaining a 10m buffer between the canal and the site will aid in continuing the connectivity between the LNR and the wider environment for bats.
- A wide landscape buffer will avoid direct impact upon the adjacent SINC and SLINC.
- A sensitive lighting scheme will need to be implemented in the vicinity of the SLINC to ensure that light levels do not deter use of the corridor by wildlife.

- Mature hedgerow with trees along the northern boundary is recommended to be retained.
- The buildings that make up the garage on Moxley Road are considered to have low and negligible potential for roosting bats.
- On-site vegetation clearance should avoid hedgehog hibernation period (November –March).
- A 10m buffer zone between the site and the canal edge is recommended in order to prevent harm or disturbance to water vole.
- Using the findings of the Great Crested Newt survey for the Wards housing development, the area has low suitability for GCN.
- Highly unlikely that the site would support either an important assemblage of notable or protected bird species.
- Buffers around the edges of the proposed development will provide suitable foraging and nesting habitat for birds to ensure local populations are retained within the site.
- To safeguard nesting birds site clearance should be undertaken outside of the usual bird breeding season (March-August).
- Japanese knotweed was recorded across the site, a control and eradication method statement should be designed and implemented.
- The addition of a planting scheme to extend the northern hedgerow boundary will create a suitable commuting and foraging corridor for wildlife across the site.
- The addition of bat and bird boxes to the site either within trees or part of buildings would increase roosting and nesting opportunities.

#### *Reptile Survey*

- No reptiles were recorded within the site
- Only historic records of reptiles were found from the 2km radius data search
- Previous reptile surveys undertaken for the adjacent development to the north also found no reptile survey
- Considered unlikely that reptiles are present within the site or vicinity.
- Mitigation for reptiles will not be required.

#### *Ground Investigation Report*

- Site infilled from the 1940s resulting in variable made ground between 20-25m in depth.
- Made ground materials are recorded to be predominately industrial in origin including a mixture of ash, foundry sand and slag, varying proportions of brick, concrete, rubber and wood, also evidence of oils, bitumen and other petroleum based materials.
- Investigation has been undertaken to assess the foundation options/constraints on the redevelopment of the site for industrial use.
- Proposed finished floor levels typically lie 2m-3m above existing ground level, but locally up to 4m and 5m.
- The principle reason for uplifting the site is to create a relatively level development platform utilising clean imported fill materials allowing the majority of groundworks to be carried out within a clean environment to mitigate risk to human health (long term site users/construction workers)
- Piled foundations are only feasible option within the main infilled area, with buried concrete required due to pH value of the groundwater.

- Potential load settlement requires external hardstanding and service corridors to be supported on piled foundations.
- In view of the land use history of the site, it would be prudent to adopt a strategy of minimal disturbance of the existing soils by raising site levels to allow all services to be carried out within clean imported upfill materials.
- Gas protection to all buildings including beneath all hard surfaced external yard areas and access ways is required.
- Consideration be given to borehole boundary monitoring along the eastern boundary of the site to assess if boundary venting is required.
- Off-site disposal of excess construction materials will need to be controlled by a material management plan.
- Soils beneath the waste will potentially limit the migration of controlled water contaminants beyond the old pit.
- Once completed the development would have the benefit of reducing infiltration and limited the potential for long term leaching from existing contamination.
- Excavations/disturbance of made ground will require closely controlled/monitored earthworks including an Asbestos/Material Management Plan.

The application has been amended since its original submission to include revised access details and additional technical reports as discussed above. Re-consultation has been undertaken in regard to the amended plans.

## **Site and Surroundings**

This 11.29ha site is a former sand quarry that had been in-filled with waste and is known locally a Moxley Tip. The site has a single vehicle access onto Moxley Road (A4038). To the east of the site is the rear gardens of residential properties of Sandwell Avenue, Wiley Avenue South, Sproat Lane and Bradshaw Avenue. The application site and these houses are separated by public footpath Dar 2. To the northern boundary are the existing houses along Berry Avenue and Wards Keep 207 unit housing development (construction has commenced) which included Ward Pool Site of Importance for Nature Conservation (SINC). To the west is the Walsall Canal which forms the western boundary and is also a designated Site of Local Importance for Nature Conservation (SLINC). Running parallel to the canal and across the site are high voltage overhead power lines. There is one 18m high pylon within the site. A High pressured gas main runs along the western part of the site parallel with the canal. Further west of the canal is the Black Country New Road (A4444), connecting to Moxley Road and Moxley High Street via the Moxley gyratory some 850m to the south west of the site.

Beyond Moxley Road to the south are residential properties and the former Moxley Infants school which is now in use as a lorry park.

The landform of the site is a shallow dome with an increase in height between 1-2m from the adjoining housing land in the north and north west, with a steep banked slope down to the Walsall Canal of approximately 10m.

Most of the site is covered with open rough grass and sparse shrubs and trees, with the exception of the north western and north eastern corners. The north western corner is covered by dense shrubs and trees while the north eastern corner

comprises a generally flat grassed area. The site has naturally re-vegetated with rough grass and self-set trees and shrubs. In some areas the cover material is thin with bricks and construction rubble evident at the surface. Small unofficial paths lead into the site from numerous points along the western boundaries.

Moxley Road Service Station, Moxley Car Centre Car and six advert hoardings are currently located at the front of the site. These would be lost as part of the proposal. The applicant does not own all of the land within the application boundary with notice being served on the landowners. One area of land is unregistered and in accordance with planning legislation notice has been published in the local press.

The site is 75m from Moxley Local Centre and 600m from Darlaston District Centre (as the crow flies).

## **Relevant Planning History**

### Application site

BCW609 – Outline: formal and informal recreation use, pub and housing plus reclamation strategy. GSC 6/4/2000.

02/2122/FL-OL/M1 - Reclamation strategy (detail) to secure development for informal recreational use and housing (outline). GSC 4/12/07.

**04/0070/FL/M1** - Extension of period within which to make application for approval of reserved matters to 6th April 2005. GSC 6/4/04.

05/0598/FL - Extension of period within which to make application for approval of Reserved Matters to 6th April 2007. GSC 16/5/15.

**09/0079/OL** - Outline - Industrial development, and informal open space. GSC 7/2/13.

10/1382/TE - Time extension to 02/2122/FL-OL/M1: Reclamation strategy (detail) to secure development for informal recreational use and housing (outline). GSC 20/3/13.

16/0466 - Reserved Matters application to planning permission 10/1382/TE to determine external appearance, scale, layout, access and landscaping for 65 houses. Currently under consideration.

**18/1477** - Request for Screening Opinion, Regulation 6 of the Town and Country Planning (EIA) Regs 2017 (as amended) for a Proposed Employment Development, up to 45,360sqm of land uses Class B2 and B8 with ancillary B1(A), associated car parking, drainage infrastructure and landscaping. EIA not required 7/12/18.

### Land at Heathfield Lane West, Darlaston, Wednesbury.

18/0072 – Proposed erection of 207 dwellings, engineering works, landscaping, provision of open space and associated works and re-routing of public right of way Dar1. GSC 27/9/18. Currently under construction.

### **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 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 (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.

### **Development Plan**

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

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

- 3.6 to 3.8 Environmental Improvement
- 3.9 Derelict Land Reclamation
- 3.11 Forestry and Trees
- GP2: Environmental Protection
- GP3: Planning Obligations
- GP5: Equal Opportunities
- GP6: Disabled People
- ENV10: Pollution
- ENV11: Light Pollution
- ENV12: Hazardous Installations
- ENV13: Development Near Power Lines, Substations and Transformers
- ENV14: Development of Derelict and Previously-Developed Sites



- ENV17: New Planting
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV24: Wildlife Corridors
- ENV25: Archaeology
- ENV26: Industrial Archaeology
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- ENV34: Public Art
- ENV35: Appearance of Commercial Buildings
- ENV40: Conservation, Protection and Use of Water Resources
- 4.6 The Service Sector
- JP8: Bad Neighbour Industrial Uses
- T1 - Helping People to Get Around
- T7 - Car Parking
- T8 – Walking
- T9 – Cycling
- T10: Accessibility Standards – General
- T11: Access for Pedestrians, Cyclists and Wheelchair users
- T12: Access by Public Transport (Bus, Rail, Metro and Ring and Ride)
- T13: Parking Provision for Cars, Cycles and Taxis

## **Black Country Core Strategy**

- Vision, Sustainability Principles and Spatial Objectives
- CSP1: The Growth Network
- CSP3: Environmental Infrastructure
- CSP4: Place Making
- CSP5: Transport Strategy
- DEL1: Infrastructure Provision
- EMP1: Providing for Economic Growth
- EMP2: Actual and Potential Strategic High Quality Employment Areas
- EMP4: Maintaining a Supply of Readily Available Employment Land
- EMP5: Improving Access to the Labour Market
- TRAN1: Priorities for the Development of the Transport Network
- TRAN2: Managing Transport Impacts of New Development
- TRAN3: The Efficient Movement of Freight
- 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
- ENV7: Renewable Energy
- ENV8: Air Quality
- WM5: Resource Management and New Development
- Regeneration Corridor 5: Loxdale-Moxley

## Walsall Site Allocation Document 2019

- IND5: New Employment Opportunities – site IN122 former Moxley Tip.
- EN1: Natural Environment Protection, Management and Enhancement
- EN3: Flood Risk
- EN4: Canals
- T2: Bus Services
- T4: The Highway Network
- T5: Highway Improvements

## 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 Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations)**

The proposal was screened in 2018 not to be an EIA development.

### **Consultation Replies**

**Planning Policy** – Development for high quality industry is strongly supported. The indicative plans show a builders’ merchants on the site frontage. Such a “sui generis” use would not be acceptable within a high quality B2 or B8 site so this element of the proposal should also be omitted.

**Highways** – No objection. Has considered the options appraisal contained within the Transport Assessment and agreed that the signalised junction is the preferred option. A condition in regard to retaining the junction visibility splay is required. In accordance with the submitted Framework Travel Plan a full Travel Plan will be required including monitoring provision. This would need to be secured by a S106 agreement.

**Highways England** – No objection.

**Public Rights of Way** – No objections subject to providing further details in regard to demonstrating the link to the canal and improvements to Dar2 can be provided given land ownership and topography

**Environment Agency** – No objection subject to use of conditions requiring implementation of the FRA measures and further contamination report.

**Pollution Control** – The main concern is the dissipation of landfill gas arising from the former Moxley Tip will occur, particularly during the construction phase, resulting in risks to neighbouring developments. The Applicant has not provided sufficient information to demonstrate that these risks have been assessed, and has failed to provide an enabling scheme to demonstrate safe development. A definitive scheme for the protection of the proposed development from landfill gas has also not been submitted. Until additional investigatory works have been completed and a comprehensive Remediation Statement produced, Pollution Control do not believe that conditions should be considered, however, the Applicant should be advised that in principle, Pollution Control are of the opinion that there is the possibility of a scheme that can be agreed.

**Ecology** –No objection subject to the use of recommended conditions in regard to submission of the proposed pre-construction surveys, details of lighting, landscape and ecological management plan, construction environmental management plan and eradication of Japanese knotweed.

**Canal and River Trust** – No objection subject to use of recommended conditions in regard to construction methodology and retaining structures, demonstrating retention of access along the Walsall canal towpath, drainage, contamination, construction and environmental management plan, lighting and contribution of £5000 towards five new canal signage signs.

**Coal Authority** – No objection subject to condition requiring scheme of intrusive site investigations and remediation measures where necessary.

**Flood Risk Manager** – No objection subject to use of recommended condition.

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

**Police Crime Prevention Design Advisor** – No objections to this application. Have been in discussion with the Architects re this development pre submission of this application. They are fully aware of the security benefits that can be achieved on this site through adopting the principles of Secure By Design

**Fire Services** – Suitable water supplies for firefighting should be provided. This shall be subject to consultation with West Midlands Fire Service once a Water Scheme plan has been produced and approved by the relevant Water Company. Vehicle access route to meet the requirements of ADB Volume 2, Table 20, noting that WMFS appliances require a carrying capacity of 15 tonnes.

**Cadent Gas** – No buildings to be constructed within 3m of the Building Proximity Distance of the proven pipeline position and with an approximate standard easement width of 12.2 *metres*.

**Health and Safety Executive** – Advise to consult with gas providers.

**Local Access Forum** – No objection.

**Wildlife Trust** – Raises concern about the loss of a potential site of importance. Further bat and reptile survey required.

**Natural England** – No comments to make.

**Archaeology and Historical Environment Officer** – No requirement for any archaeological conditions to be attached to this planning consent.

**Inland Waterways** – No comments received.

**Tree Officer** – No comments received.

**Public Health** – No comments received.

**Community Safety** – No objection subject to design including detailed boundary treatment, motorcycle barriers to the canal access path and adequate lighting.

**Structures and Geotechnics** – No comments received.

**Environmental Health** – no comments received.

**Sandwell Council** – No objection. Will contribute to the aims and objective of the Core Strategy towards a balanced portfolio of land.

## Representations

Surrounding occupiers and ward members notified by letter, site notices displayed and advertised in local press. Officer comments in *italics*.

17 letters have been received objecting to the application on the following grounds:

- Extra traffic congestion, problematic for traffic management.
- History of serious accidents on the road.
- Impact on turning out of the junction of Sandwell Avenue.
- Concerned about the environment when digging commences due to deposited waste.
- Effect of air pollution from proximity of access road to houses.
- Impact on wildlife.
- Land is not safe.
- Will lose a vast green space.
- Resident with access within proposed junction concerned will take some time to get out of driveway.
- Loss of daylight (*to be fully assessed as part of reserved matters application*)
- Loss of outlook (*to be fully assessed as part of reserved matters application*)
- Noise from traffic during the night (*to be fully assessed as part of reserved matters application*)
- Noise produced from the building itself (*to be fully assessed as part of reserved matters application*)
- Impact from 24/7 operation (*to be fully assessed as part of reserved matters application*)
- Proposed noise mitigation measures are not adequate (*to be fully assessed as part of reserved matters application*)
- Light pollution (*to be fully assessed as part of reserved matters application*)
- Impact on the landscape (*to be fully assessed as part of reserved matters application*)
- Some of the residents gardens flood in winter, where will this water go if no floodplain? (*to be fully assessed as part of reserved matters application*)

The developers of the new housing estate to the north, Countryside, object to the application on the following grounds (Officer comments in *italics*):

- Finished floor level of the proposed is shown to be 5-6m higher than the finished floor level of the closest properties at Wards keep, when the indicative height of the building 13m-18.5m is added, the 24m high difference would be unacceptable (*to be fully assessed as part of reserved matters application*).

- Building of this scale would be incongruous, visually prominent and would adversely impact on the residential amenity of the occupants on the end residential properties. *(to be fully assessed as part of reserved matters application)*
- Ward keep houses have not been considered as part of the Noise Assessment *(to be fully assessed as part of reserved matters application)*.
- Pylon requires an off-set which has not been incorporated *(to be fully assessed as part of reserved matters application)*

Following re-consultation in regard to amended plans

10 letters have been received objecting to the application and raising the following *additional* comments. Officer comments in *italics*.

- Should be turned into a nature reserve *(Whilst this is noted, the Council has to determine the application before them)*
- Moxley Road is not very wide and lorries from lorry park opposite block the road to get access
- Serves as a barrier to main road noise and pollution.
- Impact on property values *(not a material planning consideration)*.
- No acoustic barrier to the proposed car park *(to be fully assessed as part of reserved matters application)*
- What was tipped at the site *(details set out within the submitted Ground Investigation Report)*
- Concerned about surface run off being created from planted embankment *(to be fully assessed as part of reserved matters application)*
- How will substation to control drainage work *(to be fully assessed as part of reserved matters application)*
- What impact will ground level changes have on the surrounding area *(to be fully assessed as part of reserved matters application)*
- What information is there on underground services and boundary *(to be fully assessed as part of reserved matters application)*
- How will methane gas be controlled *(indicatively explained in the Ground Investigation report, will be fully assessed as part of reserved matters application)*
- What are the plans for the trees around the tip *(indicative layout suggests healthy trees to be retained, full details to assessed as part of reserved matters application)*
- Will the footpath around the perimeter of the tip remain? *(Dar2 is to be retained, as this is private land it is suggested no public access would be provided other than the new access to the canal)*
- Will there be a loss of privacy *(to be fully assessed as part of reserved matters application)*
- Will the development affect access to rear? (regarding property along Bradshaw Avenue) *(Indicative drawing suggests no access being provided at the rear, this would be a civil matter between the relevant landowners)*
- Vehicle wash facility should be installed on site during the preparatory and construction works.
- Relocation of bus stop will be opposite existing bus stop *(any location would need to be agreed by Transport for West Midlands)*.

- Vehicles should not travel into the residential area (*What vehicles travel along the public highway is a matter for the Highway Authority and outside the scope of the planning legislation*)
- Uncertain if Moxley Road is suitable for extra traffic.
- Would take away employment, future investment and opportunities as business landowners for Moxley Road Service Station.
- Site has been used as common land for 35+ years with access readily available for regular walking. Being consider by residents to register it as common land.
- No guarantee jobs would be available for local people.
- Walsall UDP says site should be retained as open space. (*UDP policy has been superseded by the Sites Allocation Document [SAD]*)
- Additional landscaping required (*to be fully assessed as part of reserved matters application*)

Valerie Vaz MP has made the following comments:

- Residents have raised concerns to her about light, noise, air pollution and increased flooding (*comments are considered within this report*)
- What discussions have Walsall MBS had with the applicant as part of the application process (*the applicants submitted a pre-application and officers had liaised with the applicants during the application process as per the Government's positive and proactive working requirements*)
- Which part of the site belongs to Walsall MBC (*not a material planning consideration but the Council's land holding is the land between the rear of houses long Berry Avenue and Bradshaw Avenue.*)
- What representations has been made to Walsall MBC about purchasing their section of the site (*note a material planning consideration*)
- Likely number of vehicle movements onto and off the site (*details set out in the Transport Assessment Technical Note January 2019 and summarised above*)

## Determining Issues

- Principle of development
- Relationship with current housing application
- Access and Highway Safety
- Ground conditions
- Ecology, Trees and Urban Open Space
- Drainage and flood risk
- Impact upon the character and appearance of the area
- Impact upon residential amenities

## Assessment of the Proposal

### Principle of development

This is an allocated site (IN122) within Walsall Site Allocation Document policy IND5 as New Potential High Quality Industrial Opportunities due to its good location and potential to attract inward investment. The policy explains that non-high quality industrial uses will be discouraged and non-industrial uses will not be permitted. The proposed B2 and B8 uses can be considered to be high quality industrial uses. The original indicative drawing included reference to a builders merchants at the front of

the site. The Council's Strategic Planning Policy team objected as this would not be an acceptable use. The development description is clear that the proposal is for B2 and B8 uses, the indicative drawing has been revised to remove this reference – high quality industry is strongly support by Planning Policy. A condition defining both the use and amount of floorspace is considered necessary to ensure compliance with SAD policy IND5.

SAD Policy IND5 explains, proposals on this site will be expected to provide an element of leisure and recreation. This is envisaged to include structural landscaping and footpath provision rather than formal open space. While indicatively the site layout demonstrates, structural landscaping can be provided plus the footpath to the canal would also contribute to the policy requirement.

The application site is part of the BCCS Regeneration Corridor 5, with fast reliable access to the motorway network (north (M6) and south (M5)). Moxley employment areas will fulfil their potential to become major industrial and logistic hubs serving the Black Country and the Region.

BCCS Policy EMP1 seeks to ensure sufficient stock of employment land to meet demand and support the growth and diversification of the economy. The aim of the BCCS is to provide for at least 75,000 industrial and warehouse jobs in the Black Country in 2026, with a target of 2,900 hectares of employment land to be delivered. BCCS EMP2 explains, Strategic High Quality Employment Areas will be characterised by excellent accessibility.

The NPPF places significant weight on the need for decisions to support economic growth and productivity, going on to say, decisions should recognise and address the specific locational requirements of different sectors including high technology industries plus storage and distribution operations at a variety of scales and in suitably accessible locations.

The Economic Benefits Assessment estimates that 220 jobs per year would be generated during construction with an estimated 1,030 jobs (on and off-site) during the sites operation.

The proposal would, in principle, be an acceptable use of the land. Appearance, landscaping, layout and scale are reserved for latter consideration with access considered below.

Whilst the loss of Moxley Road service station and Moxley Car centre is regrettable, this land is essential to provide a suitable access to deliver the regeneration aspirations of the site with new employment opportunities. On balance the loss of the existing uses are outweighed by the redevelopment opportunity presented in this application.

Whilst residents concerns the site has been used as common land for 35+ years, for planning purposes, this contaminated site is allocated for industry. At the time of the report the site does not have common land status.

## **Relationship with current housing application**



A reserved matters planning application for 65 houses from the same applicant is currently under consideration and follows an outline approval in 2013. The application is for an area of land outside of the former tip boundary to the east of the site. The application is subject to an objection from the Coal Authority. The applicants have not resolved the objection seeking to pursue this application in light of the recent industrial allocation across the whole site.

Both applications would need to be determined on their merits, approval of both would not result in both proposals being pursued. The developer would have the option of either scheme. The applicants have indicated that should the current application be supported they may seek to withdraw the housing proposal.

### **Access and Highway Safety**

The application seeks detailed approval of the access into this proposed industrial development. A new signalised junction would serve the development, 130m from the Moxley gyratory and 40m further to the east than the existing access (20m from Sandwell Avenue). The junction includes a 'left in' lane for eastbound traffic and a right hand turning lane for westbound traffic. Pedestrian crossing facilities being provided at the junction and an extended shared footway and cycleway from the gyratory. The entry to the gyratory would be widened for westbound traffic to accommodate side-by-side HGV movements, increasing capacity and safety around the gyratory junction.

Existing collision records for the area do not identify an existing problem, regarding safety issues and it is not anticipated that this would be exacerbated.

As no end user or detailed layout is provided at this time the Transport Assessment uses a worst-case scenario of vehicle movements taken from the TRICs database. It concludes, the signalised junction would operate within capacity with a predicted maximum queue of 11 vehicles heading in an eastern direction to be accommodated without queuing back to the gyratory. The queues from the gyratory in the western direction are likely, at times, to extend beyond the proposed site access junction. These flows can be managed by linking the existing and proposed signals.

The predicted additional vehicle movements on a worst case scenario of full B2 use are 139 arrivals and 34 departures during the 8am-9am peak period and 31 arrivals and 144 departures during the 5pm-6pm peak period. To put this into context currently there are 15734 vehicle movements along Moxley Road, including 533 large goods vehicle traffic. Worst-case scenario the proposal would increase this by 1845 vehicle movements, including 205 large goods vehicle traffic. The trip distribution across the network is estimated to be:

- A4444 Black Country New Road North – 40.2%
- A41 Black Country New Road South – 34.3%
- Moxley Road East – 14.7%
- High Street West - 10.7%

The Transport Statement explains, the proposed development would only result in a marginal change in delay to existing users of the highway. During the am peak including high growth scenario the gyratory would operate within capacity. In the pm peak the gyratory, would during a high growth scenario be at capacity without the

development. The proposal would increase the delay at the junction, although the report considers not to a severe amount.

To mitigate against potential impacts of vehicle movements, a Framework Travel Plan has been provided setting out that a Travel Plan Co-ordinator (TPC) will be appointed three months prior to the site's occupation, being funded for five years beyond this point. A travel information pack will be prepared by the TPC for inclusion within employee induction packs and a number of sustainable travel options promoted by the occupier(s). The framework sets out appropriate measures. A full Travel Plan which would include ongoing commitments, monitoring and review with the Local Highway Authority would not meet the government's six tests for planning conditions. To promote sustainable travel, it is considered the Travel Plan is essential and to ensure its requirements are enforceable; this would need to be secured by a S106 agreement.

Highways raise no objection to access only elements the proposed outline planning application and agree with the findings of the applicant's Transport Consultant that a signalised junction is the preferred option.

The Local Highway Authority confirm that to deliver the development of this floor-space size on this brownfield site, the proposed access needs to be positioned as shown. Re-use of the existing access would not be considered safe. It is acknowledged that the application does not own all of the land required to deliver the proposal as presented. As relevant notices have been served the planning requirements have been met. It would be for the applicant to secure ownership/access rights across this third party land. As the signalised access is fundamental to making the development acceptable in planning terms a Grampian condition, requiring implementation of the junction and improvements prior to the development first being brought into use is essential and would meet the government's six tests. A condition regarding maintaining visibility splays is also a necessary condition and is recommended.

In close proximity to the proposed junction and across the road from the application site is an existing lorry park (former Moxley Infants School) and 139 Moxley Road's vehicular driveway access. For the lorry park the submitted drawings have tracked an articulated vehicle, demonstrating it can continue to access the site without being severely compromised by the proposed signals. For the 139 Moxley Road driveway the applicant's explain, the design allows for infrequent vehicular access/egress via an all red signals stage. Concerns about turning out of the Sandwell Avenue junction is noted. Traffic travelling in a western direction along Moxley Road there is a potential for queuing to the gyratory and this would have an impact. The addition of a signalised junction would provide a break in the traffic to assist access and egress from side roads. Traffic turning east from Sandwell Avenue to Darlaston would benefit from the red phase of the signals which would provide a gap in the traffic heading in this direction, giving residents an opportunity to access Moxley Road.

The indicative 3m wide shared pedestrian cycle/track path from Moxley Road to the canal towpath is an important part of the scheme and would assist with promoting sustainable means of travel for users of the development either by foot or by bicycle. In addition it would bring access improvements for local people and is viewed as an environmental benefit to the scheme. The current canal access point is located south

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of the gyrator some 95m away from the site. The proposed access is considered within the context of the upgraded footpath at Wards site and the combination of providing integrated links between Darlaston and Moxley. Full details of the access would be required as part of a future submission. A condition that meets the six tests is recommended.

The application originally proposed improvements to footpath Dar2. The applicants consider the benefits of the proposed canal link are more beneficial to the improvements to Dar2. It is considered that both of these links are essential to supporting the move to more sustainable modes of travel to and from this site and both need to form part of any planning approval.

The Public Rights of Way Officer has questioned how both links can be delivered due to land ownership considerations. For the canal link the Land Registry Titles demonstrate the applicants ownership includes land from Moxley Road to the canal tow path, this area of land is also within the redline of the application boundary. Factoring the need for the ramp to meet the gradient to be accessible to all in compliance with the Equality Act, this access provision can be secured by condition. For Dar2 this land is outside of the redline boundary and the applicant's ownership, but is highways land. Planning legislation allows for planning conditions to be used for works on highways land where it is outside of the application boundary. Accordingly these necessary improvements can be secured by conditions that meet the six tests.

Footpath Dar2 will be improved to a specification to be agreed with the Council, likely to include resurfacing, lighting and improved boundary treatment. Full details are to be secured by a Grampian condition that meets the six tests.

Public Rights of Way have confirmed that in regard to the possible presence of unrecorded rights of way at the site, no claims have been received requesting that this been added to the Definitive Map for this site. A safeguarding note for applicant is recommended should any such claim be made.

The existing westbound bus stop on Moxley Road will need to be relocated. The applicant explains Transport for West Midlands have been consulted and have no principle issues subject to the costs being provided by the developer.

It is recognised that the scale of the development would lead to an impact in highways terms due to the associated vehicle movements. The trip distribution demonstrates vehicle movements would be concentrated onto the District Distributors and Strategic Highways. The NPPF places significant weight on the need for decisions to support economic growth and productivity, going on to say, decisions should recognise and address the specific locational requirements of different sectors including high technology industries and for the storage and distribution operations at a variety of scales and in suitably accessible locations. It continues, development should only be refused on transport grounds where the residual cumulative impacts of development are severe. The additional net increase in vehicle movements, as discussed above, is considered, to not be severe. Therefore the Council could not sustain a reason for refusal on these grounds.

The internal road layout and car parking areas are reserved for future consideration.

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## Ground conditions

The site is a former landfill site, which is known to contain various contaminants and significant levels of methane and carbon dioxide gas. The supporting ground investigation report identifies that the in filled sand/clay pit anticipated to be up to 25 metres deep; the land contains various contaminative and hazardous materials; hotspots of asbestos have been identified.

Pollution Control has concern over the development of the site without first ascertaining the extent of an enabling scheme to ensure the protection of existing development on Moxley Road and Sandwell Avenue. It should also be noted, Planning Application 18/0072 has given approval to the construction of 207 dwellings on adjoining land located immediately to the north. Consideration should be considered to "boundary venting" of the northern boundary of this development site to prevent the lateral migration of ground gas.

Pollution Control agree with the findings of the report:

- there is significant contamination and ground gas,
- there is a need for further investigation, monitoring and review
- there is a need to continue ground settlement investigations,
- if development is to be permitted, then only commercial/industrial should be considered at this stage
- the site will require piling
- buildings will require gas ingress protection measures
- other venting measures should be considered
- Consideration will need to be given to the requirement for "boundary venting" upon the south-eastern reaches

At this stage, until additional investigatory works have been completed and a comprehensive Remediation Statement produced, Pollution Control do not believe that conditions should be considered, however, the applicant is advised, in principle, Pollution Control are of the opinion, there is the possibility of a scheme that can be agreed.

To create a safe development platform it is indicatively proposed to uplift the site with finished floor level would be typically 2m-3m above existing ground level, but locally up to 4m and 5m to create a relatively level development platform utilising clean imported fill materials allowing the majority of ground works to be carried out within a clean environment. This would mitigate human health risks (long term site users/construction workers). Gas protection to all buildings including beneath all hard surfaced external yard areas and access ways would need to be provided.

The concerns of Pollution Control are acknowledged and the applicant's report is clear that further investigations and detailed remediation scheme would be required. If this were a full detailed submission where the parameters of the built form are understood then due to severity of the ground issues full remediation would be required prior to determination.

This is an outline application with all matters reserved accept access. As Pollution Control explains, in principle a scheme or remediation can be agreed. They have not

objected to the principle of industrial development at this site or that there is a risk from the position of the proposed access. The Council considers full remediation details can be secured through a reserved matters application. Members can be assured that reserved matters applications can be refused if insufficient safeguards are not provided. The Pollution Control comments have been shared with the applicant's agent so they are clear to what is required. Conditions to secure this information are necessary and are recommended.

In reaching this position the comments of the Environment Agency are also necessary. The EA explain it is clear that follow-up work is required before the site risks are fully understood and/or made safe. They support the report's conclusions. They consider that planning permission should only be granted to the proposed development as submitted subject to a condition requiring further site investigation. Without these conditions, the proposed development on this site could pose an unacceptable risk to the environment and the EA would object to the proposals. A safeguarding condition is recommended which meets the Governments 6 tests.

NPPF gives substantial weight to the value of using suitable brownfield land within settlements for identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. It also says that decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. As described above the site is suitable for its proposed use and the risks can be managed through further detailed submissions.

The Coal Mining Risk Assessment identifies four mineshafts; one is away from the indicative building and hard standing. Shaft 4 has not been treated and would be under the apron of hard standing. It should be located and stabilised. The Coal Authority concurs with the findings of the report. The locations of the mine entries need to be ascertained and appropriate mitigation strategies provided to ensure the safety and stability of the proposed development. This can be secured by a safeguarding condition requiring intrusive site investigations, mitigation and implementation, which meets the Governments 6 tests.

During the course of the application the Archaeological Officer identified a historic ridge and furrow formation within the site. This has been recorded, and 3 evaluation trenches were excavated. No archaeology was identified. The findings will be submitted to the Wolverhampton and Walsall Historic Environment Record. There is no requirement for any archaeological safeguarding conditions to be imposed.

### **Ecology, Trees and Urban Open Space**

The Badger survey found no field signs of badger activity and the inactive sett would be located within the landscape buffer. The buildings that make up the garage on Moxley Road are considered to have low and negligible potential for roosting bats. The Parameters plan provides wildlife corridors of woodland and scrub planting around the edges of the site which should badgers begin to use the area, connectivity is provided, as well as foraging and sett creation habitat.

Whilst foraging and commuting bats were observed within the site, no bat roosts were found within the immediate vicinity of the site. Post development the site will retain linear landscape features and the provision of a wide buffer to the adjacent

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Walsall Canal, it is anticipated that common pipistrelle will continue to use the site for foraging and commuting in the long term.

The Preliminary Ecological Appraisal (PEA) explains that Moorcroft Wood LNR (600m away) is ecologically connected to the site via the Walsall Canal. Retaining a 10m buffer between the canal and the site aids continuing connectivity between the LNR and the wider environment for bats. This buffer will also avoid direct impact upon the adjacent SINC and SLINC and will prevent harm or disturbance to water vole. Sensitive lighting would be required to this boundary with details secured through a safeguarding condition meeting the Governments six tests. The PEA explains the mature hedgerow and trees to the northern boundary should be retained, whilst explaining the area has low suitability for Great Crested Newts and other reptiles. The existing condition of the land, it's unlikely the site would support notable or protected bird species. The landscape buffers around the edges of the proposed development will provide suitable foraging and nesting habitat for birds to ensure local populations are retained within the site. The addition of bat and bird boxes to the site either within trees or the buildings would increase roosting and nesting opportunities and can be secured via safeguarding conditions that meet the Governments six tests.

To safeguard nesting birds site clearance should be undertaken outside of the usual bird breeding season (March-August) and hedgehog hibernation period (November-March), unless works are supervised by a suitably qualified, experienced and licenced Ecologist. A safeguarding condition meeting the Governments six tests can be imposed.

Japanese knotweed was recorded across the site and will need to be eradicated. The Council's Ecologist concurs with the methodologies and the findings of the reports and subject to the use of recommended conditions set out above considers the scheme is unlikely to result in any significant ecological impacts. These conditions are considered necessary and meet the government's six tests.

The Wildlife Trust explain that the site area encompasses Moxley Sand Beds and Berry Avenue Pasture Potential Sites of Importance (PSI) and any development at this site will negatively impact the un-assessed PSIs with potential to harm the adjacent protected sites. The adjacent protected sites being the Walsall Canal SLINC and Wards Pool SINC.

Any large vacant site has the potential, over time, to have ecological value. This must be weighed against the overall planning objectives for the locality. BCCS policy ENV1 explains that in exceptional circumstances the strategic benefits of a development could be seen to outweigh the importance of the ecological features to be affected subject to appropriate mitigation. The Wildlife Trust's comments are in regard to *potential* sites of importance. As considered above the ecological value of the land is not significant in planning terms, plus mitigation is being proposed in the overall proposal.

Regarding any potential impacts to the Walsall Canal SLINC can be managed through the recommended Landscape and Ecological Management plan condition. For Wards Pool SINC the area around this site has planning permission to be developed for housing with a compensatory ecological enhancement area approved

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further to the north. The proposal would not impact upon these approved ecological enhancements.

As recently endorsed by the Planning Inspectorate the strategic aims for this site is to deliver a large industrial development within an accessible location. The ecological impacts of the proposal can be mitigated and the proposal offers the opportunity for enhancement.

Whilst an A category London plane highway tree would need to be removed to accommodate proposed access, its high amenity value has been weighed in the overall planning balance and the benefits of the scheme, in this instance, outweigh the trees retention. A safeguarding condition could be imposed to include replace semi mature London plane trees in the overall landscaping plan.

Whilst the indicative scheme illustrates a number of A and B category trees around the perimeter of the site to be retained (A rated trees; sycamore, field maple, silver birch, wild cherry, hazel, purples leafed sycamore and acer, towards the front of the site create significant grouping in amenity terms), they are likely to be removed to accommodate the development. Again whilst their loss is regrettable this can be mitigated for by a high quality landscape scheme at reserved matters stage and have been weighed in wider planning assessment to not be reason to refuse the planning application.

Whilst residents have concerns about the loss of open space and there are a small number of unofficial paths leading into the site from the western boundaries suggesting the site has been used for informal recreation. Historically open space was part of the remediation strategy for the site, leading to it being designated as open space under the UDP. The approved planning permission for this remediation was never implemented. The most recent appraisal for the whole the Borough has re-assessed existing sites and allocated new sites in accordance with the development framework. The conclusion for this site is industrial use is considered to best meet the future needs of the Borough. The loss of open space has already been determined through the development plan process.

### **Drainage and flood risk**

The Flood Risk Assessment explains that whole parts of the site boundary are in Flood Zones 2 and 3, all development will be on the former landfill cell. The area to be developed is 7m higher than the land in Flood Zone 3. Therefore the site will be unaffected by flooding or exacerbated by climate change. Surface water drainage strategy for the development will mimic Greenfield rates; runoff will be discharged into the canal at a restricted rate with on-site attenuation with climate change allowance to ensure that the risk of flooding to adjacent areas and downstream of the site is not increased as a result of the development. The Environment Agency and Flood Risk Officer have no objection to the application subject to the use of recommended conditions to implement this strategy and control surface water flow and attenuation.

### **Relationship with the canal**

The Walsall Canal runs along the western boundary of the application site and is approximately 10m lower than the current ground levels of the site. The proposed

ground level increase and the position of a substantial building and service yard has the potential to cause harm to the visual amenities and ecological value of the area.

Retaining walls will be required along the western edge of the site with associated landscaping.

Works may impact on the stability of the canal infrastructure at this location, a necessary condition requiring full construction details is recommended. Any future reserved matters application also needs to demonstrate that access along the Walsall Canal towpath will not be affected by the development, a condition is recommended. The canal will provide an off-road sustainable route for future employees, while there are existing proposals outside of this application to improve the towpath surface the Canal and Rivers Trust seek new signs as part of the development with five signs at a cost of £5000. Full drainage details are required to ensure no contaminants are discharged into the canal, a condition is recommended. All contamination paths needs to be considered, and a construction management plan and lighting plan will be necessary and can be secured by condition. The Canal and Rivers Trust consider the landscape buffer a reasonable approach with full landscaped to be secured through the reserved matters application.

While the request for £5000 is recognised it is questioned whether the signage would meet the tests for contributions (necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The application also makes provision for an access ramp from the canal through the site and onto Moxley Road. Whilst the applicant has concerns about the cost of providing this, it is considered, the opportunity for a new access to be provided to the canal contributing to sustainable alternative modes of transport to and from the site, outweighs the costs concerns and some simple directional signage within the application site to direct employees and visitors from the site would also be of benefit and secured via a safeguarding condition meeting the Government's six tests. For this reason the £5000 contribution is not sought.

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

Whilst the SAD designation has accepted industrial use of this site, this outline application for the principle of B2 and B8 use, with appearance, landscaping, layout and scale reserved for later consideration, only limited weight can be given to the indicative layout plan. The indicative plan shows two buildings, a smaller building to the front of the site 13m in height then one large building in the middle and rear of the site 18m in height with commercial vehicle yard to the front and staff car park to the eastern side towards the boundary with the existing houses. Landscaping areas are shown around the perimeter of the site.

It is explained that the building(s) would include parapet roof to present a softer and more organic line and effectively reduce the perceived mass of the main building volumes. Detailing will be simplistic with clean sharp lines, functional detailing, a limited range of surface materials and a restricted palette of neutral colours to create an architecture which doesn't quickly date. It is further explained that simple design details such as shadow recesses and subtle changes in surface texture will be utilised to improve proportion and give variety and rhythm to elevations.



The indicative drawings show the existing ground level to potentially be raised up to 5m in places. Whilst the illustrative layout demonstrates that the principle of an industrial building or buildings across the site could be accommodated, a detailed application would need to demonstrate that the massing of the building(s) would not be harmful to the visual amenities of the area and that proposed landscaping would have an immediate screening effect that could be sustained in the long-term.

The detailed design will need to meet Secure by Design or equivalent standard in regard to security. A condition is recommended.

Saved UDP policy ENV34 for Public Art explains the Council will require the provision of public art for larger developments in prominent locations to enhance the quality of developments. This can come in many different forms, however, in this instance, a condition is recommended for public art provision to be provided on site.

The reserved matters application will also need to demonstrate sufficient separation distance from the high voltage power lines.

### **Impact upon residential amenities**

Whilst appearance, landscaping, layout and scale of the development are reserved for later consideration it is material to consider at this stage whether an unrestricted B2 and B8 use on the site could be provided without causing a material harm to adjoining residents by virtue of noise and disturbance from HGV movements, loading/unloading of vehicles, processing/manufacturing operations within the building and external lighting.

Pollution Control Officers advised the Acoustic Consultant, they will need to consider current background noise levels in their assessment and control measures for the proposed development. The Consultant has undertaken a series of background noise assessments and has derived noise limits that the proposed development should not exceed. At this stage, Pollution Control do not disagree with the assessment and the findings.

Regarding noise and disturbance full assessment can only be undertaken at reserved matters when the precise location of building(s) and external areas are known. The noise report has set the parameters for the reserved matters application to inform the design of the required mitigation measures.

The potential for harm is recognised with the rear of some houses shown indicatively to be 35m from the service yard. Based on the above the Council is of the view, an acceptable development could be provided subject to suitable mitigation measures. Furthermore, given the elevated nature of the proposed development, the consultant will need to consider noise from site roads and car parks, and possible mitigation measures. Those measures would be integral to the final design concept and would be fully assessed as part of any future reserved matters application.

Any reserved matters application would need to demonstrate the massing of the building would not result in significant harm to the outlook of neighbouring residents or an unacceptable loss of light. Given the requirement to increase the ground level to create a safe development platform, as discussed above, the combined ground levels increase and the height of the building (indicatively suggested to be 18.5m)

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has the potential to cause harm. Indicative shadowing drawings suggest some impact the neighbours during the winter months. The future reserved matters application would need to include section drawings showing the relationship with the existing Sandwell Avenue houses and at Wards Keep currently under construction. These sections can be secured via a safeguarding condition that meets the Governments 6 tests.

The Council recognises the sensitive positioning of the building/buildings, a simple design and neutral palette of materials alongside high quality landscaping, means, in principle, an appropriate relationship between residents could be provided.

The Air Quality Assessment has identified that the air quality from the proposed development will not result on a significant alteration to existing air quality levels. Based on the data used, Pollution Control would agree with this conclusion.

Although the Air Quality Assessment has identified that Walsall Council have adopted the Black Country Air Quality Supplementary Planning Document (SPD), the Air Quality Consultant has not identified what mitigation measures they will implement to comply with the SPD. This would be need to be demonstrated through a reserved matters application and may include electric charging points.

## **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 principle of development is consistent with the provisions of the development plan bringing economic growth and productivity to the area. The proposed vehicle access arrangements would have an impact but this has been demonstrated not to be severe cumulative impacts. The proposal provides localised access improvements through the provision of an access path the canal and qualitative improvements to the public right of way Dar2.

The site has existing adverse ground conditions that would need to be addressed as part of a reserved matters, however in principle terms this is not a barrier to supporting the outline proposal. There are no substantial ecological constraints to development the site, but an opportunity to provide net ecologically grounds through sensitive and substantial landscape improvements.

The development is not at risk of or poses flood risk issues. A satisfactory relationship with the canal could be provided subject to detailed design. While the size of such a building and its operation could have impacts on visual and residential amenity grounds, the principle of a building(s) in this location could be acceptable. Detailed designs through reserved matters will need to demonstrate a satisfactory relationship with neighbours and the general character of the area.

Taking into account the above factors it is considered that the application should be recommended for approval. The development is considered to meet the aims and objectives of the National Planning Policy Framework, policies CSP1, CSP3, CSP4, CPS5, DEL1, EMP1, EMP2, TRAN1, TRAN2, TRAN3, TRAN4, TRAN5, ENV1, ENV2, ENV3, ENV4, ENV5, ENV7, ENV8 and WM5 of the Black Country Core Strategy, policies IND5, EN1, EN3, EN4, T2, T4 and T5 of the Walsall Site Allocation

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Document and saved policies GP2, 3.6, 3.7, ENV10, ENV11, ENV12, ENV13, ENV14, ENV18, ENV23, ENV24, ENV26, ENV32, ENV33, ENV34, ENV40, JP8, T1, T7, T8, T9, and T13 of Walsall Unitary Development Plan, Supplementary Planning Documents Designing Walsall, Conserving Walsall's Natural Environment and Air Quality.

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

Pre-application advice was provided prior to the submission of the application and the advice has been followed. Officers have worked with the applicant and agent securing additional information to address the concerns of consultees and to enable a positive recommendation to be made.

### **Recommendation**

Grant planning permission subject to conditions

### **Conditions and Reasons**

1. Application for the approval of reserved matters must be made not later than the expiration of three years beginning with the date of this permission.

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

2. The development to which the permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters application, or the last reserved matters approval.

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

3. This development shall not be commenced until details of the following, hereafter named "the Reserved Matters", have been submitted to and approved by the Local Planning Authority:-

- i. Appearance
- ii. Landscaping
- iii. Layout
- iv. Scale

Reason: Pursuant to Town & Country Planning (Development Management Procedure) Order 2015.

4. The development shall not be carried out other than in conformity with the application form and following plans and documents:

- Site location plan (Rev A) received 28/9/18

- Proposed Site Access General Arrangement (3207 TR 01 Rev P3) received 13/2/19
- Proposed site access swept path analysis (302 TR 02 P3) received 13/2/19
- Updated Topographical survey (ST16161-064 Rev A) received 21/9/18
- Tree Constraints plan (02 Rev A) received 21/9/18
- Mining and mineshaft risk assessment report received 21/9/18
- Preliminary Ground Investigations report Volume 2 received 21/9/18
- Flood Risk Assessment received 21/9/18
- Pre-development Tree Survey received 21/9/18
- Badger Survey Report received 21/9/18
- Bat Activity Report August 2018 received 21/9/18
- Bat Activity Report January 2019 received 23/1/19
- Preliminary Ecological appraisal received 21/9/18
- Reptile survey report received 4/2/19
- Transport Assessment received 21/9/18
- Transport Assessment Technical Note (A) received 23/1/19
- Transport Assessment Technical Note (1) received 13/2/19
- Framework Travel Plan received 21/9/18

Reason: For the avoidance of doubt and in the interests of proper planning, (except in so far as other conditions may so require).

5. The maximum gross floorspace approved under this permission is a total of 45,360sqm for B2 and B8 use including offices to be ancillary to the B2 and B8 primary uses. No part of the development shall include retail floor space or trade counters available to the general public.

Reason: To define the permission, and control the location of office floorspace other than that required to use the site for the other approved uses.

6a. The details to be submitted in accordance with condition 3 above (the reserved matters) shall include an inclusive access path through the site between Moxley Road and the Walsall Canal, to include surface water drainage mitigation measures.

6b. The development shall not be brought into use until the approved access path has been provided.

6c. The access path shall thereafter be retained for the life of the development and available for use by members of the public at all times.

Reason: The proposals rely on the canal towpath as a sustainable and alternative transport route for pedestrians and cyclists to get to provide a link to the surrounding area.

7a. The details to be submitted in accordance with condition 3 above (the reserved matters) shall demonstrate vehicle access to the electricity transmission towers on the site shall not be hindered and proposed security measures to prevent access by unauthorised vehicles.

7b. The approved measures shall be implemented and thereafter be retained for the life of the development.

Reason: To safeguard access to the electricity pylons.

8a. The details to be submitted in accordance with condition 3 above (the reserved matters) shall include an additional noise impact assessment and mitigation measures.

8b. The development shall not be brought into until agreed mitigation measures have been installed

8c. The approved mitigation measures shall thereafter be retained for the life of the development

Reason: To protect the amenity of nearby residential occupiers.

9a. The details to be submitted in accordance with condition 3 above (the reserved matters) shall include full details of the proposed levels of the site, access and floor levels and of any retaining structures required to ensure the stability of the site or adjoining land

9b. The development shall be carried out in accordance with the approved levels.

Reason: To ensure the satisfactory appearance of the development and the visual amenity of the area.

10a. The details to be submitted in accordance with condition 3 above (the reserved matters) shall include details of how the development is to achieve Secured by Design or equivalent status.

10b. The development will be carried out in accordance with the approved details.

Reason: To ensure appropriate measures are in place to minimise crime and the fear of crime

11a. The details to be submitted in accordance with condition 3 above (the reserved matters) shall include a detailed landscaping scheme for the site including its phased implementation. These details shall include semi-mature trees to the Moxley Road boundary in compensation for the loss of the existing A category trees and compensatory planning and:

- correct botanical names
- numbers/planting densities for each block of planting proposed
- size supplied of all proposed tree and shrubs at time of planting
- details of proposed turf/seeded areas and sowing rates
- topsoil and mulching depths and specifications
- staking details for proposed trees
- Ground preparation measures to be adopted.

11b. The approved scheme shall be implemented in accordance with the approved phasing and retained for 5 years from the phased implementation. Within this period:

- (i) grassed areas shall be maintained and any areas that fail to establish shall be reinstated;
- (ii) any tree, shrub or 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 the same species as that originally required to be planted;
- (iii) any damage to protective fences shall be made good.

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

12a. The details to be submitted in accordance with condition 3 above (the reserved matters) shall include an intrusive site investigation to assess the ground conditions on the site and establish the risks posed to the development by past coal mining activity and any remedial measures necessary including the submission of a layout plan which identifies appropriate zones of influence for the mine entries on site and the definition of suitable 'no-build' zones and identification of the condition and the treatment details of each mine entry including written commentary that they have been treated.

12b. The approved remedial works shall implemented prior to the commencement of development.

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

13a. The details to be submitted in accordance with condition 3 above (the reserved matters) shall include additional ground contamination surveys and assessment of ground-gas and groundwater, having regard to current best practice, (see Note for Applicant CL1) together with an assessment of identified and/or potential hazards and a 'Remediation Statement' setting out details of remedial measures to deal with the identified and potential hazards of any land contamination and/or ground gas present on the site and a timetable for their implementation shall be submitted to and agreed in (see Note for Applicant CL2).

13b. The remedial measures as set out in the 'Remediation Statement' required by part a) of this condition shall be implemented in accordance with the agreed timetable.

13c. If during the undertaking of remedial works or the construction of the approved development unexpected ground contamination not identified by the site investigation required by part a) of this condition is encountered, development shall cease until the 'Remediation Statement' required by part b) of this condition has been amended to address any additional remedial or mitigation works required and agreed in writing by the Local Planning Authority.

13d. 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 for written approval of 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, to protect human health, ensure that the development will be protective of Controlled Waters at all times, notably the underlying Secondary A aquifer and nearby Darlaston Brook, to safeguard the

environment and in the interests of the safety of waterway users and water quality of the Walsall Canal.

14a. Prior to any engineering, site clearance/preparation, and/or construction works commencing a Construction Management Plan setting out how the works will be undertaken and giving details of arrangements for the control of noise, vibration, dust and debris (including site drag-out), the management of any materials arising from the works, details for the parking and turning facilities for site operatives and construction deliveries, the loading and unloading of plant and materials, the storage of plant and materials used in constructing the development, full details of the wheel cleansing arrangements to prevent mud from being deposited on the highway during the period of construction shall be submitted for written approval of the Local Planning Authority.

14b. The Construction Management Plan shall be implemented upon commencement of any works and shall be maintained until the site is completed.

14c. Vibration levels during ground stabilisation/piling works shall not exceed the Low Probability of Adverse Comment, as prescribed within British Standard BS6472-1:2008 'Guide to evaluation of human exposure to vibration in buildings – vibration sources other than blasting'.

Reason: To protect the amenity of local residents and in order to minimise on street parking by site operatives and the potential disruption to the free flow of traffic along the public highway, in the interests of highway safety. To safeguard the environment and in the interests of the structural integrity of the waterway and to ensure the proposed works do not have any adverse impact on the safety of waterway users and the integrity of the Walsall Canal

15a. Prior to the commencement of development details of at least 10% of the energy supply for the development from decentralised and renewable or low-carbon energy sources shall be first submitted for written approval of the Local Planning Authority.

15b. The approved details shall be implemented prior to first occupation of any part of the buildings and retained as operational thereafter.

Reason: In the interests of energy efficiency. Details are required prior to development as measures could involve ground works.

16a. Prior to the commencement of development an Arboricultural Method Statement shall have first been submitted for written approval of the Local Planning Authority demonstrating how retained trees will be protected during the course of the construction works. .

16b. The approved measures shall be implemented prior to the commencement of development.

16c. The approved details shall be retained until the completion of the development. The land so enclosed shall be kept clear of all contractors' materials and machinery at all times, as laid out in British Standard 5837:2012.

*Reason:* To safeguard the retained trees on the site.

17. To avoid the risk to nesting birds, site clearance of vegetation and clearance works should be undertaken outside the bird nesting season. The bird nesting season extends between mid February and September inclusive but is weather dependant and nesting may take place outside this period. If site clearance unavoidably takes place within the nesting season the site shall be checked by a qualified and experienced ecologist immediately prior to works commencing. If nesting birds are discovered clearance works should be delayed and advice sought from the ecologist or Natural England.

*Reason:* To protect local bird populations.

18. To avoid the risk to hibernating hedgehogs, site clearance of vegetation and clearance works should be undertaken outside the hedgehog hibernation season, November to March. If site clearance unavoidably takes place within the hibernation season the site shall be checked by a qualified and experienced ecologist immediately prior to works commencing. If hibernating hedgehogs are discovered clearance works should be delayed and advice sought from the ecologist or Natural England.

*Reason:* To protect local hedgehog populations

19. To avoid the risk to hibernating bats, site clearance of vegetation and clearance works should be undertaken outside the bat hibernation season, November to March. If site clearance unavoidably takes place within the hibernation season the site shall be checked by a qualified and experienced ecologist immediately prior to works commencing. If hibernating bats are discovered clearance works should be delayed and advice sought from the ecologist or Natural England.

*Reason:* To protect local bat populations

20a. Prior to the commencement of development drainage plans for the disposal of foul and surface water flows shall have first been submitted for written approval of the Local Planning Authority

20b. The approved details shall be fully implemented before the development is brought into use

*Reason:* To ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution.

21a. Prior to the commencement of development a Landscape and Ecological Management Plan shall be first submitted for written approval of the Local Planning Authority. The plan shall include management practices to be undertaken on the retained, newly created and enhanced areas of habitat within the site and shall detail the precautionary working methods for protected and priority species and the protection of retained habitats during site enabling works and construction.



21b. The approved plan shall be implemented in accordance with the approved details.

Reason: To provide net ecological gains to the development.

22a. Prior to the commencement of development details of surface water drainage design shall have first been submitted for written approval of the Local Planning Authority. The design must be in accordance with the overall strategy and key design parameters set out in the Flood Risk Assessment and Drainage Strategy Reference: Wardell Armstrong (ST16161-004-VO.2) September 18.

This design must demonstrate that:

1. Surface water drainage system(s) designed in accordance with the Non-statutory technical standards for sustainable drainage systems (DEFRA, March 2015).
2. SuDS design to provide adequate water quality treatment, which can be demonstrated using the Simple Index Approach (CIRIA SuDS Manual 2015).
3. Limit the surface water run-off generated by the 100yr critical storm plus 40% climate change so that it will not exceed 35.7 l/s and not increase the risk of flooding off site.
4. Detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
5. Provision of an acceptable management and maintenance plan for surface water drainage to ensure that surface water drainage systems shall be maintained and managed for the lifetime of the development.
6. Plans illustrating flooded areas and flow paths in the event of exceedance of the drainage system.
7. There shall be no new buildings, structures (including gates, walls or fences) or raised ground levels within Flood Zone 2 or 3 as defined by land which is lower than 125mAOD.

22b. The development shall be implemented in accordance with the approved details.

Reason: To reduce the risk of flooding to the proposed development, its future occupants and third parties off site through the displacement of floodwaters and obstruction of flood flows and to protect the integrity of the canal waterway structure and water quality.

23a. Prior to the commencement of development full details of all proposed retaining structures and condition surveys of all retaining structures which will remain during/after the proposed development shall be submitted for written approval of the Local Planning Authority. The detail shall provide for:

- Cross sections to the canal (existing and proposed);
- Drainage measures associated with any retaining structure;
- Slope stability assessment, including calculations to demonstrate the development will not impart an additional load on to the Walsall Canal;
- Construction methodology
- Future maintenance/management regime for all retaining structures (existing or proposed)

23b. The development shall be carried out and maintained in full in accordance with the approved details.

Reason: In the interests of minimising the risk of any adverse impacts upon the structural integrity of the adjacent Walsall Canal and cutting slope and to protect the safety of waterway users.

24a. Prior to the commencement of development details shall be first submitted for the written approval of the Local Planning Authority demonstrating that access along the Walsall Canal towpath will be maintained and will not be adversely affected by the proposed development.

24b. The development shall be carried out in accordance with the approved details.

Reason: To ensure that pedestrian/cycle access along the Walsall Canal is maintained at all time and to protect users of the waterway corridor.

25a. Prior to the commencement of development an updated survey for Badgers shall be undertaken and the findings, including any mitigation measures shall be submitted for written approval of the Local Planning Authority.

25b. The development shall be undertaken in accordance with any approved mitigation measures.

Reason: To protect local badger populations and in accordance with the Badger Survey Report August 2018.

26a. Prior to the commencement of development an updated survey for Bats shall be undertaken and the findings, including any mitigation measures shall be submitted for written approval of the Local Planning Authority.

26b. The development shall be undertaken in accordance with any approved mitigation measures.

Reason: To protect local bat populations and to ensure that the findings of the Bat Activity Reports of August 2018 and January 2019 remain up to date.

27a. Prior to the commencement of development a detailed scheme for the treatment of the identified Japanese Knotweed shall be first submitted for written approval of the Local Planning Authority, including a timetable for its treatment,

27b. The identified Japanese Knotweed shall be eradicated in accordance with the approved details and timetable.

Reason: To ensure the satisfactory implementation of the development.

28a. Piling or any other foundation designs using penetrative methods shall not be permitted unless details have first been submitted for written approval of the Local Planning Authority demonstrating that there is no resultant unacceptable risk to groundwater.

28b. The development shall be carried out in accordance with the approved details.

Reason: To ensure the protection of Controlled Waters.

29. Temporary construction lighting shall be kept to a minimum in the vicinity of the off-site canal and directional lighting and deflectors shall be utilised where necessary in order to direct the light into the site and away from the canal, and maintain dark corridors for bats and other nocturnal / crepuscular wildlife.

Reason: In the interests of protected species and to comply with UDP policy ENV23.

30. Prior to the development first being brought into use the signalised junction and road improvement works as shown on approved drawing 'Proposed Site Access General Arrangement (3207-TR-01 Rev P3) received by the Local Planning Authority on 13/2/18 shall be fully installed and brought into use.

Reason: To define the permission and in the interests of highway safety.

31a. Prior to the development first being brought into use details of improvement to public right of way Dar2 including resurfacing, lighting and improved boundary treatment shall be submitted for written approval of the Local Planning Authority.

31b. The development shall not be brought into use until the approved details have been fully installed.

Reason: To promote sustainable means of travel.

32a. Prior to the development first being brought into use details of all boundary treatment, including materials and finishes shall have first been submitted for written approval of the Local Planning Authority.

32b. The approved details shall be implemented prior to the development first being brought into use and retained thereafter.

Reason: In the interests of visual amenity and protecting the amenity of neighbouring occupiers.

33a. No development above damp proof course shall commence until details of the measures to be implemented within the development to comply with the requirements of the Black Country Air Quality Supplementary Planning Document (SPD) has been submitted to and approved in writing by the Local Planning Authority.

33b. Prior to first occupation of the development the measures shall have been installed in accordance with the approved details and shall be retained and maintained for the life of the development.

Reason: In the interests of creating a sustainable form of development and to encourage the use of ultra low emission vehicles in accordance with Policies ENV8 (Air Quality) and DEL1 (Infrastructure Provision) of the Black Country Core Strategy.

34a. Prior to first occupation a detailed lighting scheme, including hours of operation, to serve the development shall be submitted for written approval of the Local Planning Authority.

34b. Proposed new lighting shall be kept to a minimum in the vicinity of the off-site canal and nearby residential properties. Directional lighting and deflectors shall be utilised where necessary in order to direct the light into the site and away from the canal and residential occupiers, and maintain dark corridors for bats and other nocturnal / crepuscular wildlife

34c. The approved details shall be implemented in accordance with the phased occupation and retained thereafter.

Reason: To ensure the satisfactory development of the site, in the interests of highway safety, community safety, protection of residential amenity and conserve local bat populations.

35a. Prior to first occupation of the development details of public art to be installed within the site and a timetable for its installation shall have first been submitted for written approval of the Local Planning Authority.

35b. The public art shall be installed in accordance with the approved details and retained for the life of the development.

Reason: To enhance the quality and individuality of the development hereby approved in accordance with saved UDP policy ENV34.

36a. Prior to the development first being brought into use details for directional signage within the application site, including along the path linking to the canal towpath that provides direction for employees and visitors to and from the site shall be first submitted for written approval of the Local Planning Authority.

36b. The approved signage shall be installed prior to the development first being brought into use and shall be retained thereafter.

Reason: To promote sustainable means of travel.

37. No industrial process shall take place in the open on any part of the site.

Reason: To safeguard the amenities of the occupiers of adjoining premises and to ensure the satisfactory appearance of the development.

38. No open storage shall take place in the open on any part of the site.

Reason: To ensure the satisfactory appearance of the development.

39. No structure or planting exceeding 600mm in height above carriageway levels shall be introduced at any time into the Intervisibility Zone at the north east side of the proposed signal junction shown on approved drawing Proposed Site Access General Arrangement (3207 TR 01 Rev P3) received by the Local Planning Authority on 13/2/18.

Reason: To ensure adequate pedestrian/vehicle inter-visibility, in the interests of highway safety.

## **Notes for Applicant**

### **Contaminated Land**

#### **CL1**

*Ground investigation surveys should have regard to current 'Best Practice' and the advice and guidance contained in the National Planning Policy Framework 2012; British Standard BS10175: 2011 +A2:2017 'Investigation of potentially contaminated sites – Code of Practice'; British Standard BS5930: 1999 'Code of practice for site investigations'; Construction Industry Research and Information Association 'Assessing risks posed by hazardous ground gasses to buildings (Revised)' (CIRIA C665); or any relevant successors of such guidance. You are strongly advised to consult with the Local Planning Authority on the construction, location and potential retention of any boreholes installed for the purposes of ground gas and or groundwater before installation of same.*

#### **CL2**

*When making assessments of any contaminants identified as being present upon and within 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 to Applicant Air Quality SPD**

The Air Quality SPD (Section 5.6) advises the following about Electric Vehicle Charging Points for non-residential premises:

5% of parking provision will be sought with charging points to comply with EN 62196-2 (J1772) Type 2, Mode 3, 7 pin, 32 amp, 7kw. Appropriate cable provision shall be in place for a further 5% to meet any future increase in demand.

Further information on Electric Vehicle Charging Points and the necessity to provide these can be found in the following:

□□West Midlands Low Emissions Towns and Cities Programme, Good Practice - Air Quality Planning Guidance,

□□Black Country Air Quality Supplementary Planning Document (SPD), can accessed via the following link:

[https://go.walsall.gov.uk/Portals/0/images/importeddocuments/black\\_country\\_air\\_quality\\_spd\\_september\\_2016.pdf](https://go.walsall.gov.uk/Portals/0/images/importeddocuments/black_country_air_quality_spd_september_2016.pdf)

□□General Procurement Guidance for Electric Vehicle Charging Points, UK Electric Vehicle Supply Equipment Association (April 2015),

□□Institute of Engineering and Technology (IET) Code of Practice for Electric Vehicle Charging Equipment Installation.

## **Public Rights of Way**

Public rights of way may sometimes be in existence which are not shown on the definitive map and statement. In accordance with section 31 of the Highways Act 1980, where a route has been enjoyed by the public without interruption for a period of 20 years, a claim can be made under section 53 of the Wildlife and Countryside Act 1981. No evidence or claims have been received in relation to this at this location. Should any details be received, it may be necessary for any unrecorded public rights of way to be extinguished and/ or diverted by implementation of a legal order. Any such details should be referred to the public rights of way officer on 01922 654673 or [publicrightsofway@walsall.gov.uk](mailto:publicrightsofway@walsall.gov.uk) at the earliest opportunity. This may affect delivery of the development.

## **Canal and Rivers Trust**

- 1) *The applicant/developer is advised to contact the Works Engineering Team on 0303 040 4040 in order to ensure that any necessary consents are obtained and that the works comply with the Canal & River Trust "Code of Practice for Works affecting the Canal & River Trust".*
- 2) *The applicant is advised that any surface water discharge to the waterway will require prior consent from the Canal & River Trust. As the Trust is not a land drainage authority, such discharges are not granted as of right-where they are granted they will usually be subject to completion of a commercial agreement. Please contact Joanna Bryan, Utilities Surveyor ([joann.bryan@canalrivertrust.org.uk](mailto:joann.bryan@canalrivertrust.org.uk))*



## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 2**

**Reason for bringing to committee:** Major Application and Consultee Objection

**Location:** SITE OF FORMER 37 AND 38, BRADFORD STREET, WALSALL

**Proposal:** ERECTION OF FOUR STOREY BUILDING TO ACCOMMODATE 26NO. ONE AND TWO BEDROOM APARTMENTS

**Application Number:** 18/0715

**Applicant:** Bradford Street Developments Limited

**Agent:** Louise Leyland

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

**Case Officer:** Karon Hulse

**Ward:** St Matthews

**Expired Date:** 19-Nov-2018

**Time Extension Expiry:**

**Recommendation Summary:** Grant Subject to Conditions



## Current Status

The 3<sup>rd</sup> January, 2019 planning committee deferred determination of this application for the applicant to consider options on how the proposed development would be serviced in terms of waste collections and refuse, and car parking provision. The following additional information and amended plans have now been submitted in order to address the above and for your consideration.

### Waste Collections and Refuse

Previously it was proposed to utilise Bradford Lane to access a rear bin storage area. However, the councils Clean and Green Services stated that whilst they collect 4 trade bins from along Bradford Lane the access is very limited due to the width of the road and parked cars, due to it being an unadopted highway the Council has no control over parking along this road. Consequently, Clean and Green expects bins from any residential development to be presented on Bradford Street as is the case for other flats along this location.

The applicant has now provided a bin store located within the ground floor of the proposed building which can accommodate 4 euro bins. Access to this will be along a 2 metre wide pedestrian access in between the application site and the side elevation of number 39 Bradford Street. The amended plan demonstrates that the bins can be adequately manoeuvred in and out of the bin store and placed on the highway on collection days. The applicant has confirmed that this will be carried out by a management company on collection days only, thereby reducing any potential impact on the conservation area or creating substantial harm to the nearby heritage assets and the street scene. In order to ensure the above, a safeguarding condition requiring the submission of details of the management company and details relating to the collection of waste should be required to be submitted to and agreed in writing by the Local Planning Authority prior to any occupation.

### Car Parking

The agent for the application has submitted supplementary information regarding the provision of car parking. It gives examples where the Council has approved apartment developments in the last year without any car parking provision. Such locations have been assessed as sustainable (31, Bradford Street, 74-75, Stafford Street, Willenhall and 1 Woodside Close).

The information also includes appeal decisions where the planning inspector has determined that car parking is not required in sustainable locations. In conclusion the submitted information has identified that:

- The application site is in a highly sustainable location;
- The proposals are likely to be less attractive to car users and more attractive to residents who wish to take advantage of sustainable modes of travel;
- For any car-owning residents, there are parking options available locally, including a large car park directly to the rear of the site; and
- There are numerous examples, including appeal decisions, where car parking provision has been deemed unnecessary in sustainable locations.



In view of the above information it is considered the proposed development is in line with the NPPF's core principle of sustainable development and in its encouragement of sustainable modes of transport.

### Policy Update

Since the 3/1/19 planning committee report, the Walsall Site Allocation Document (SAD) and the Area Action Plan for the town Centre (AAP) were adopted 7 January 2019. The Walsall (SAD) does not cover the Walsall town centre. The saved UDP policies detailed below have not been replaced by the SAD and full weight can be given to these policies.

The UDP Town Centre Inset Map, and the UDP town centre policies have been replaced by the Area Action Plan (AAP).

The Walsall Town centre Area Action Plan seeks to plan positively for new and improved facilities. The policy section of the report has been updated accordingly

**TC21** - Bradford Street area... The new building would need to be of an appropriate scale and design to the adjacent Bradford Street Conservation Area and listed buildings.

The remainder of the report is as previously considered. The plans have been amended to reflect the 3<sup>rd</sup> January planning committee supplementary report; fifth floor set back the front and partially hidden by a parapet, the front and side elevations of the fifth floor being clad in a grey material, Bradford Street front windows grey as a contrast to the white render, ground floor brick element to be dark and mottled finish and Bradford lane elevation to utilise dark coloured bricks.

Planning conditions have also been updated. Recommendations remains grant subject to conditions

## **Proposal**

This application follows several previous planning proposals and permissions granted since 1994 for the residential development of the former 37 -38 Bradford Street, Walsall.

The most recent planning permission was for the construction of 22 flats in 2007. The planning consent was extended on two occasions however even though the planning permission were extended until 2016 the approved scheme has not been implemented.

This scheme now seeks planning permission for the erection of a five storey (ground, first, second, third and fourth) building to accommodate 26 apartments consisting of:

- 9 no. 1 bed apartments and
- 17 no. 2 bed apartments.

All apartments will include a private bathroom, and a combined kitchen and lounge area.

The proposed development will front Bradford Street and extend to the rear towards Bradford Lane. The building would appear as four-storey but would have a recessed fifth floor on the top set back from the front on Bradford Street.

The details of the application are as follows:

- To the rear the building is four-storey.
- Small gaps would be retained along the north and south (side) boundaries of the site.
- The levels slope down towards Bradford Street which results in the ground floor providing 3 apartments positioned towards the front (Bradford Street).
- Floors 1, 2 and 3 would have 6 apartments on each floor with the fourth floor (top) having 5 apartments. The front elevation facing Bradford Street would be finished with smooth render with ashlar feature lines on the ground floor and smooth render to match the local vernacular on the remainder of the front elevation.
- Stuccoed façade, evenly spaced windows, a light rendered finish to its upper storeys, a cornice moulding between 2nd & 3rd floor, 2nd floor windows include stone sills and architrave to cap the perimeter of the ground floor just below 1st floor sill height
- Dummy sash windows will be included where necessary across the frontage to mimic and ensure the formal character of the proposed development is consistent with the character of the conservation area and the style, pattern and layout of Georgian buildings.
- The main entrance to the building has been placed centrally, with dummy doors located on either side, to provide consistency to the street frontage
- On the fourth floor, vertical cladding would be used on the front elevation together with full height casement windows. At street level, steel railings with Fleur-de-lys finials in black would be sited around the small hard surfaced frontage yard area.
- The rear of the proposed building faces Bradford Lane, there are no windows at ground floor level. The elevation would be finished in facing brick. The upper section of the rear elevation would also be finished in vertical cladding being zinc grey in colour. Smooth render is proposed on the edge of the elevation to match that on the front elevation facing Bradford Street.
- All windows to the rear elevation would be casement windows in white.
- The proposed building would be a 'U' shape with windows inwardly facing and a small secure courtyard in the centre for use by residents as informal out door space.

- The building would be accessed primarily off Bradford Street, on the site's western boundary. Further access points are provided to the rear and on the side elevation into the courtyard.
- The density of the site would be 285 dwellings per hectare.

*The application has been accompanied by the following documents:*

*Planning Statement* – the planning statement sets out that the proposals represent a sustainable development, utilising previously developed land within the town centre. The proposals would enhance and conserve the Bradford Street Conservation Area and the nearby listed buildings which the existing site currently detracts from. The scale of the proposal is considered essential to the site's delivery and any harm identified is significantly outweighed by the benefits of the proposal, such that it can be found acceptable in line with the Development Plan, the NPPF and all relevant material considerations.

*Design and Access Statement* confirms that the overall form of the building has been scaled to compliment surrounding structures & streetscape, while providing a suitable density to conform with modern housing needs. Its appearance has been heavily informed by the local context and endeavours to become a future building of interest due to its classical features and composition

*Viability Assessment / Financial viability questionnaire* - The Viability Assessment submitted with the application demonstrates that the likely profit margin for the developer would be just 10.28%, which is significantly lower than the 18-20% margin considered reasonable for such a development. No financial contributions are considered reasonable given the low profit margin and would certainly render the proposed development undeliverable. In addition, the Viability Assessment demonstrates that the overall height and scale of the building is necessary.

*Heritage statement* - A Heritage Assessment has been prepared which demonstrates that the proposed development converses and enhances the heritage assets associated with the site, particularly having regard to the negative impact that the site currently imparts on these assets.

## **Site and Surroundings**

The application site is located on land known as 37-38 Bradford Street, and lies within the Bradford Street Conservation Area which is 'at risk' with a condition of 'very bad' and a trend of 'deteriorating change' according to the 2017 Heritage at risk Register, by Historic England on the edge of Walsall town centre.

The site has a total area of approximately 0.06 hectares and bound to the west by Bradford Street and to the east by Bradford Lane.

The surrounding area predominantly comprises of high density mixed commercial/residential properties within the Bradford Street Conservation Area, typically 3 storeys and mainly utilised for commercial purposes on the lower floors and residential use on upper floors.

To the rear of the site on the opposite side of Bradford Lane lies an open-air public car park.

The Bradford Street area lies on the edge of Walsall town centre, with Bradford Street extending southwards from the town's main shopping area. Properties along the street mainly date back to the early 19th century.

Walsall town centre provides public transport services, with Walsall Railway Station located 0.3 km north of the site and bus stops located on Bradford Street 40m away from the site, providing services to and from the town centre along a north to south route.

The site was formerly occupied by a derelict 2 storey Georgian building (probably built between 1830 -1850), only the shell remained until recently after which it was demolished under conservation area consent in 2007 (06/1109/CA/W3). The site is currently vacant and is being used as a private car park.

It is located wholly within Flood Zone 1, where the risk of flooding is at its lowest. There are no active Tree Preservation Orders associated with the site. As well as being located in the conservation area, there are Grade II listed buildings to the north of the site; at 24-30 Bradford Street, 31 Bradford Street and 32-33 Bradford Street.

### **Relevant Planning History**

**13/0979/TE** – Time Extension Application: Four Storey development to provide 22 flats with associated undercroft parking. Granted. 27th September 2013.

**10/0613/TE** - Time Extension Application: Four Storey development to provide 22 flats with associated undercroft parking. Granted. 4th August 2010.

**10/0351/DOC** – Request for Discharge of Conditions 2,5 & am; 6 of 09/1360/FL. Approved. 19th May 2010.

**09/1360/FL** – Temporary Change of Use to public car park (for 3 years). Granted. 9th December 2009.

**07/1795/FL/W5** - 4 Storey Development to Provide Twenty Flats with Associated Undercroft Parking. Grant subject to conditions 17/12/07

**07/0526/FL/W5** – Four storey development to Provide Twenty Flats with Associated Undercroft Parking. Refused. 22nd June 2007.

**06/1109/CA/W3** – Conservation Area Consent: Demolition of Whole Buildings. Granted. 22nd September 2006.

**04/2233/OL/W2** – Demolition of Derelict Properties & amp; Proposed Development of 16 No. Flats. Granted. 10th January 2005.

**03/0633/FL/W5** – Outline: Proposed formation of 10 no. self-contained flats. Withdrawn. 07th January 2005.

**02/0219/FL/W4** – Outline: Change of use and extensions to provided 14 no. flats. Refused. 29th January 2003.

Other relevant planning history is as follows:

Permission was granted in 1994 for the refurbishment of the building to create 6 no. flats and a restaurant (ref: BC42148P) - this included the refurbishment of the single storey building along the southern boundary, and the provision of 8 car parking spaces to the rear of the main building.

02/0219/FL/W4 - Outline Change of Use and extensions to provide 14 flats. Refused

03/0633/FL/W5 - OUTLINE: Proposed formation of 10 self-contained flats. To be determined at this committee but recommended for refusal on basis of being contrary to policy 8.4 of the Unitary Development Plan.

04/2233/OL/W5 – Development for 16 flats. Grant Subject to Conditions on basis that the scheme demonstrated satisfactory amenity and high quality design within the conservation area. 10<sup>th</sup> January, 2005.

## Relevant Policies

### National Planning Policy Framework (NPPF) [www.gov.uk](http://www.gov.uk)

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 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.

### **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.

## **Local Policy**

### **Black Country Core Strategy**

- CSP1: The Growth Network
- CSP4: Place Making
- CSP5: Transport Strategy
- HOU2: Housing Density, Type and Accessibility
- DEL1: Infrastructure Provision
- DEL2: Managing the Balance Between Employment Land and Housing
- CEN1: The Importance of the Black Country Centres for the Regeneration Strategy
- CEN2: Hierarchy of Centres
- CEN3: Growth in the Strategic Centres
- CEN8: Car Parking in Centres
- TRAN1: Priorities for the Development of the Transport Network
- TRAN2: Managing Transport Impacts of New Development
- TRAN4: Creating Coherent Networks for Cycling and for Walking
- TRAN5: Influencing the Demand for Travel and Travel Choices
- 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

### **Unitary Development Plan [http://cms.walsall.gov.uk/annotated\\_2011\\_udp - february 2011.pdf](http://cms.walsall.gov.uk/annotated_2011_udp_-_february_2011.pdf)**

- GP2: Environmental Protection
- GP6: Disabled People
- ENV10: Pollution
- ENV27: Buildings of Historic or Architectural Interest
- ENV29: Conservation Areas
- ENV32: Design and Development Proposals
- ENV35: Appearance of Commercial Buildings
- ENV40: Conservation, Protection and Use of Water Resources
- S1: Definition of Town Centre Uses
- S2: The Hierarchy of Centres
- S4: The Town and District Centres: General Principles
- S8: Housing in Town Centres
- H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings
- 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

### **Walsall Town Centre Area Action Plan 2019**

*AAPLV1: Residential Developments*

*AAPLV5: Protecting and Enhancing Historic Character and Local Distinctiveness*

*AAPLV6: Securing Good Design*

*AAPINV6: Secondary Development Sites*

### **Supplementary Planning Document**

#### **Designing Walsall**

- DW1 Sustainability
- DW3 Character
- DW4 Continuity
- DW6 Legibility
- DW7 Diversity
- DW9 High Quality Public Realm

#### **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

#### **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

#### **Walsall Area Action Plan**

The AAP is a long-term plan which will allocate sites for development within the town centre for retail, leisure and offices, as well as setting out policies for other aspects of



the town centre. Once adopted, the AAP will form the basis on which planning decisions are made within this area.

The site is located within the 'TC21: Bradford Street Area', where opportunities for mixed town centre uses under policy 'AAPINV6: Secondary Development Sites' are encouraged.

**AAPINV16** states that secondary sites provide a key role in meeting other needs in the centre, such as community facilities, conferencing/banqueting, car parking and residential. All proposals in such areas should accord with other policies within the plan, make best use of the site and have consideration of the character of the area and be of high quality design.

With specific regard to residential development, this policy requires that schemes for this sole use will need to support and not prejudice the centre's retail, commercial and leisure function. The TC21 allocation identifies the location within the Bradford Street Conservation Area, and that there are listed and locally listed buildings present. Furthermore, the allocation is identified as 'high sensitivity' in the Characterisation Study.

**AAPLV1: Residential Developments** states that the town centre will be an inviting, safe and pleasant place to live. All residential developments in the town centre will be high quality and desirable. This will be achieved by ensuring all residential developments provide high quality, safe and secure environments, which have access to amenity space and sufficient protection against noise and air pollution. High density developments in the town centre will be encouraged. In all areas of the centre, residential uses will support and not prejudice the centre's retail, commercial and leisure functions, in particular the evening economy. This policy repeats the requirements of AAPINV16, that sole residential use schemes should demonstrate that the proposal supports rather than prejudices the centre's retail, commercial and leisure function.

The supporting text of this policy identifies how creating sustainable communities by encouraging an increased residential population in the town centre is important to bringing life into the centre, improving surveillance and activity in the centre.

**AAPLV5: Protecting and Enhancing Historic Character and Local Distinctiveness** seeks to protect local character and respect any heritage assets identified in the Characteristic Study [referred to below]. The policy states that development affecting sites identified as heritage assets should demonstrate how they will be conserved and enhanced. This should include consideration of the need to protect views and enhance the setting of heritage assets and ensuring good design in line with AAPLV6.

**Other Policy:**

- Conservation Principles Policies and Guidance for the Sustainable Management of the Historic Environment: English Heritage (2008)
- Historic England Heritage at Risk study 2015
- Historic Environment Good Practice Advice Notes 2, and 3

## Legislation:

- **Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990**
  - **Section 66(1) General duty as respects listed buildings in exercise of planning functions:** In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
  - **Section 72(1) General duty as respects conservation areas in exercise of planning functions:** In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

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

## Consultation Replies

**Transportation** – objects on the grounds of no off street parking

**Pollution control** – recommends conditions in respect of electric vehicle charging points, low NOx boilers and land contamination

**Seven Trent Water** – no objections subject to conditions in respect of

**Archaeology Officer** – no objections

**Police Architectural Liaison Officer** – recommends Secure by Design initiatives

**Fire Officer** – no objections subject to note for applicant

**Housing Strategy officer** - As this is a block of flats, housing associations would not want to purchase on site affordable housing in a leasehold arrangement. Therefore, in these instances we seek an offsite contribution in the form of a commuted sum to provide affordable housing elsewhere in the Borough.

**Strategic Planning Policy, Conservation officer, Clean and Green, Community Safety, Regeneration & Development, Public Health, Car Parks or Walsall Civic Society** - No comments received. (NPPG confirms; *'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'*, which is the case in this instance.

## Representations

One letter of objection from the occupier of no 36 Bradford Street on the following grounds:

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- Bradford Street is a mainly commercial area.
- erection of flats will affect existing business
- 26 x 1 and 2 bedroom apartments will affect parking.
- area prone to drug and alcohol abuse.
- no other four storey buildings in local area
- negative impact on value of properties in Bradford Street.
- anti-social behaviour on Bradford Lane
- number of apartments significant for small plot of land
- out of character for conservation area.

## **Determining Issues**

- Heritage Asset / Conservation Area
- Development Opportunity and Principle
- Character/Appearance and Design
- Residential Amenity
- Highway Safety
- Planning Obligations
- Local Finance Considerations

## **Assessment of the Proposal**

### **Heritage / Conservation area**

This site is in the Bradford St Conservation Area and near to several listed buildings.

The application site is within the Bradford Street Conservation Area which is 'at risk' with a condition of 'very bad' and a trend of 'deteriorating change' according to the 2017 Heritage at risk Register, by Historic England.

The legislative background is that a planning authority must preserve or enhance a Conservation Area. This proposal achieves such an outcome, in terms of effects.

In determining any planning application, special attention shall be paid to the desirability of preserving listed buildings and preserving or enhancing the character or appearance of conservation areas as set out in sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

It is considered that the scheme will result in 'less than substantial' harm to the significance of and character and appearance of the conservation area.

Paragraph 193 of the NPPF states that where there is less than substantial harm that this harm is to be balanced against the public benefits, including the optimum use.

The application is welcomed as it will redevelop a currently vacant site which is used as a car park, and which could potentially be vulnerable to becoming a gap site, within the conservation area. The benefits are that it will infill a gap in the conservation area and will complete the street scene for Bradford Street. Any harm can be mitigated against by the use of appropriate materials which can be conditioned for later approval. As

such, the benefits of the development will in this particular circumstance will not cause harm to the conservation area and is in accordance to Sections 66 and 72 of the Planning (listed buildings and conservation areas) Act 1990.

Whilst the proposed density is high the design has allowed the building to be integrated into both the street scene and the conservation area

### **Development Opportunity and Principle**

This application provides an opportunity to develop an infill site within the Bradford Street conservation area with a bespoke designed building taking into account its surroundings. It will be well integrated with, and complements, the neighbouring buildings and the local area in terms of its scale, density, layout and access and its good design, all of which are fundamental to using land efficiently.

The site has now been cleared and currently used as a car park, although the temporary permission for this has since expired. It is within the Town Centre and the proposed use for residential accords with planning policy in general, and would be a positive re-use of the site and beneficial to the local environment and community.

Saved UDP policy S8 and Walsall Area Action Plan (AAP) policy AAPLV1 supports housing in the Town Centre. The NPPF also recognises that residential development can play an important role in ensuring the vitality of centres and also states that housing applications should be considered in the context of the presumption in favour of residential development. This is considered to be a highly sustainable location in a Town Centre position.

On balance, the development would not prejudice the function of the Town Centre, will provide a building which will make a positive impact to the immediate location and the town centre whilst supporting the centre's retail, commercial and leisure functions including the growth of the evening economy.

This proposal would be in accordance with NPPF and saved policies GP2, ENV27, ENV35, ENV29, ENV32, S1, S8, H3, T7, T8, T9, T10, T11, T12 and T13 of the Unitary Development Plan in so far as the proposal would support and promote an emerging character within this area and on balance is to be encouraged.

### **Character/Appearance and Design**

The scheme includes a number of positive features: courtyard-style development, underground cycle storage, access from the rear as well as the frontage, lift access to all floors and use of materials which replicate and mimic the Georgian style.

The proposed design of the building takes account of its historic context and surroundings, will add to the character and amenity of a conservation area and will respect the height of neighbouring buildings through its careful design. The style of the frontage façade has been redesigned to appear in symmetrical composition reflecting early 20th/late 19th century neoclassicism. This style compliments the local character and reflects that of the prominent Listed buildings located to the north on Bradford Street.

The design concept of an apartment block around a courtyard is welcome, particularly given the busy nature of this part of the town centre. It should be inherent

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with town centre residential developments that opportunities for sustainable living within close proximity to the town centre amenities are maximized whilst also providing the occupants with a high quality residential environment within which to relax when they wish to escape from the activity of the town centre. The premise of the courtyard development is positive in this respect and provides the opportunity for occupants to enjoy a peaceful outdoor environment whilst living in the town centre.

There is an existing character along Bradford St, influenced partly by the building heights and the consistent building line behind the pavement with a strip of private land to the front. The proposed scheme follows this and the use of a main entrance centrally located on the front elevation is a further positive feature as together with the two dummy doors either side, will represent an active street frontage.

Whilst the development will be higher than neighbouring properties it has been designed with the fifth floor set back from the front elevation. Views of the top floor from street level will be limited and therefore the perception is one of the building being four storeys high and at a similar height to its neighbouring properties.

The proposed density of the development is high being 285 dwellings per hectare (DPH). The NPPF states that development should be supported where it makes efficient use of land and takes into account different types of housing, other forms of development, local market conditions and viability, availability and capacity of infrastructure and services, sustainable travel modes, maintaining an area's prevailing character and setting and the importance of securing well-designed, attractive and healthy places.

In this instance the proposed density is synonymous with town centre living. It is also comparable with other similar developments in and around the town centre namely Midland Road, Station Street, Waterfront, Marsh Street and Shannon's Mill developments which are all of similarly high densities.

Such high density is not unreasonable for a town centre location and whilst it is accepted that more intensive development is not always appropriate, it is considered that this is a well-designed scheme which will enhance the character and quality of the area including the conservation area. It provides an opportunity to infill a gap in the conservation area which has been vacant for at least 15 years and the design and layout of the new development will lead to a more efficient use of land without compromising the quality of the local environment and provide units in an area of the town centre which will benefit from this type of development and promote the enhancement of the area generally.

Consequently, the scheme provides an acceptable form, scale, design, and density on this site and will be well-integrated into the street scene and Bradford Street conservation area.

As such it is considered to be in accordance with BCCS policies HOU2, DEL2, CEN3, ENV2 and ENV3: Design Quality and UDP saved policies GP2, ENV27, ENV35, ENV29, ENV32, S8 and H3.

### **Residential amenity**

In order to address air quality and residential amenity Pollution Control require the installation of low NOx boilers into the development and the undertaking of a contaminated land assessment to determine if the site is suitable for residential use or inform of any mitigation measures required. These requests can be required by way of safeguarding conditions.

The building is based around a central courtyard which provides some external outdoor useable space. This is to be supported and an unusual addition which will enhance this quality town centre living accommodation.

The design and layout of the apartment block provides a satisfactory level of amenity with a mix of one a two bedroom apartments being provided.

Finally, conditions to prevent or minimise environmental impact during the course of building works can also be required by way of appropriate safeguarding conditions.

### **Highway safety**

#### *Car parking and Access*

Highways have objected to the application stating that whilst the site is within the town centre and can be considered relatively sustainable, the site is presently vacant and there would appear to be ample opportunity to provide an element of on-site parking in line with the previous approvals on this site and other schemes within the town centre.

Taking into account the NPPF, it is considered that the location is within walking distance of shops, health and leisure facilities including places of employment, the Bradford Place bus station interchange is 200mts along Bradford Street, the main bus station is 400m walking distance away and the Walsall train station being 500mts away, this is considered to be a highly sustainable town centre location. Saved UDP Policy H3 allows for a flexible approach in the application of parking standards for the development of windfall sites on previously developed land. There are a number of public car parks within walking distance in particular to the rear of the application site.

Accordingly, the site has good access to sustainable means of travel and is supplemented by sufficient off-street parking to meet the needs of the development. Details of waste/recycling management, accessible bin storage area and secure cycle storage can be secured by way of safeguarding conditions.

On balance it is considered the development will not have severe transportation implications and is acceptable in accordance with NPPF and saved policy H3 of the UDP.

#### *Electric vehicle charging points*

Pollution control have requested electric vehicle charging points to be installed within the development. There is no provision for off street parking with both Bradford Street and Bradford Lane being traffic controlled with restricted parking close to the development. It would be difficult to provide safe on street parking where a vehicle could be connected to an electric vehicle charging point close to the proposed development site.

### **Planning obligations**

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

For Open Space, a development of this size would require a contribution of £24,442.00 towards open space improvements in the neighbourhood. The council's housing strategy officer requested a 25% affordable housing contribution in accordance with Policy HOU3 in the BCCS. However, as the proposal is for a block of flats, housing associations will not want to purchase on-site affordable housing in a leasehold arrangement. Therefore, in these instances an off-site contribution in the form of a commuted sum will be calculated as  $26 \times 0.25 \times £31,562.50 = £205,156.25$ .

The applicant explains that due to viability issues, they are unable to provide a financial contribution and has submitted a viability assessment that has been considered by the District Valuer.

The District Valuer has confirmed that in this case seeking this contribution in full would make the scheme unviable and further explains:

*Although the viability appraisal concludes that the site does not sustain affordable housing/urban open space contribution, the proposed development does provide for the redevelopment of a vacant site which presently detracts from the character and appearance of the conservation area and nearby listed buildings; and provision of 26 no. units of accommodation in a sustainable town centre location, which will contribute towards Walsall's housing requirements.*

*My assessment shows a Residual Land Value for the proposed scheme in the sum of - £157,501 (negative one hundred and fifty-seven thousand five hundred and one pounds).*

*Accordingly, I have concluded that the proposed scheme cannot support the provision of any amount of Affordable Housing off-site Commuted Sum in lieu, or open space contribution without being rendered unviable.*

As such and on the basis of the DVS conclusions it is considered the development is unviable and as such there is no requirement for any open space financial contributions or off-site affordable housing commuted sum in lieu attributed to the application and no Section 106 Agreement is required.

### **Secure by Design**

This proposed development is situated on the St Matthews Neighbourhood Policing Team on the Walsall LPU. This beat has experienced over 10344 police reported incidents over the last 12 months including burglary, vehicle and Assault/ Drug related and robbery/ theft related crimes. In addition, there have been criminal damage to houses and vehicles and Anti-Social Behaviour.

It is recommended that due to the high overall crime experienced in this area that the specifications and guidelines of Secure by Design are taken on board.

If secured by Design is not to be achieved in full on this development it is recommended the following is implemented as minimum standards.

- All ground floor windows and any accessible windows should be fitted with BS EN 356 grade P1A glass. This includes French doors and patio doors and should improve the standard of security to the more vulnerable ground floor windows.
- The frontages and accessible windows of the apartments need to have defensible planting under them. This can be created by dense low level shrubbery which should be around 1m in depth.
- The defensible space should overlap the whole length of the window at least. Low level dense shrubbery is the preferred method to create this barrier with a mature height of no more than 1m and should be suitable for the light and soil environment at its location.
- PAS 24:2016 doors are fitted not only on the entrance doors but on each individual apartment.
- Where euro profile cylinder locks are proposed in doors, shutters etc. consideration should be given to the ever Increasing trend in lock snapping as a means of forcing entry to a building. To reduce such risk a minimum standard of TS-007 3 star rated cylinders with Secure By Design and Sold Secure Diamond Standard certification should be used instead of the standard 1 Star cylinder.
- Where thumb turn locks are to be installed considerations should be given to the use of the 'BY Pass' method of entry by offenders. There are thumb locks on the market that cannot be 'by passed' such as the ASB Thumb turn 3 star cylinders or the Ultion Locks.
- No Lead or metal should be used on the ground floor, where possible lead substitute products should be used.
- All properties should have a suitable intruder alarm, with a siren box front and back, and should have dual or quad technology sensors and auto dialler function.
- Any communal entry to the apartments to be fitted with an access control system. This may be a proximity access control system, a door entry phone system and electronic lock release or a combination of these to discourage casual intrusion by non-residents;
- CCTV coverage to the flats.
- Entrance and exit doors and frames to the block should be of a robust vandal resistant material, with vandal resistant viewing panels.
- Entrances should be well lit both internally and externally.
- Communal areas for letterboxes should have DAD UK Ltd DAD009 1.5mm steel letterboxes which can be mounted in rows and are secure and anti-identity theft proof.

### **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 26 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 key material planning considerations, neighbour comments and consultee responses have been weighed in assessing the planning application and it is considered that the proposed development accords with the aims and objectives of the National Planning Policy Framework, Black Country Core Strategy policies CSP1, CSP4, CSP5, HOU2, DEL1, DEL2, CEN1, CEN2, CEN3, CEN8, TRAN1, TRAN2, TRAN4, TRAN5, ENV2, ENV3, ENV5, ENV6 and ENV7, Unitary Development Plan saved policies GP2, ENV10, ENV27, ENV35, ENV29, ENV32, ENV40, S1, S2, S4, S8, H3, T7, T8, T9, T10, T11, T12 and T13 Supplementary Planning Documents Designing Walsall, Open space, sport and recreation, Affordable Housing and Air Quality and on balance is considered to be acceptable.

The application has demonstrated sufficiently that the proposed redevelopment of this site for residential purposes is be welcomed and the proposed design, scale, appearance of the building takes account of its historic context and surroundings, will add to the character and amenity of a conservation area, respects the height of neighbouring buildings through its careful design and will not have any additional impact on nearby businesses which currently operate in the area.

The NPPF states that residential development can play an important role in ensuring the vitality of centres and also states that housing applications should be considered in the context of the presumption in favour of residential development. This is considered to be a highly sustainable location in a Town Centre position and whilst the councils transportation have raised issues with the lack of off street parking, it is considered that the close proximity of the town centre within walking distance of shops, health and leisure facilities including places of employment, the Bradford Place bus station interchange being 200mts along Bradford Street, the main bus station being 400m walking distance away and the Walsall train station being 500mts away, this is considered to be a highly sustainable town centre location.

The use of safeguarding conditions in respect of the time, plans, materials, boundary treatment, control of noise etc., drainage, land contamination, air quality, secure by design, cycle storage and hours of works will ensure that the 6 tests: necessary; relevant to planning and; to the development to be permitted; enforceable; precise and reasonable in all other respects within the national planning guidance are fully met.

Taking into account the above factors, there are no objections from significant consultees and that any community responses are not considered to be contrary to the recommendation it is therefore considered that the application should be recommended for approval.

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

**Approve** - Officers have confirmed to the applicant's agent that the submitted details are acceptable and no further changes have been requested.

## **Recommendation**

Grant subject to conditions

## **Conditions and Reasons**

1. The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Reason: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

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

- Site location plan (18.017.LP.01 rev A) received 5/7/18
- Block site plan (18.017.SP.01 rev C) received 20/8/18
- Ground floor plan (18.019.FP201 rev C) received 3/12/18
- First floor plan (18.019.FP202 rev C) received 3/12/18
- Second floor plan (18.019.FP203 rev C) received 3/12/18
- Third floor plan (18.019.FP204 rev C) received 3/12/18
- Fourth floor plan (18.019.FP205 rev C) received 3/12/18
- 3d views (18.0117.3D.01, 18.0117.3D.02, 18.0117.3D.03, 18.0117.3D.04, 18.0117.3D.05) received 3/12/18
- Proposed Front and Rear street scenes (18.019.SS.101 rev B) received 6/12/18
- Proposed side elevations (18.019.SS.102 rev B) received 6/12/18
- Planning Statement received 1/6/18
- Design and Access Statement received 1/6/18
- Viability Assessment / Financial viability questionnaire received 3/7/18
- Heritage statement received 1/6/18

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).

3a. Prior to the commencement of the development hereby approved a schedule of facing materials to be used in the external walls, roofs, windows, doors, rainwater goods and surfacing shall be submitted to and approved in writing by the Local Planning Authority.

3b. The approved scheme shall be fully implemented in accordance with the submitted details.

Reason: To ensure the satisfactory appearance, functioning of the development and in accordance with UDP saved policy GP2 and ENV32.

4a. Prior to the commencement of the development hereby approved measures for controlling noise, dust and drag-out from construction activities at the site shall be submitted in writing to and agreed with the Local Planning Authority.

4b. All agreed measures shall be implemented and maintained throughout the duration of demolition, site clearance and construction activities.

Reason: To minimise environmental impact during development

5a. Prior to the commencement of the development hereby approved drainage plans for the discharge of surface water and disposal of foul sewerage and all existing and proposed underground services and sewers shall be submitted to and approved in writing by the Local Planning Authority.

5b. The development shall not be carried out otherwise than in accordance with the approved details and shall thereafter be retained.

Reason: To ensure the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution in accordance with NPPF10, BCCS Policy ENV5 and saved Walsall's Unitary Development Plan policy GP2 and ENV40.

6. In order to address potential impact from land contamination the following matters shall be addressed:

i) Prior to the commencement of the development hereby approved a ground contamination survey having regard to current best practice shall be undertaken. (see Note for Applicant CL1).

ii) Prior to built development commencing a copy of the findings of the ground contamination survey, together with an assessment of identified and/or potential hazards arising from any land contamination shall be forwarded to the Local Planning Authority. (see Note for Applicant CL2).

iii) Prior to built development commencing a 'Remediation Statement' setting out details of remedial measures to deal with the identified and potential hazards of any land contamination on the site and a timetable for their implementation shall be submitted to and agreed in writing by the Local Planning Authority. (see Note for Applicant CL2).

iv) The remedial measures as set out in the 'Remediation Statement' required by part iii) of this condition shall be implemented in accordance with the agreed timetable.

v) If during the undertaking of remedial works or the construction of the approved development unexpected ground contamination not identified by the site investigation required by part i) of this condition is encountered, development shall cease until the 'Remediation Statement' required by part iii) of this condition has been amended to address any additional remedial or mitigation works required and agreed in writing by the Local Planning Authority.

vi) 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 safeguard the amenities of occupants and to comply with saved policies GP2 and ENV10 of Walsall's Unitary Development Plan

7a. Prior to first occupation of any part of the development hereby approved details of the frontage boundary treatment including the proposed gates shall be submitted to and approved in writing by the local planning authority

7b. The agreed measures shall be implemented prior to occupancy and thereafter retained.

Reason: To ensure the satisfactory appearance, functioning of the development and in accordance with UDP saved policy ENV 32.

8. No boilers shall be installed and used in any of the units hereby approved, save for

- Gas and liquefied petroleum gas (LPG) boilers with maximum NO<sub>x</sub> emissions no greater than 56 mg/kWh
- Oil-fired boilers with maximum NO<sub>x</sub> emissions no greater than 120 mg/kWh.

8b. Prior to first occupation of the hereby approved development, a written independent validation report confirming the low NO<sub>x</sub> boilers have been installed throughout the development shall be submitted for the written approval of the Council. The low NO<sub>x</sub> boilers shall thereafter be retained for the life of the development

Reason: To conserve and enhance the natural environment in accordance with BCCS policies ENV8 and DEL1.

9a. The development shall be constructed to meet the following minimum security measures and thereafter retained as such;

- All ground floor windows and any accessible windows should be fitted with BS EN 356 grade P1A glass. This includes French doors and patio doors and should improve the standard of security to the more vulnerable ground floor windows.
- The frontages and accessible windows of the apartments need to have defensible planting under them. This can be created by dense low level shrubbery which should be around 1m in depth.

- The defensible space should overlap the whole length of the window at least. Low level dense shrubbery is the preferred method to create this barrier with a mature height of no more than 1m and should be suitable for the light and soil environment at its location.
- PAS 24:2016 doors are fitted not only on the entrance doors but on each individual apartment.
- Where euro profile cylinder locks are proposed in doors, shutters etc. consideration should be given to the ever Increasing trend in lock snapping as a means of forcing entry to a building. To reduce such risk a minimum standard of TS-007 3 star rated cylinders with Secure By Design and Sold Secure Diamond Standard certification should be used instead of the standard 1 Star cylinder.
- Where thumb turn locks are to be installed considerations should be given to the use of the 'BY Pass' method of entry by offenders. There are thumb locks on the market that cannot be 'by passed' such as the ASB Thumb turn 3 star cylinders or the Ultion Locks.
- No Lead or metal should be used on the ground floor, where possible lead substitute products should be used.
- All properties should have a suitable intruder alarm, with a siren box front and back, and should have dual or quad technology sensors and auto dialler function.
- Any communal entry to the apartments to be fitted with an access control system. This may be a proximity access control system, a door entry phone system and electronic lock release or a combination of these to discourage casual intrusion by non-residents;
- CCTV coverage to the flats.
- Entrance and exit doors and frames to the block should be of a robust vandal resistant material, with vandal resistant viewing panels.
- Entrances should be well lit both internally and externally.
- Communal areas for letterboxes should have DAD UK Ltd DAD009 1.5mm steel letterboxes which can be mounted in rows and are secure and anti-identity theft proof.

9b. Prior to first occupation of the hereby approved development, a written independent validation report confirming the security measures have been installed throughout the development shall be submitted for the written approval of the Council. The security measures shall thereafter be retained for the life of the development

Reason: To ensure the safety and security of the development and its occupiers and to accord with Revised NPPF8 and NPPF12.

*10a. Prior to first occupation of the hereby approved development, details of the management company and details relating to the storage and collection of waste shall be submitted to and agreed in writing by the Local Planning Authority.*

*10b. The agreed measures shall be implemented prior to occupancy and thereafter retained.*

*Reason: To ensure the satisfactory appearance, functioning of the development and in accordance with UDP saved policy ENV 32.*

11. Prior to the first occupation of any flat on the development, the under-stairs cycle stands/storage areas shall be fully implemented and thereafter retained and used for no other purpose.

Reason: To encourage sustainable modes of travel and in accordance with UDP policy T13 and Black Country Core Strategy TRAN4.

**Notes for Applicant** - Severn Trent Water advise that there may be a public sewer located within the application site. Although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under the Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and contact must be made with Severn Trent Water to discuss the proposals. Severn Trent will seek to assist in obtaining a solution which protects both the public sewer and the building.

**Water supplies for firefighting** should be in accordance with “National Guidance Document on the Provision for Fire Fighting” published by Local Government Association and WaterUK: <https://www.dropbox.com/s/5s5i45fxr3m3hrt/national-guidance-document-on-water-for-ffg-final.pdf?dl=0>

For further information please contact the WMFS Water Office at the address given above or by email on [Water.Officer@wmfs.net](mailto:Water.Officer@wmfs.net)

The approval of Building Control will be required with regard to Part B of the Building Regulations 2010.

Where fire mains are provided in the building there should be access to the riser inlet within 18 metres and each access point should be clearly visible.

**Hours of operation** - No demolition, construction or engineering works, (including land reclamation, stabilisation, preparation, remediation or investigation), shall take place on any Sunday, Bank Holiday or Public Holiday\*, and such works shall only take place between the hours of 08:00 to 18:00 weekdays and 08:00 to 14:00 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)*



## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 3**

**Reason for bringing to committee:** Major Application

**Location:** FORMER BRITISH LION WORKS, FOREST LANE, WALSALL, WS2 7AX

**Proposal:** DEMOLITION OF EXISTING BUILDINGS, CONSTRUCTION OF 16 DWELLINGS ( 2X2 BED AND 14X3 BED ) WITH ASSOCIATED ACCESS ROAD AND PARKING.

**Application Number:** 17/1240

**Applicant:** c/o the agent

**Agent:** Julian Hill

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

**Case Officer:** Stuart Crossen

**Ward:** Blakenall

**Expired Date:** 24-Jan-2018

**Time Extension Expiry:**

**Recommendation Summary:** To delegate to the Head of Planning, Engineering & Transportation to grant permission subject to an amended parking plan, conditions including the revision or removal of any conditions listed below, not required following receipt of details acceptable to officers, and consultees; subject to the completion of a Section 106 Agreement to provide for affordable homes (or to demonstrate that contributions are not viable), open space, motorcycle barriers and resurfacing of the public right of way, and details of the future management/maintenance of the canal boundary structure. In the absence of a completed section 106 or amended parking plan delegation is sought for the Head of Planning, Engineering & Transportation to refuse the scheme on this basis.



## Status

Since the application was last considered by Committee on June 7<sup>th</sup> 2018 amendments have been received which include a revised parking layout supported by Highways Officers and a revision to the entrance to plot 12 now includes access to the house within the site and not from the public right of way. A condition has been recommended by the public rights of way officer in relation to the boundary treatment which is already covered by condition 10, as the details provided are more specific to the Public Rights of Way they are included as an additional note to applicant.

The District Valuer has now confirmed that the scheme is not viable to provide contributions for affordable housing or open space. These changes require a new resolution so that officers can issue a planning permission. The following resolution is now requested:

Resolve to delegate to the Head of Planning, Engineering & Transportation to grant permission subject to conditions including the revision or removal of any conditions as required; subject to the completion of a Section 106 Agreement to detail of the future management/maintenance of the canal boundary structure. In the absence of a completed section 106 delegation is sought for the Head of Planning, Engineering & Transportation to refuse the scheme on this basis.

**Original committee report below (including supplementary updates and plans list updated).**



## Proposal

The application is for 16 houses at a former industrial site.

The scheme was originally for 18 houses, however the scheme and layout has now been reduced to improve amenity and access.

The application proposes to use the existing access off Forest Lane to create a mix of terraced houses and semi-detached houses with a mix of driveway parking and shared parking areas.

There are 6 house types proposed as follows:

House type A is a 2.5 storey 3 bedroom house with a ground floor kitchen, living room and toilet, 2 bedrooms on the first floor and another bedroom and the bathroom in the loft with rear velux and front dormer window. Side elevation windows would be secondary or not serve main habitable rooms.

House type A2 is a 2.5 storey 3 bedroom house with a ground floor kitchen, living room and toilet, 2 bedrooms on the first floor and another bedroom and the bathroom in the loft with rear velux and front dormer window. Side elevation windows proposed would be secondary or would not serve main habitable rooms.

House type B is a 3.5 storey 3 bedroom house with a ground floor utility room, living room/kitchen on the first floor, 2 bedrooms and a bathroom on the second floor and another bedroom with ensuite in the loft with rear velux and dormer window and front dormer window. Side elevation windows would be secondary or not serve main habitable rooms.

House type C is a 3 bedroom house with a ground floor kitchen, living room and toilet, 2 bedrooms on the first floor and another bedroom in the loft with rear velux and front dormer windows. Side elevation windows would be secondary or not serve main habitable rooms.

House type D is a 2 bedroom house with a ground floor kitchen/dining room, living room and toilet, 2 bedrooms and a bathroom on the first floor. Side elevation windows would be secondary or not serve main habitable rooms.

House type D2 is a 2 bedroom house with a ground floor kitchen/dining room, living room and toilet, 2 bedrooms and a bathroom on the first floor. Side elevation windows would be secondary or not serve main habitable rooms.

The application includes a phase 1 habitat survey which concludes:

Desk study data and survey work carried out at the Industrial Units off Forest Lane, Walsall, indicate that the proposed development scheme should consider protected species legislation with regard to nesting birds. Consideration should also be given to the protection of the adjacent Wyrley and Essington Canal corridor.

The Design and Access Statement makes the following relevant statements:

Access - The existing building will require demolition, and the existing area of hard standing would be the location of a new site access point.

Layout - The proposal is for a perimeter development, with some dwellings looking into the site, and some looking outward, towards Forest Lane.

Amount - The size of the proposed dwellings are as follows:

2 beds - 67.2sqm. (type D)

3 beds - 91.0sqm. (type A)

3 beds - 115sqm. (type C)

3 beds - 113sqm. (type B, w/garage)

A bin store is proposed near to the junction to the proposed access.

The total development has a net area of 1834.1sqm.

## **Site and Surroundings**

The site is located on the western side of Forest Lane. This part of Forest Lane is approached from a narrow bridge over the railway which has weight restrictions imposed (11 tonnes). There is alternative access available from Dartmouth Avenue. The highway splits in two as it surrounds a large landscaped central reservation which has several mature trees on it. There is also a turning head outside 48/50 Forest Lane on the opposite side of the highway. The Wyrley & Essington Canal and towpath are at the rear of the site and there is a footbridge over the canal to the north of the site. The southern boundary of the site adjoins the boundary of semi-detached houses and a transport haulage yard. There are semi-detached houses opposite the site.

The Definitive map of Public Rights of Way show the site affected by the line of a public footpath (WAL33), between Forest Lane and Hawbush Road over the canal. A new 2 metre wide footway is proposed to link to the canal footbridge and the existing informal link to the canal towpath will be retained.

## **Relevant Planning History**

06/0314/FL/E4 – Demolition of industrial units and erection of 24 apartments with new access driveway and landscaping and relocation of existing footpath linking up to the canal towpath – Granted subject to conditions and a S106 Agreement 20/6/06. The S106 Agreement was to secure contributions towards Education provision (£45K) and refurbishment of the footbridge over the canal (£10K). Both obligations were to be paid on or before occupation of 50% of the dwellings. The proposed building is four storeys high.

10/1090/OL - Outline application for the demolition of existing buildings and construction of new 60 bed extra care accommodation, access and layout only for consideration. GSC 20/11/13

## **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*".

All the **core planning principles** have been reviewed and those relevant in this case are:

- Find ways to enhance and improve places in which people live their lives
- Contribute to conserving and enhancing the natural environment and reducing pollution.
- Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas
- Encourage the effective use of land by reusing land that has previously been developed

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

- **NPPF 1 - Building a strong, competitive economy**
- **NPPF 4 - Promoting sustainable transport**
- **NPPF 6 - Delivering a wide choice of high quality homes**
- **NPPF 7 - Requiring good design**
- **NPPF 8 - Promoting healthy communities**
- **NPPF 10 - meeting the challenge of climate change, flooding and coastal change**
- **NPPF 11 - Conserving and enhancing the natural environment**

On **planning conditions** the NPPF says:

Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

On **decision-taking** the NPPF sets out the view that local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development and look for solutions rather than problems and work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

- **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
- DEL2: Managing the Balance Between Employment Land and Housing

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- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- HOU3: Delivering Affordable Housing
- TRAN2: Managing Transport Impacts of New Development
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV4: Canals
- ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island
- ENV7: Renewable Energy
- ENV8: Air Quality

## **Unitary Development Plan**

- GP2: Environmental Protection
- GP3: Planning Obligations
- ENV10: Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings
- H5: Housing for People with Special Needs
- H6: Nursing Homes and Rest Homes for the Elderly
- H7: Hostels and Houses in Multiple Occupation
- Policy JP7: Use of Land and Buildings in Other Employment Areas
- T7 - Car Parking
- T8 – Walking
- T9 – Cycling
- T13: Parking Provision for Cars, Cycles and Taxis
- LC1: Urban Open Spaces

## **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

## 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

## 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

**Housing Standards** – No objections - requires 25% on site affordable homes.

**Public Footpaths Officer** – No objections subject to conditions to protect the public right of way, a condition for boundary treatment details to be submitted for the area

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next to the public footpath, a condition for details of the side access to plot 12 and a condition requiring a street lighting survey in relation to the side windows of plot 12.

**Fire officer** – No objections, notes for applicant regarding fire standards.

**Pollution Control** - No objections subject to conditions to mitigate for noise, contaminated land and air quality.

**Police** – No objections

**Canal and Rivers Trust** – No objection conditions regarding the foundations and construction methodology.

**The Coal Authority** – No Objection subject to Coal Mining Risk Assessment proposed mitigation measures.

**Severn Trent** – No objections subject to conditions for drainage.

**Inland Waterways Association** – No objections

**Highways** - No objections to the general principle. Whilst the original layout of parking spaces for plots 13, 14, & 15 was on balance acceptable an amended plan has been provided that offers some improvement in terms of proximity to the dwellings they serve. Further amendments are sought.

## **Representations**

None

## **Determining Issues**

**Principle of Residential Development**

**Amenity**

**Design and Character of the Area**

**Public Rights of Way**

**Canal**

**Ecology**

**Pollution Control**

**Coal Mining**

**Parking**

**Section 106 Contributions**

## **Assessment of the Proposal**

### **Principle of residential development**

Planning permission was granted for an apartment scheme on this site in June 2006. Although that scheme was for 24 apartments in a four storey block and the proposal is for 16 houses the principle of a residential use is established and the loss of the employment site accepted. It is also considered that redevelopment of this vacant industrial site will improve the environment for surrounding residents. On this basis residential development is considered acceptable in principle.

### **Amenity**

The separation between houses ensures there would be no significant overbearing impact or loss of light.

An amended plan is being sought to relocate the parking areas closer to the houses they serve. The current location of these spaces (serving 13,14 and 15) is on balance acceptable and will not result in any significant noise or disturbance impacts

due to their distances to houses. There would be visual surveillance of these spaces from adjacent proposed houses.

All houses have private amenity space, most meet the Council's minimum standards some are less at 45m<sup>2</sup>.

### **Design and Character of the Area**

The traditional 2.5 storey design with sloping roofs would be a little higher than the surrounding 2 storey houses however the proposal is more in character than the existing derelict industrial buildings and the 0.5 storey element provides some visual surveillance of public space which offsets any detrimental impact to the wider character.

The amended scheme which has reduced the number of houses and improved the layout has resulted in an acceptable scheme which is considered to be a significant betterment to the character of the area.

### **Public right of way**

There are no public rights of way objections to this proposed development, but additional details are required to ensure that the potential impacts on the adjoining public footpath 33 Walsall, greenway and link path are addressed.

There are concerns about the proposed layout with rear amenity space backing on to the public footpath and canal towpath/ green way. The proposed development, fencing and landscaping may impact upon these pedestrian and cycle links and will require careful design to ensure safety and security of both proposed residents and path users. Secure by Design Principles should be applied.

In particular, the rear gardens to plots 10-13 could suffer overlooking due to the height of the footbridge, and may be particularly vulnerable to crime and ASB in an area of reported issues, due to the footbridge level in relation to the proposed dwellings and window heights. Based upon the current proposed layout, additional details for the proposed boundary treatments, to include details of the proposal for retention or replacement of the high brick wall and mesh panel which forms the original factory boundary could provide mitigation.

The public rights of way officer has requested that the houses face onto the towpath and considers that the scheme does not enhance the overlooking of the public right of way and towpath. In this instance it is considered that the scheme provides significantly improved visual surveillance of these public spaces than the existing situation and that the layout follows the existing character of the adjoining estate. For these reasons the layout is supported by the case officer.

The Public Rights of Way Officer states that there have been reports of ASB at the junction of the footpath, footbridge and greenway. The re-use of this site combined with the additional visual surveillance represents a positive solution to these existing issues.

### **Canal**

The Trust previously advised that a cross section should be provided identifying the treatment to be used to retain the embankment toe and they have provided conditions which require the detail prior to commencement.

Detailed information for the proposed retaining structure and methodology for the demolition/ construction will be required before a planning permission can be granted. The full details of the type and construction of the retaining wall, including a cross section through this part of the development and drainage proposals, should be submitted prior to the commencement of any works in this part of the site.

The Canal and Rivers trust have asked that the applicant provides a heritage statement because the site is opposite a grade 2 listed aqueduct. The site is actually 20 metres away which combined with the level difference between the canal and application site would mean there would be little impact on the setting of the aqueduct to justify a heritage statement.

### **Ecology**

The Ecology statement provided concludes that the site has very limited Ecology value but that improvement works could take place as part of the scheme.

In accordance with the works to the scrub areas could be conditioned to take place outside of the bird breeding season unless an ecologist is present, a condition can be added to use fencing to protect the canal corridor and a landscaping scheme can be requested to ensure that native plant species can be planted in the rear gardens.

### **Pollution Control**

From a search of previous planning applications for this site, it is noted that an Outline Application (10/1090/OL) for a Care Home was made in 2010/2012, with permission granted subject to conditions. The Application included a number of Documents in support of the application, unfortunately, Pollution Control do not have access to all of these, which may have assisted the current Applicant.

The Documents included an Asbestos Survey. It is recommended that if asbestos has not been removed from the site since the 2010 Application was submitted, then a new report is undertaken and asbestos removed in accordance with National Legislation, before any demolition works commence. A condition has not been requested so this can be added as a note to applicant.

As there is going to be substantial demolition and construction works, a Working Plan needs to be agreed in writing, with the Local Planning Authority, to minimise disruption to local residents and infrastructure, roads and footpaths from noise, dust, debris, waste etc.

The Documents also included a Ground Investigation, which was undertaken by Spillman Associates in August 2005, Ref J05068/01. Although Pollution Control has no current access to this Document, it will require updating to reflect current guidance and legislation. If industrial activities have taken place on the site, since the Ground Investigation was undertaken, then additional investigatory works may be required.



Pollution Control recommend a noise survey which reflects current best practice and Standards. The noise survey will need to consider current guidance, British Standard BS8233:2014, BS4141:2014, and Professional Practice Guidance on Planning and Noise (ProPG) May 2017. To the south of the site, there is a Commercial/Haulage activity, as some of the existing walls between the haulage yard and the proposed residential premises may be demolished, acoustic boundary treatment between the two usages needs to be considered as part of the noise survey.

Walsall Council has adopted the Black Country Air Quality Supplementary Planning Document (SPD). Pollution Control is of the opinion that the application falls under the Type 1 category, therefore the Applicant needs to consider installing electric vehicle charging points and low NOx boilers.

### **Coal Mining**

A Coal mining risk assessment has been submitted to the Coal Authority.

Based on a review of appropriate sources of coal mining and geological information, the report identifies that coal mining legacy poses a medium risk to the application site due to the presence of recorded workings in the Deep & Shallow Coal seam (c.36m bgl) beneath the west of the site and possible further unrecorded workings in the Deep & Shallow Coal and in the Gubbin and Ball Ironstone and associated coal seams.

Accordingly, the Report makes appropriate recommendations for the carrying out of intrusive ground investigations in the form of boreholes in order to investigate ground conditions, the depth and condition of the identified coal and ironstone seams of interest, and to inform any necessary remedial measures required.

The Coal Authority concurs with the recommendations for site investigations and appropriate mitigation.

### **Parking**

The parking spaces to Plot 13 and to a certain degree Plots 14 and 15 are remote. For convenience and security reasons residents of these plots are likely to park on street outside their house. Whilst this would not necessarily present a significant highway problem at this particular location, it is an issue with the layout and amendment has been requested prior to a decision being issued.

The application looks to replace an existing disused factory with a residential development consisting of 16 x two and three bedroom dwellings. 22 parking spaces are proposed which equates to 138%. UDP T13 parking policy for 16 2/3 bedroom dwellings is 32 spaces.

Taking into account the likely parking demand for the existing commercial premises of about 1800sqm GFA requiring 24 spaces under UDP Policy T13 with significantly fewer spaces actually available, and on street parking being available if needs be, on balance the Highway Authority considers the parking level is acceptable.

### **Section 106 Agreement**

The following contributions are required for this scheme:

### *Boundary to Public Right of Way*

Boundary treatments are not maintained as part of the highway but must either be transferred to the new owners of the dwellings or incorporated within the site maintenance strategy. Details are to be submitted, agreed and retained in accordance with the agreed arrangements thereafter which can be secured by a section 106 agreement.

Improvements are required to the link path (owned by the Council) which adjoins the application site, adjacent to the site boundary at plots 10-13, which should include motorcycle barriers and resurfacing. This path is also to be included within the site lighting survey. This is to accommodate the additional footfall associated with the development and in the interests of safety and security of proposed residents and path users, in accordance with policy LC5 and can be secured through the section 106 agreement.

### *Open Space*

The open space contribution for this development would be £31,510.00 which can be secured through a section 106 agreement, unless the scheme is unviable which would need to be proven to the District Valuer.

### *Canal*

Details have been requested by the Canal and Rivers Trust for the future maintenance / management for the retaining structure. These details would need to be part of a section 106 agreement to ensure ongoing maintenance.

### *Affordable Housing*

In accordance with Policy HOU3 of the BCCS, 25% of the development should be provided as affordable housing. The Housing Standards officer seek 4 units – 2 x 2 bed and 2 x 3 bed. 1 of the 2 beds would be shared ownership, and other 3 would be social rent. Alternatively all 4 can be social rent. This is also subject to the viability of the scheme would need to be proven to the District Valuer.

## **Conclusions and Reasons for Decision**

Conditions requiring construction methodology and boundary treatment detail in relation to the canal and public rights of way and be conditioned and mitigated for and would accord with UDP policy ENV32.

The case officer considers in this instance there is a case for a slight reduction in amenity standards in order to ensure the viability of the site and where amenity reductions do not impact on existing occupants the weight of this determining issue is less than the overall viability. The distance to neighbouring houses, it's siting and location is considered acceptable and would not result in any significant loss of amenity to neighbouring residents by way of loss of light or overlooking and accords with UDP policy GP2 and Designing Walsall SPD.

The 2.5 storey design with traditional sloping roofs is acceptable and compatible with the character of the area in accordance with UDP policy ENV32.

The remote parking areas can be addressed through amendments which the agent is currently undertaking. Without acceptable amendments to the layout the current

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scheme cannot be supported and would be contrary to policies GP2 and ENV32 in particular. If suitable amendments cannot be achieved delegation is sought for Officers to refuse on this basis.

The scheme would if approved increase footfall to the adjacent public footpath which requires enhancement and protection from unauthorised use by motorcycles which can be secured through a legal agreement which would comply with UDP policy T8.

The scheme is considered to minimise any impact on the canal and is considered an improvement because the existing derelict building has a poor appearance and is used for fly tipping. To ensure that the development is acceptable in accordance with UDP policies ENV23 conditions recommended by Canal & Rivers Trust can be attached to planning permission.

The submitted Ecology Report raises no objections and conditions can be attached in accordance with the recommendations of the Ecology Report to control the timing of works to minimise the impact on birds during the bird nesting season, to provide satisfactory landscaping and enhancements; all represent a significant improvement to the sites previous use and current condition in accordance with UDP policy ENV23.

The mitigation measures proposed by Pollution Control Officers regarding potential ground contamination are considered acceptable to protect human health, can be secured by condition and would comply with UDP policy ENV14.

The proposed noise survey requested by Pollution Control Officers are considered acceptable to mitigate for potential noise amenity impacts on the occupiers of the development, can be secured by condition and comply with UDP policies GP2 and ENV10.

In accordance with the Air Quality SPD the proposed requirement for electric car charging points by Pollution Control Officers is considered acceptable and can be attached as a condition. This requirement complies with UDP policies GP2 and ENV10

The applicants Coal Mining Risk Assessment has been deemed acceptable by The Coal Authority who have suggested past Coal Mining mitigation measures which ensures the scheme is acceptable in this regard and complies with policies GP2 and ENV10.

In traffic terms the proposed residential development of the site will remove an element of commercial traffic movements from the street if the site came back into use and on balance the Highway Authority consider the development would reduce the potential of the site to come back into the current use which could result in commercial traffic movement. The development will not have severe transportation implications and is acceptable in accordance with the NPPF in this respect.

Provided an affordable housing contribution is made in accordance with the Affordable Housing SPD (or the scheme is confirmed as not being viable by the District Valuer in accordance with the submitted viability assessment) and as part of a section 106 agreement motorcycle barriers and resurfacing of the public right of

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way, and details of the future management/maintenance of the canal boundary structure the scheme is acceptable and complies with policy.

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

Officers have spoken with the applicant's agent and in response to concerns raised regarding the relationship between houses, parking and bin layout amended plans have been submitted which enable full support to be given to the scheme.

### **Recommendation**

To delegate to the Head of Planning, Engineering & Transportation to grant permission subject to an amended parking plan, conditions including the revision or removal of any conditions listed below, not required following receipt of details acceptable to officers, and consultees; subject to the completion of a Section 106 Agreement to provide for affordable homes (or to demonstrate that contributions are not viable), open space, motorcycle barriers and resurfacing of the public right of way, and details of the future management/maintenance of the canal boundary structure. In the absence of a completed section 106 or amended parking plan delegation is sought for the Head of Planning, Engineering & Transportation to refuse the scheme on this basis.

### **Conditions and Reasons or Reasons for Refusal**

1) The 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 and block plan drawing number (Zeb1043/P/001) received 20/03/18

Existing site plan and section (Zeb1043/P/005) received 20/03/18

Proposed site plan (Zeb1043/P/005 revJ) received 29/01/19

House Type A2 (Zeb1043/P/014 revA) received 29/01/19

House Type A (Zeb1043/P/015 revA) received 29/01/19

House Type B (Zeb1043/P/016 revB) received 29/01/19

House Type D (Zeb1043/P/018 revA) received 29/01/19

House Type D2 (Zeb1043/P/018 revA) received 29/01/19

Existing and Proposed Site Sections B-B and C-C (Zeb1043/P/020 revB) received 29/01/19

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 built development commencing a new or updated site investigation, ground contamination survey and assessment of ground gas having regard to current best practice shall be undertaken. (see Note for Applicant CL1)

3b) Prior to built development commencing a copy of the findings of the site investigation, ground contamination survey and ground gas assessment, together with an assessment of identified and/or potential hazards arising from any land contamination and/or ground gas shall be forwarded to the Local Planning Authority. (see Note for Applicant CL2)

3c) Prior to built development commencing a 'Remediation Statement' setting out details of remedial measures to deal with the identified and potential hazards of any land contamination and/or ground gas present on the site and a timetable for their implementation shall be submitted to and agreed in writing by the Local Planning Authority. (see Note for Applicant CL2)

3d) The remedial measures as set out in the 'Remediation Statement' required by part c) of this condition shall be implemented in accordance with the agreed timetable.

3e) If during the undertaking of remedial works, or the construction of the approved development, unexpected ground contamination not identified by the site investigation required by part i) of this condition is encountered, development shall cease until the 'Remediation Statement' required by part c) of this condition has been amended to address any additional remedial or mitigation works required and agreed in writing by the Local Planning Authority.

3d) 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.

4a) Prior to development or any Demolition, Engineering, and Construction activities, a Construction Methodology Statement shall be submitted in writing to and approved by the Local Planning Authority. The Construction Methodology shall include the following details:

1. The location of parking and turning facilities for site operatives and construction deliveries.
2. Details of the parking of vehicles of site operatives and visitors; the loading and unloading of plant and materials; the storage of plant and materials used in constructing the development;
3. Measures to control the emission of dust and dirt during construction;
4. Details of protective measures (both physical measures and sensitive working practises) to avoid impacts during construction;
5. A timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed (such as when badgers, reptiles and amphibians are active and during bird nesting seasons);
6. Details of persons responsible for:

i) Compliance with legal consents relating to nature conservation;

ii) Compliance with planning conditions relating to nature conservation

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- iii) Installation of physical protection measures during construction;
  - iv) Regular inspection and maintenance of the physical protection measures and monitoring of working practices during construction;
  - v) Provision of training and information about the importance of Environment Protection measures to all construction personnel on site.
7. Full details of the wheel cleansing arrangements to prevent mud from being deposited on the highway during the period of construction.
8. A site survey to identify any potentially hazardous materials shall be carried out and a Method Statement shall be submitted to the local planning authority detailing actions and time scale to be taken to prevent localised contamination.
9. Full details of the proposed retaining structure to the existing canal embankment shall. This detail shall provide cross sections (existing and proposed); drainage measures associated with the retaining structure; provision of a path to enable inspections of the embankment and future maintenance / management regimes for the retaining structure.
10. Details of all proposed earthmoving, demolition and construction works (including foundation details) within 20 metres of the toe of the adjacent Wyrley & Essington Canal embankment (including any works to the embankment itself and construction of any retaining walls or structures), including identification of potential adverse impacts on the canal embankment arising from such works and the proposed means of mitigating any such impacts.

4b) All agreed measures shall be fully implemented and maintained throughout the duration of demolition operations and construction activities.

Reasons: To safeguard the amenities of the area and to comply with BCCS policy ENV4 and UDP policies GP2 and ENV10.

5) The site area shall be secured throughout the development with a perimeter fence to prevent any incursion of machinery, equipment or personnel onto the corridor of the adjacent Wyrley and Essington Canal.

Reason: In order to safeguard the visual amenity of the area and maintain the integrity of the wildlife corridor.

6a) There shall be no clearance of vegetation undertaken during the bird-nesting season (1st March to 31st August inclusive).

6b) Where this is not practicable, any potential nesting habitat to be removed should first be checked no more than three days in advance of vegetation clearance by a qualified ecologist in order to determine the location of any active nests.

6c) Any active nests identified would then need to be cordoned off (minimum 5m buffer) and protected until the end of the nesting season or until the birds have fledged.

Reason: In the interests of protected birds and to comply with UDP policy ENV23

7a) Prior to any development being carried out above damp course level details for an Acoustic Survey shall be submitted in writing and approved by the Local Planning Authority (see Note).

7b) Acoustic Mitigation measures to ensure future residents have a good acoustic environment shall be submitted to and agreed in writing with the Local Planning Authority.

7c) The agreed Acoustic Mitigation measures shall be fully implemented prior to occupation and a Validation Statement shall be submitted in writing to the Local Planning Authority that confirms the installation of the measures.

Reason: To safeguard the amenities of occupiers and to comply with UDP policy GP2.

8a) Prior to the first occupation of any dwelling on the development, all access ways and parking spaces serving that dwelling 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) These areas shall thereafter be retained and used for no other purpose.

Reason: To ensure the safe and satisfactory operation of the development and in accordance with UDP policy GP2, T7 and T13.

9) Prior to the first occupation of Plots 13 to 16, the section of existing dropped kerb footway crossing on Forest Lane, made redundant as a result of the development layout, shall be reinstated back to full kerb height to the specification of and shall be in accordance with all statutory requirements.

Reason: To ensure the satisfactory completion and operation of the development, in accordance with UDP Policy GP2 and in the interests of highway safety.

10a) Prior to occupation full details shall be provided for boundary treatments, to include:

- details of the proposal for retention or replacement of the high brick wall and mesh panel which forms the original factory boundary
- a cross section, showing the proposed development, window heights and boundary treatments in relation to the footpath and footbridge height.

10b) The approved details shall be fully implemented and retained thereafter.

Reason: To safeguard the occupiers of the houses and to comply with UDP policy GP2 and ENV32

11a) Prior to occupation details of electric charging points to serve each property shall be submitted to and approved by the Local Planning Authority.

11b) The agreed measures shall be fully implemented, a written validation statement shall be submitted to the Local Planning Authority prior to occupancy and the works retained thereafter.

Reason: In the interests of air quality, public health and to comply with UDP policy GP2

12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), no development within Classes A, B, C and D of Part 1 Schedule 2 of the said Order shall be carried out to the dwellings hereby approved.

Reason: To protect the character and amenities of the area, in the interests of ground gas protection and to comply with policies GP2 and ENV32 of Walsall's Unitary Development Plan.

13a) Prior to occupation a landscape scheme shall be submitted to and approved in writing by the local planning authority. The landscaping shall include native species identified in the Extended Phase 1 Habitat Survey.

13b) The development shall be implemented fully in accordance with the approved scheme prior to the end of the first planting season.

13c) All planted areas shall be maintained for a period of 5 years from the full completion of the scheme. Within this period, any trees shrub or plant which dies, becomes seriously diseased, damaged or is removed shall be replaced with a tree, shrub or plant of the same size and same species as that originally required to be planted,

Reason: In order to safeguard the visual amenity of the area and maintain the integrity of the wildlife corridor.

14) There shall be no demolition, construction or engineering works, (including land reclamation, stabilisation, preparation, remediation or investigation), on any Sunday, Bank Holiday or Public Holiday\*, or between the hours of 18.00 to 08.00; or after 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: To safeguard local amenity and to comply with UDP policy GP2

### **Notes for Applicant**

#### **Police**

The applicant may wish to consider crime prevention and home security advice contained within SBD New Homes.

Please see [http://www.securedbydesign.com/wpcontent/uploads/2017/06/Secured\\_by\\_Design\\_Homes\\_2016\\_V2.pdf](http://www.securedbydesign.com/wpcontent/uploads/2017/06/Secured_by_Design_Homes_2016_V2.pdf)

Any dead end greater than 20 m in length should have an appropriate turning facility for a pump appliance

Suitable water supplies for firefighting should be provided. This shall be subject to consultation with West Midlands Fire Service once a Water Scheme plan has been produced and approved by the relevant Water Company.



The approval of Building Control will be required with regard to Part B of the Building Regulations 2010

### Contaminated Land

#### **CL1**

*Ground investigation surveys should have regard to current 'Best Practice' and the advice and guidance contained in the National Planning Policy Framework 2012; British Standard BS10175: 2011 +A1:2013 'Investigation of potentially contaminated sites – Code of Practice'; British Standard BS5930: 1999 'Code of practice for site investigations'; Construction Industry Research and Information Association 'Assessing risks posed by hazardous ground gasses to buildings (Revised)' (CIRIA C665); or any relevant successors of such guidance. You are strongly advised to consult with the Local Planning Authority on the construction, location and potential retention of any boreholes installed for the purposes of ground gas and or groundwater before installation of same.*

#### **CL2**

*When making assessments of any contaminants identified as being present upon and within 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.*

### Acoustics

Relevant acoustic guidance and documents:

ProPG: Planning & Noise – New Residential Development

Planning Practice Guidance – Noise

BS8233: 2014 - Guidance on Sound Insulation and Noise Reduction for Buildings,

BS4142: 2014 – Methods for Rating and Assessing Industrial and Commercial Noise

WHO Night Noise Guidelines

BS7445: 2003 – Description and Measurement of Environmental Noise

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## Noise Policy Statement England

Pollution Control cannot verify that the agreed acoustic mitigation measures have been or will be installed as per manufacturer's instructions. It is recommended that such confirmation be obtained from a suitable third party, such as a Building Control Inspector or the acoustic performance verified by a person or organisation certified for the purposes of sound insulation testing by either by the Association of Noise Consultant (ANC) or the United Kingdom Accreditation Service (UKAS).

### Air Quality SPD

The Air Quality SPD (Section 5.6) advises the following about Electric Vehicle Charging Points:

An external weatherproof and lockable covered 32 Amp external 7 pin charging socket to comply with EN 62196-2 and be compatible with a J1772 Type 2 connector. The charging unit should feature a Mode 3 (IEC 61851) communication module.

Wherever possible the power supply and charging point should both be phase 3 compatible and be located near the parking area for each dwelling. Where only single-phase power supply is available the charging unit should be capable of handling 3-phase power if supply is subsequently upgraded.

Each charging unit to be supplied by its own independent radial circuit.

Further information on Electric Vehicle Charging Points and the necessity to provide these can be found in the following:

- West Midlands Low Emissions Towns and Cities Programme, Good Practice - Air Quality Planning Guidance,
- Black Country Air Quality Supplementary Planning Document (SPD),
- General Procurement Guidance for Electric Vehicle Charging Points, UK Electric Vehicle Supply Equipment Association (April 2015),
- Institute of Engineering and Technology (IET) Code of Practice for Electric Vehicle Charging Equipment Installation.

### Asbestos

The Documents included an Asbestos Survey. It is recommended that if asbestos has not been removed from the site since the 2010 Application was submitted, then a new report is undertaken and asbestos removed in accordance with National Legislation, before any demolition works commence.

### 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 S278 of the Highways Act 1980 with the Highway Authority or obtain a Road Opening Permit from the Highway Authority for the dropped kerb reinstatement works within the existing public highway. For further advice please contact Highway Development Control Team on 01922 655927.
3. Condition 10 clarification: Details are of proposed boundary treatments alongside Footpath 33 Walsall (alongside plots 10 - 12) are to be submitted and agreed with

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the local planning authority, to include details in relation to either the retention of, or the replacement of, the original factory wall and metal rail boundary, as appropriate. Proposed boundary treatments and defensive planting must be in accordance with Secured by Design Standards and must be of a height, positioning and specification to reduce risk of climbing over using the existing hand rails, motorcycle chicane barrier and RADAR gate, footbridge and guard rail fencing, present within the adjoining public right of way and towpath.

#### Canal

*The applicant/developer is advised to contact the Works Engineering Team on 0303 040 4040 in order to ensure that any necessary consents are obtained and that the works comply with the Canal & River Trust "Code of Practice for Works affecting the Canal & River Trust".*

#### Coal

The submitted Report identifies that unrecorded mine entries could potentially be present within the application site. We therefore take this opportunity to highlight that should any previously unrecorded mine entry be encountered during development, appropriate treatment will be required i.e. filling and capping. This may also necessitate revisions to the site layout.





## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 4**

**Reason for bringing to committee:** Major application and significant community interest

**Location:** THE ORCHARD RESIDENTIAL HOME, 1-2, STATION STREET, DARLASTON, WEDNESBURY, WS10 8BG

**Proposal:** RETROSPECTIVE: CHANGE OF USE TO HOSTEL (SITE AFFECTS THE SETTING OF A PUBLIC RIGHTS OF WAY DAR16).

**Application Number:** 18/1313

**Applicant:** Mr Robert Antcliff

**Agent:** Gateway2Housing

**Application Type:** Full Application: Major Use Class Sui Generis

**Case Officer:** Paul Hinton

**Ward:** Bentley And Darlaston North

**Expired Date:** 24-Jan-2019

**Time Extension Expiry:**

**Recommendation Summary:** Grant Subject to Conditions



## Proposal

This application seeks retrospective planning permission for the change of use from a 28 bed nursing home to a 33 bedroom hostel. The hostel includes the following:

- 33 bedrooms across three floors
- Access controlled reception area
- 13 shower rooms across three floors
- Kitchen, dining room, two lounges and laundry on ground floor.
- 'Food cupboard' on top floor to include cooking facilities.
- Gated car park with provision for six vehicles
- Secured shared amenity area with existing smoking shelter
- No external changes are proposed

The application form states that the building is currently being used to house families in crisis for up to 66 people that is a safe and secured accommodation. The use commenced in September 2018. It is also explained:

- All rooms meet national minimum standards with hand wash basins.
- Premises manned 24/7 by experienced staff
- No visitors are permitted at any time to protect existing individuals or families.
- Open between 6am to 10pm.

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

### *Supporting letter*

- Provide emergency accommodation for families experiencing crisis throughout the West Midlands.
- Tenants will be families including single parents, couples and children.
- Tenants are those in crisis that require temporary emergency accommodation.
- On average tenants will remain between 4-6 weeks
- Site fully secure, fenced and gated from the general public.
- Gates will be closed between 10pm and 6am every day.
- No external visitors outside of allocated tenants and external professionals.
- Tenants do not have cars or bikes.
- Six external CCTV cameras and 10 internal cameras in corridors and communal areas to ensure highest level of security.
- Signing in and out sheets in the reception area which remains locked until the bell is rung where a staff member will be in attendance to ensure paperwork and fire safety records are fully maintained.
- Any evictions of tenants will be completed by their accommodation team.

### *Transport Statement*

- Being emergency accommodation for families in dire need of housing will result in the vast majority, if not all, of the future resident having no access to a car.
- Site is located 485m from the centre of Darlaston and 430m away from bus services on the Walsall Road that provides up to 18 buses per hour to Bilston, Willenhall and Walsall.

- Using TRICS data, would require, on average one parking space per 11 residents – based on proposed 66 residents, six parking spaces would be required.
- Drawing submitted demonstrates six parking spaces can be provided.

#### *Additional information from site visit*

- Provides emergency accommodation for families, does not accept single people.
- Families shouldn't be there for more than 6 weeks.
- Staff undertake hourly walk of the building.
- Rooms get inspected every 1-2 days.
- No televisions permitted in rooms.

#### *Security comments*

- Fully fenced and gated perimeter
- 6 external CCTV cameras in operation covering the entire perimeter and monitored by on-site staffing.
- All windows have sash-jammers.
- External security lights
- All existing rooms and fire evacuation route doors to any exit are equipped with thumb turn locks
- Access provided via an Intercom system operated by on-site staffing in the main office. Keypad and code are only known to staff of the Orchard to maintain the integrity and security of the building and its tenants.
- Numbered keypads installed to the 1<sup>st</sup> and 2<sup>nd</sup> floor landing access doors to ensure complete compartmentalisation.
- Tenants will only be provided codes to access areas of the building which their room is located.
- Upon entering and exiting the main reception door tenants provide staff and are re-issued with their keys as per company policy and procedures where tenants are not to leave the property in possession of their room keys.
- 17 live functioning CCTV cameras, 6 external and 11 internal cameras covering all live areas such as reception, lounge, dining area, kitchen and all communal corridors. The system is monitored 24/7 by onsite staff and has a 10-day recording period.

#### *Further supporting letter February 2018 in response to neighbour concerns*

- Specifically designed to house families only with parents and children of all age's ranges staying within the property. Every case is risk assessed and The Orchard only accept low risk cases. All cases are assessed by the referring agency and we do not accept dangerous people. The Orchard is monitored 24/7 by a dedicated officer who is available at all times.
- Strict no drugs and no smoking policy any tenant found in possession or using drugs or smoking anywhere other than a designated outside area are evicted from the property and police notified.
- Proof of Identification is required from all tenants including next of kin details with contact information.
- Parents remain fully responsible for their children whilst duty officer monitors building and its tenants via operational CCTV within the property. All staff working at The Orchard have undertaken the necessary safeguarding training and know what process to follow should a case arise and who they report to.

- has a no visitors policy and no individual that is not an existing tenant can enter the property outside of external professionals such as ambulance, police, social workers etc. Within the building the reception room at The Orchard is managed via an intercom system with CCTV camera in place to ensure only those staying within the Orchard can access beyond this point.
- during the hours between 8am and 6pm there can be up to 4 staff onsite at any one time
- In relation to facilities to support young children The Orchard has up to 10 cots/beds available for any children from 0-7 years of age, a communal lounge whereby children can interact with one another and use developmental toys provided. There are also high chairs within the dining room environment to ensure the safety of young children whilst parents are cooking.
- Former care home drug cupboard is now a cleaning cupboard.
- The Orchard cannot guarantee that individual families will not have access to their own forms of transport. Again this is based on an individual family's circumstance. The majority of clients from experience do not have access to their own transport whereby they rely on the bus
- Whilst we outline to all tenants that The Orchard gates close at 10pm we appreciate on occasions where people work irregular hours that we do not discriminate against them. On occasion tenants will inform us they are working and are expected to provide on-site staff with an arrival time.
- The opening times and visitor's policy is managed by staff on shift, the reception area is the only point of The Orchard that is accessible to anyone that is not a tenant. An intercom and CCTV camera is in place to ensure only tenants of The Orchard are let through the reception room door.

## Site and Surroundings

This is a two storey building on the northern side of Station Street bound by Victoria Park to the northern and western boundaries of the building. To the eastern boundary is Definitive Public Footpath 16 Darlaston which separates the site from a row of industrial buildings. Across the road to the south are residential properties.

The application site has a car park and garden area behind a set of railings and gates. The site is 150m from the boundary with Darlaston District Centre.

## 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 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.

### **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

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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.

### **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
- CSP3: Environmental Infrastructure
- CSP4: Place Making
- CSP5: Transport Strategy
- HOU2: Housing Density, Type and Accessibility
- TRAN1: Priorities for the Development of the Transport Network
- TRAN4: Creating Coherent Networks for Cycling and for Walking
- TRAN5: Influencing the Demand for Travel and Travel Choices
- 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
- ENV10: Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- H6: Nursing Homes and Rest Homes for the Elderly
- H7: Hostels and Houses in Multiple Occupation
- T7 - Car Parking
- 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

### **Walsall Site Allocations Document**

- HC2: Development of Other Land for Housing
- HC3: Affordable Housing and Housing for People with Special Needs.

### **Supplementary Planning Document**

### **Designing Walsall**

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character
- DW7 Diversity
- DW8 Adaptability

### **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**

**Highways** – no objection subject to a revised parking layout providing five car parking spaces and one disabled bay.

**Pollution Control** – no objection.

**Police Crime Prevention** – no objection. The data available from other premises managed by the applicant it was clear that a good management program was in place. It is noted that the application is retrospective and the Police have not been called to the address.

**Public Health** – no objection. Raises questions about food provision and parking provision.

**Fire Services** – no objection.

**Public Rights of Way Officer** – no objection.

**Housing Standards** – will require a mandatory licence. Additional communal facilities required on second floor.

**Severn Trent Water** – no objections and do not require a drainage condition.

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## Representations

Site notice displayed, advertised in the local press and surrounding occupiers notified by letter.

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

- Would not like people who may be a danger to our children *(No evidence has been provided to link occupiers of the property to this allegation)*
- Existing drug dealing in area, would bring more problems. *(No evidence has been provided to link occupiers of the property to this allegation)*

A petition with a total of 46 signatures has been received objecting to the application on the following grounds:

- Loss of privacy
- Safety and security
- Safeguarding issues for children
- Cannot be assured who will be visiting or residing in and outside of the property (not a material planning consideration).
- Residents maybe dealing with drug and alcohol misuse which could be a risk to children in the area. *(No evidence has been provided to clearly link occupiers of the property to this allegation)*
- One person to manage 66 people is not enough.
- As people will almost certainly be jobseekers they need to be close to those facilities. *(Not a material planning consideration)*

Valerie Vaz MP objects to the planning application on the following grounds:

- Only a few houses were notified of the application *(surrounding occupiers notified by letter, advertised in the local newspaper and site noticed displayed)*.
- Only one kitchen, one laundry and one lounge provided for 66 residents *(Not a material planning consideration. This is a matter for the Housing Licence)*
- Council's HMO standards required one bath or shower to every 5 persons sharing. The provision of 12 showers for 66 people does not meet this criteria. *(Not a material planning consideration. This is a matter for the Housing Licence)*
- Have not made it clear what type of vulnerable families the property will be hosting or age range. *(not a material planning consideration)*
- Do not appear to be any facilities to support young children.
- No reason for retention of a drugs cupboard or presence of external health professionals. *(Not a material planning consideration)*
- Not specified on what basis rooms will be shared, how privacy of residents will be respected or procedures to manage disputes between residents *(not a material planning consideration)*.
- Have not stated how they will guarantees that residents will not possess their own forms of transport.
- Application form says no need to provide spaces of bicycles, but T11 of the UDP required provision.
- Site is open after 10pm.

- Unclear how opening times and no visitors policy will be enforced. *(Not a material planning consideration. This is a matter for the Housing Licence)*
- Applicants do not appear to have consulted the police or neighbourhood watch about the security of the site *(applicant's have been in direct communication with the police)*.
- Impact of privacy of neighbouring residents.

## **Determining Issues**

- Principle of development
- Crime and disorder/fear of crime
- Design and character of the area.
- Neighbouring and occupiers amenity
- Parking and access

## **Assessment of the Proposal**

### **Principle of development**

Hostels in general terms are considered provide accommodation for people with no other permanent place of residence and are a sui generis planning land use (a use of its own).

The NPPF and SAD policy HC2 encourages the provision of residential accommodation through the conversion of existing buildings in sustainable locations. Further, saved UDP policy H7 encourages the provision of hostels where there would be no harm to the amenity of the occupants of neighbouring properties or the occupiers of the accommodation or no harm to the character and appearance of the building or the area, and it would not impair on the free flow of traffic or highway safety. SAD policy HC3 encourages the provision of housing for people with special needs in location that would be acceptable for general housing.

The Council recognises the role well managed and appropriately located temporary accommodation play in providing valuable accommodation for people with no other permanent place of residence. The Equality Act places a duty on public bodies to minimise disadvantages by taking steps to meet needs and encouraging participation in public life. Accordingly the Council is unable to object on planning policy grounds to the principle of use.

### **Crime and disorder/fear of crime**

The application has been supported by a letter which explains the strict vetting process for potential occupiers. The site would be managed by 24 hour specialists and includes staff controlling who comes into and out of the building. The Police have not objected to the current proposal.

Housing Standards raise no objection, explaining that in addition to securing planning permission a mandatory licence is required. This process requires the licence holder to pass a fit and proper test, provide safety certificates and comply with the minimum prescribed standards of amenities and facilities. Landlords are expected to work with the Council's housing team and other agencies to combat anti-social behaviour caused by tenants and there will be an expectation that landlords

will remind tenants of their obligations and take appropriate action to end their tenancy where they breach them. Any license from the Council's housing standards team can be subject to on-going management requirements. It is recognised that existing residents are concerned about potential future crime and antisocial behaviour. The fear of crime is a material consideration in planning decisions. The weight that can be attributed in the planning assessment, is often limited unless there is significant evidence to show that the increased fear of crime would actually occur. This is reflected in recent appeal decisions, where Planning Inspectors have concluded there is no firm evidence that this form of development, with tenants living together as more than one household would result in crime and anti-social behaviour and that crime prevention measures could be imposed through a planning condition.

The applicant explains that each resident is carefully assessed prior to being accepted and tenants will be families including single parents, couples and children who are subject to crisis support i.e. those who have suddenly become homeless and are seeking refuge until they can find alternative accommodation.

The Police explain that this location has the potential to generate considerable demand for the force, but from the data available from other premises managed by the applicant it was clear that good management was in place. The Police recognise the application is retrospective; confirming they have not been called to the address since the hostel started operating in September 2018.

The Police consider in the long term there would be a need to protect the premises and provide upgraded security provision across the premises. Vulnerable residents are being housed who may already have a heightened sense and fear of crime. Every attempt should be made to make them feel and be secure when at the hostel. Given the type of residents being housed, there's the potential for aggressive or violent people to attend location, so preventing them accessing the grounds and the premises must be a priority. The building has access control measures to the one means of access, CCTV externally and internally, secure perimeter, security lighting and have recently increased security measures to windows. In addition access control measures have been installed within the separate floors to ensure occupiers do not have access to other areas of the building.

Recent appeal decisions for multiple occupied properties noted that whilst it is wholly reasonable that the appellant would not wish to entertain bad tenants, Environmental Health and the Police have processes in place to manage and take action against antisocial behaviour and crime. The Police do not object to this application or raise any concerns in regard to the direct impact from the proposal upon Police services.

Neighbours have objected on the grounds of people being a danger to children, drug and alcohol issues, safety and security. As explained the building has been in use as a hostel since September 2018 without any reports of ASB or crime as a result of the use. As explained there are a number of physical security measures to the building and strict management controls that assist in reducing the perception of crime for neighbours.

Crime and anti-social behaviour is ultimately a matter for the relevant authorities and as found in the recent appeal decisions crime and disorder is not an inevitable consequence of multi-occupation as opposed to single occupation of dwellings, but

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rather a question of individual behaviour and appropriate management of the premises.

In the circumstances the management details submitted show their aim is to minimise the fear of crime. These measures could be enforced through the housing standards licence. In the absence of any firm evidence to the contrary, it is considered that the proposal would not have a materially harmful effect on the fear of crime in the locality to support a refusal of the application on these grounds.

### **Design and character of the area**

The proposal does not include any changes to the appearance of the building. The building would continue to be used as accommodation for a number of people and therefore would not impact upon the character of the area.

### **Neighbouring and occupiers amenity**

The application site is 22m away from the nearest houses with Station Street between. The applicant confirms there are 24/7 staff on site, access control measures and external and internal CCTV. Occupiers would be families in need for crisis support. It is explained that the gates to the building are closed at 10pm. The combination of this separation, security measures and absence of incidents since the commencement of the operation, demonstrates the proposed use can operate without causing significant harm to the amenity of nearby residents. The proposal would not give rise to any additional overlooking compared to the previous use as a nursing home.

Comments have been received about no facilities to support young children. As the placements would be for a short period of time only minimal facilities are provided, which include generous room sizes an external garden and the amenities of Darlaston District Centre within walking distance, plus Victoria Park is adjacent to the building.

The application seeks permission for 33 bedrooms across three floors with the applicant explaining this could accommodate up to 66 people. 16 rooms have been brought into use so far. The layout includes 13 shower rooms across three floors, with kitchen, dining room, two lounges and laundry on ground floor. Individual bedrooms are between 8.6sqm and 16sqm which exceeds the Council's Housing Team's guidance for hostel room sizes that require a minimum of 6.5sqm for a 1 person room, 11sqm for a two person room and 15sqm for a three person room. While the applicant suggests up to 66 persons could be accommodated assessing the Council's HMO amenity standards against the rooms sizes and facilities shown the proposal does not provide sufficient space to meet the standards for 66 persons (based on bedroom size alone this would permit maximum of 58 persons and could be less given the size of the kitchens). This would, however, be an issue for the housing licence and not a material planning consideration.

Material planning considerations will be based on the land use and should not replicate other legislative powers. As the minimum sizes for the proposed 33 bedrooms are provided, on its planning merits, sufficient amenities are provided for future occupiers. A condition to define the use to no more than 33 bedrooms would be necessary to define the permission and meets the government's six tests.

Whilst it is recognised there would be an increase in the coming and goings at the site compared to a nursing home the on-site facilities and security discourage any loitering. The applicant explains that occupiers generally keep themselves to themselves. The people movements would be similar to a high density flatted scheme that are typical of residential areas.

There is an existing rear amenity area of 145qm that would be available for occupiers and is away from existing houses. In addition Victoria Park is adjacent to the building.

### **Parking and Access**

The site has an existing car park that can provide six off-street parking spaces. Due to the nature of the users it has been explained they are unlikely to own a vehicle or have access to one. The Transport Statement explains, using TRICS data the proposal would require, on average one parking space per 11 residents – based on proposed 66 residents, six parking spaces would be required.

It also explains that being emergency accommodation for families in dire need of housing will result in the vast majority, if not all, of the future resident having no access to a car.

In addition the site is located 485m from Darlaston centre and 430m away from bus services on the Walsall Road, providing up to 18 buses per hour to Bilston, Willenhall and Walsall.

Whilst the Highway Authority have no objection to the proposal, they require the layout to include one disabled parking bay. In addition, as the existing parking spaces is not marked out, they require the demarcating of six bays including one disabled bay, which can be secured via a safeguarding condition meeting the government's six tests.

Cycle storage would help encourage sustainable travel for staff and occupiers. The Council considers this a necessary requirement and a secure, covered and illuminated store can be required via a safeguarding condition that meets the six tests.

Having regard to the Air Quality SPD, it is necessary to provide one electric vehicle charging point and the infrastructure for one further point in the future. This can be provided by a safeguarding condition that meets the government's six tests.

### **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 proposal would be an acceptable use of this previously developed site within an existing residential area. The application has demonstrated sufficient measures are in place to manage the use of the site without giving rise to an increase fear of crime in the area; in addition the proposal would require a separate license that can condition these measures. There is no evidence that the proposal would increase crime and anti-social behaviour in the area or give rise to an unacceptable level of noise and disturbance. The proposal would not result in a significant loss of amenity

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for adjoining neighbours. The application has demonstrated sufficient off-street parking to serve the needs of the development. Accordingly the previous reasons for refusal have been overcome.

Conditions in regard to security measures, boundary treatment, cycle and bin stores, and provision of parking area are necessary and meet the six tests. Taking into account the above factors and weighing the overall planning balance it is considered that the application should be recommended for approval. The development is considered to meet the aims and objectives of the National Planning Policy Framework, policies, CSP4, HOU2, TRAN5, ENV2, ENV3 and ENV8 of the Black Country Core Strategy, policy HC3 of the Walsall Site Allocations Document and saved policies GP2, GP5, ENV10, ENV14, ENV32, H7 and T13 of Walsall Unitary Development Plan.

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

Officers have liaised with the applicant securing amended drawing and additional information to enable a positive recommendation to be made.

### **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: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

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

- Location plan received 25/10/18
- Block plan received 25/10/18
- Existing ground floor plan received 31/12/18
- Existing first floor plan received 31/12/18
- Existing second floor plan received 31/12/18
- Proposed ground floor plan received 31/12/18
- Proposed first floor plan received 31/12/18
- Proposed second floor plan received 31/12/18

Reason: For the avoidance of doubt and in the interests of proper planning, (except in so far as other conditions may so require).

3a. Notwithstanding the details submitted, within three months from the date of this decision details of a secure, covered and illuminated cycle shelter, shall be submitted for written approval of the Local Planning Authority

3b. Within three months from the approval of 3a, the secure, covered and illuminated cycle shelter facility shall be installed in accordance with the approved details.

3c. The secure, covered and illuminated cycle shelter facility shall thereafter be retained for the life of the development, available for future occupiers to store/use cycles and used for no other purpose.

3c. Following installation, a validation report included pictures of the works being installed on site shall be submitted to the Local Planning Authority.

Reason: To encourage sustainable modes of travel and in accordance with UDP policy T13 and Black Country Core Strategy TRAN4.

4a. Notwithstanding the details submitted, within three months from the date of this decision details of electric vehicle charging point to be provided for one parking bay and the infrastructure cabling for a further one space for future demand shall have been submitted to and approved in writing by the Local Planning Authority.

4b. Within three months from the approval of 4a the electric vehicle charging point and additional infrastructure cabling shall be installed in accordance with the approved details and shall be retained and maintained for the life of the development.

4c. Following installation, a validation report included pictures of the works being installed on site shall be submitted to the LPA...

Reason: In the interests of creating a sustainable form of development and to encourage the use of ultra low emission vehicles in accordance with policies ENV8 (Air Quality) and DEL1 (Infrastructure Provision) of the Black Country Core Strategy and the Black Country Air Quality Supplementary Planning Document.

5a. Notwithstanding the details submitted, within three months from the date of this decision the parking bays shall clearly demarcated on the ground and shall provide 5no. 2.4m by 4.8m parking bays and 1 no. disabled bay, 2.4m by 4.8m with a 1.2m safety zone to the side and rear.

5b. The parking areas shall thereafter be retained for the life of the development and used for no other purpose.

5c. Following installation, a validation report included pictures of the works being installed on site shall be submitted to the Local Planning Authority.

Reason: To ensure the safe and satisfactory operation of the development and in accordance with UDP policy GP2, T7 and T13.

6. For the avoidance of doubt the development hereby permitted shall not exceed 33 bedrooms.

Reason: To define the permission.

# PETITION AGAINST THE CHANGE OF USE TO A HOSTEL

| Name | Address                     | Signature |
|------|-----------------------------|-----------|
|      | 37 TILLEY ST                |           |
|      | 38 TILLEY ST                |           |
|      | 39 TILLEY ST                |           |
|      | 40 TILLEY ST                |           |
|      | 41 TILLEY ST                |           |
|      | 41 TILLEY ST                |           |
|      | 34 Tilley St                |           |
|      | 34 Tilley St                |           |
|      | 33 TILLEY ST                |           |
|      | 38 TILLEY ST                |           |
|      | 42 Tilley ST                |           |
|      | 7 Tilley St                 |           |
|      | 9 Tilley St                 |           |
|      | 11 Tilley Street            |           |
|      | 8, Tilley Street            |           |
|      | 12 TILLEY ST                |           |
|      | 45 Tilley Street            |           |
|      | 46 Tilley St                |           |
|      | 4 Stiles St                 |           |
|      | 4 Victoria Rd               |           |
|      | 3 VICTORIA RD               |           |
|      | SUNNYGDE VICTORIA RD        |           |
|      | Branwen Villas              |           |
|      | 2 <del>Branwen</del> Villas |           |
|      | 2 Pension Villas            |           |
|      | 5 Station Villas            |           |
|      | 1 STATION VILLAS            |           |
|      | Tilley Street               |           |
|      | 3 TILLEY STREET             |           |





## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 5**

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

**Location:** WALSALL CRANE HIRE LIMITED, CROXSTALLS AVENUE, BLOXWICH, WALSALL, WS3 2PJ

**Proposal:** CHANGE OF USE OF VACANT CRANE HIRE STORAGE AND MAINTENANCE YARD TO COACH PARK AND MAINTENANCE AREA TOGETHER WITH RETROSPECTIVE PLANNING PERMISSION FOR CONTAINER UNITS

**Application Number:** 18/0090

**Applicant:** J K T International

**Agent:** Mr Anthony Spruce

**Application Type:** Full Application

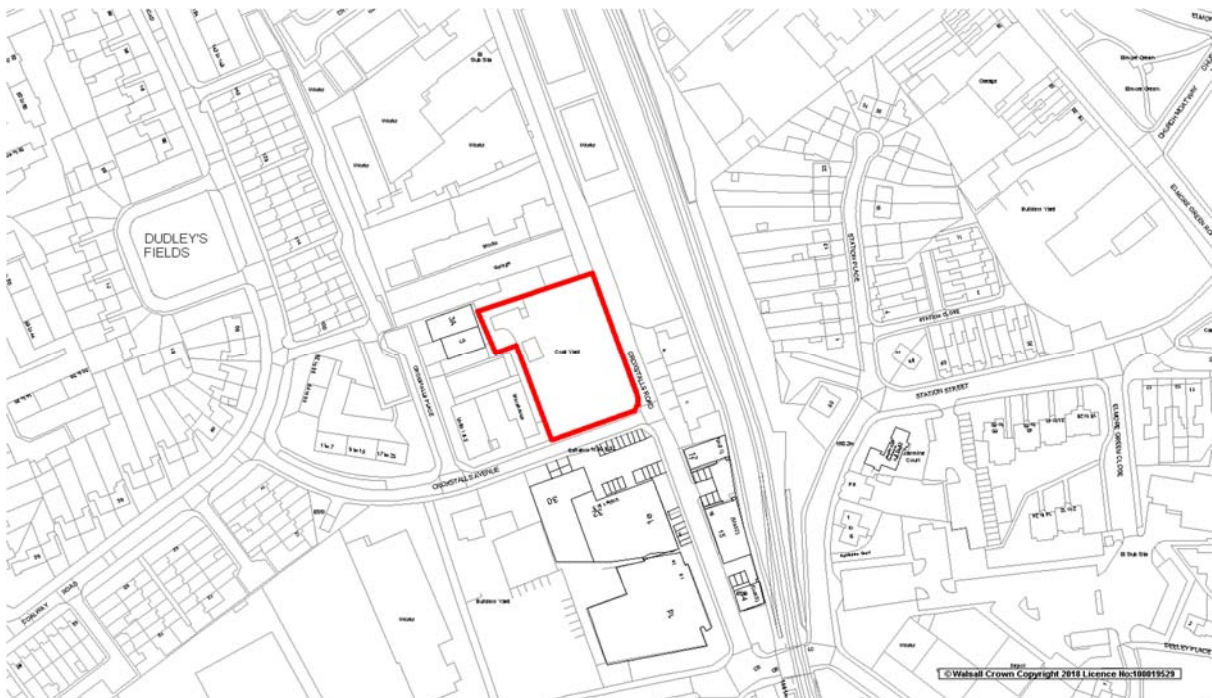
**Case Officer:** Devinder Matharu

**Ward:** Bloxwich West

**Expired Date:** 10-Apr-2018

**Time Extension Expiry:** 31-Jan-2019

**Recommendation Summary:** Grant Permission Subject to Conditions.



## Proposal

The proposal is for change of use of a vacant crane hire storage and maintenance yard to coach park and maintenance area together with retrospective planning permission for installation of container units.

The site is enclosed by 2.4m high palisade fencing. There is a concrete base in the northern corner of the site adjacent to Croxstalls Avenue where there are 7 containers positioned (including some double stacked) comprising stores, office, maintenance and toilet units. There are steel staircases and gangways attached to the units for access purposes. There is car parking along the remainder of this boundary to Croxstalls Avenue and coach parking is identified around the remaining boundaries of the site. A further 3 containers are positioned on the western part of the site including one to accommodate waste storage.

There are 10 container units on site in total, these will store spare parts for coaches such as mechanical and engine parts. The proposal is for up to 14 coaches parked on site.

The proposal is to reposition the access gates from the highway junction to Croxstalls Avenue with a 6m wide automatic sliding gate and concrete pad. There is security lighting throughout the site.

The proposals is to operate the premises 24 hours a day. The site area is 2800m<sup>2</sup>.

The application indicates the use commenced in January 2018.

## Site and Surroundings

The site is located at the junction of Croxstalls Avenue and Croxstalls Road. There are industrial premises to the north, south and east of the site but areas to the west are residential. The site is just to the west of Bloxwich District Centre boundary and opposite a designated core employment area. There is 2.4m high palisade fencing and gates around the highway junction securing the site and the boundary walls of adjacent premises form the rear boundaries within the site. The site access gates are currently positioned immediately at the highway junction.

## Relevant Planning History

BC56693P – Scrap yard, waste transfer station, haulage contractors – GSC 23/7/1999.

BC59055P – Change of use to crane hire, repair maintenance, storage and parking of cranes with ancillary offices – GSC 23/9/1999.

02/2231/FL/E6 – Proposed revised side fence and gate position, details of office block and landscaping scheme – Refused 11/02/2003.

## 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 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**
- **NPPF 14 – Meeting the challenge of climate change, flooding and coastal change**

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.

### **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
- ENV10: Pollution

- ENV11: Light Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV32: Design and Development Proposals
- ENV35: Appearance of Commercial Buildings
- ENV40: Conservation, Protection and Use of Water Resources
- JP8: Bad Neighbour Industrial Uses
- T1 - Helping People to Get Around
- T7 - Car Parking
- T10: Accessibility Standards – General
- T13: Parking Provision for Cars, Cycles and Taxis

### **Black Country Core Strategy**

- CSP1: The Growth Network
- CSP2: Development Outside the Growth Network
- CSP3: Environmental Infrastructure
- CSP4: Place Making
- CSP5: Transport Strategy
- DEL1: Infrastructure Provision
- DEL2: Managing the Balance between Employment Land and Housing
- EMP1: Providing for Economic Growth
- EMP3: Local Quality Employment Areas
- EMP4: Maintaining a Supply of Readily Available Employment Land
- EMP5: Improving Access to the Labour Market
- 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
- ENV3: Design Quality
- ENV7: Renewable Energy
- ENV8: Air Quality
- WM5: Resource Management and New Development
- MIN1: Managing and Safeguarding Mineral Resources

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

IND4: Local Industry Consider for Release  
 IND5: New Employment Opportunities  
 EN3: Flood Risk  
 M1: Minerals Safeguarding Area  
 T4: The Highway Network  
 T5: Highway Improvements

### **Supplementary Planning Document Designing Walsall**

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character
- DW9 High Quality Public Realm
- DW10 Well Designed Sustainable Buildings

### **Air Quality SPD**

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- **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

**Coal Authority** - The application site does fall within the defined Development High Risk Area; however, the nature of development is listed as exempt from Version 4, 2017 of The Coal Authority's *Resources for Local Planning Authorities*. Accordingly, and whilst there is no requirement under the risk-based approach that has been agreed with the LPA for a Coal Mining Risk Assessment to be submitted with any planning application or for The Coal Authority to be consulted on this proposal, the applicant may wish to consider the implications posed by the coal mining legacy of the site. Most notably, our records indicate the presence of three recorded mine entries (shafts) within the planning boundary which could pose a very serious risk both to public safety and ground stability. The applicant should be made aware of this by way of an informative note on any permission given.

**Fire Service** – General comment only that water supplies should be available and that the vehicle access route should have a carrying capacity of 15 tonnes.

**Network Rail** – The proposals will have no impact on rail infrastructure.

**Police** – Recommends security measures including CCTV, intruder alarms, locking measures for fencing and gates. Also recommends Secure by Design standards.

**Pollution** – Supports the proposals. Recommends a condition to mitigate the effect of artificial light.

**Transportation** – No objections. There is an extensive yard area that provides adequate parking and manoeuvring space for coaches in a managed arrangement. The former access to the site directly onto the junction radius of Croxstalls Road and Croxstalls Avenue has been closed off and the existing access onto Croxstalls Road has been brought back into use which has been Autotracked for a coach accessing and egressing. On balance, the Highway Authority considers the development will not have severe transportation implications and is acceptable in accordance with the NPPF in this respect.

## Representations

Three objections and a letter with a petition of 14 signatures received relating to:

- Retrospective nature of the proposals as the business is already operating without permission
- The business started over Christmas break so Council weren't available
- The Council should refuse the proposals as they are already operating the business without permission

- The applicant showed disregard for the general public by operating before applying for permission
- Why haven't the Council taken action?
- Dangerous access a pedestrian and highway hazard for large vehicles
- Parking and congestion in the highway
- Taxi firm operating from the site
- Unlawful connection to sewers
- Noise/disturbance and anti-social behaviour from the site
- Noise, light and vehicle pollution
- 24 hour operation causes disturbance
- Floodlighting neighbouring residential properties (photos provided)
- Containers overlook neighbouring properties
- Odour from cleaning toilets in coaches
- Concern about sewage disposal
- Stacking of containers, lighting and noise detrimental to neighbours
- Containers are permanent as adaptations made including stairs, gangways, lighting and electricity
- Containers fully furnished as homes

Four letters of support from surrounding businesses relating to:

- No issues with the proposals
- Brings a vacant site back into use for employment
- Investment to the site welcomed
- JKT Coaches have tidied up the site
- Improvement from previous scrap yard that was full of rodents
- Occupation of the site will improve security particularly with CCTV
- Adjoining business will benefit from the proposals

## **Determining Issues**

- Principle of use for coach park and maintenance
- Layout and design
- Relationship to neighbouring properties
- Access and parking

## **Assessment of the Proposal**

### **Principle of use for coach park and maintenance**

The site is allocated within the SAD as a local quality industrial site considered for release although industrial development interest will be acceptable in principle subject to saved UDP policy JP8 which refers to bad neighbour industry. The site is identified as part of a larger site in Croxstalls Road (IND19.2) with a potential release for housing. Bearing in mind that this site was formerly a scrap yard and the immediate neighbours are industrial premises the retention for employment purposes is considered acceptable. The proposed development is industrial in character and as such it is considered acceptable in accordance with SAD policy IND4 and saved UDP policy JP8.

The site is within the mineral safeguarding area but does not exceed the threshold (5 hectares) for requiring supporting evidence to demonstrate how non mineral proposals will safeguard the mineral resource as required by BCCS policy MIN1.

Whilst neighbours consider the applicant has ignored planning legislation by implementing the changes before seeking planning permission the application seeks to regularise this situation. Despite the proposals first coming to the attention of the local planning authority through an enforcement inquiry there is no justification to refuse permission just because a proposal is retrospective, rather the local planning authority must take into account all material planning considerations in reaching a decision.

### **Layout and design**

The storage containers are located near the Croxstalls Avenue frontage near to existing industrial premises. They are of a comparable height and are constructed of profiled metal similar to the adjacent premises. The coach parking and maintenance will take place in the open on the remainder of the site. Whilst the site is exposed to views from the street it has an improved appearance from the former use as a scrap yard. The layout is considered acceptable given the surrounding industrial context in accordance with saved UDP policy ENV35.

The Police has made comments about security measures such as CCTV, intruder alarms and locking gates. These measures can be secured by condition to ensure the safety and security of the site.

In respect of connection of the containers to public sewers this is not a material planning consideration.

The layout presently includes lighting around the storage containers and in various places throughout the site. Neighbours have made objections that this is shining into their homes and causes light pollution. Nevertheless the lighting enhances security at the site and measures can be secured by condition to restrict the luminance of the lighting and ensure it is directed towards the site only to protect amenities.

### **Relationship to neighbouring properties**

The nearest housing to the west of the site is in Croxstalls Place and Coalway Road 63m and 58m away respectively separated by existing industrial premises. There is also housing to the east separated by the railway, including 50 Station Street over 72m away and further housing in Station Place over 82m away from the boundaries of the site. Given the distance between the site and residential properties it is considered that the occupation for the coach parking and maintenance and installation of storage containers is not harmful to the outlook, privacy or daylight of any residential neighbours sufficient to warrant refusal of permission. There are also other commercial uses intervening between sites.

The premises propose to operate 24 hours, presumably as the applicant cannot determine when coaches will return from bookings. It is unlikely that the coach maintenance will operate throughout the night or that activities at the site will permanently operate throughout the night but a 24 hour permission gives flexibility to the developer to operate the business. As the surrounding premises are industrial

and many unrestricted in terms of operating hours it is considered that the proposed used is acceptable and will not harm amenities.

Pollution control officer support the proposals and have not requested conditions to control any operations on the site. Matters relating to odour, noise and disturbance emanating from the site are controlled by separate environmental health legislation and potential anti-social behaviour is a matter for the police. Residents are concerned about vehicle pollution but this is an issue that could occur at any industrial site.

The surrounding industrial neighbours have written in support of the proposals welcoming the investment and employment opportunities and claiming the site is tidier and an improvement from the former scrap yard. They also welcome enhanced security and consider the proposals will offer benefits to adjoining premises although no specific reason is given.

There is no evidence to suggest the containers on site are occupied for residential purposes, there are facilities such as toilets and sinks but these are usual facilities expected to be provided for coach drivers and those working at the site.

On balance it is considered that the distance between the proposals and nearby housing is such that the proposals will not cause significant harm to residential amenities. Measures to control noise and disturbance are covered by separate legislation and conditions included to protect amenities.

### **Access and parking**

The proposal includes the relocation of the site access gates from the highway junction to further along Croxstalls Avenue. This is supported by the Transportation officer as it is considered to be a safer access. The design of the new access is of sufficient width to enable coaches to manoeuvre safely into and out of the site without causing a significant hazard to public safety.

Objectors are concerned about parking and congestion on the highway in the vicinity of the site but as there is adequate space within the site for the coaches to park and manoeuvre and for staff parking then the development provides adequate parking to meet the needs of the development. The Transportation officer recommends a condition to limit the number of coaches to ensure this manoeuvring and parking space remains available which is considered reasonable in the interests of highway safety.

There is no evidence of a taxi firm operating from the site but this can be investigated separately.

## **Conclusions and Reasons for Decision**

The principle of the proposal is considered appropriate in accordance with SAD policy IND4 and saved UDP policy JP8. The site is surrounded by industrial uses and is appropriate in this type of area.

The site is within the mineral safeguarding area but does not exceed the threshold (5 hectares) for requiring supporting evidence to demonstrate how non mineral proposals will safeguard the mineral resource as required by BCCS policy MIN1.

The storage containers are of a comparable height and are constructed of profiled metal similar to the adjacent premises and despite the operations taking place in the open yard the site has an improved appearance from the former use as a scrap yard. The layout is considered acceptable given the surrounding industrial context in accordance with saved UDP policy ENV35.

Given the distance between the use and adjacent residential occupiers it is considered the proposals are not harmful to the outlook, privacy or daylight of any residential neighbours sufficient to warrant refusal of permission and accords with saved UDP policy GP2.

Issues in relation to odour, noise and disturbance, sewage connections and potential anti-social behaviour are covered by separate legislation.

Relocation of the access is supported by Transportation officers and the layout of access, parking and manoeuvring space is adequate to cater for the proposed use without causing severe harm to the surrounding highway network in accordance with saved UDP T13.

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

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

Officers have spoken with the applicant's agent and in response to concerns raised regarding the need for swept path analysis for vehicle manoeuvring amended details have been submitted which enable full support to be given to the scheme.

## **Recommendation**

Grant permission subject to conditions.

## **Conditions and Reasons**

1. The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Reason: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. This development shall not be carried out otherwise than in accordance with the following approved plans: -

- Block Plan/Site Plan/Floor Plans/Elevations (Drg No 1808D) received 11/05/18

- Coach Swept Paths (Dwg No P001) received 08/10/18
- Coach Swept Path A (Dwg No P002) received 08/10/18
- Coach Swept Path C (Dwg No P004) received 08/10/18

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. In accordance with the details shown on drawing 1808D the developer shall install the hard surface concrete pad at the access within three months of the date of this decision and the concrete pad shall thereafter be retained for the life of the permission.

Reason: To prevent loose bound surface material being carried and deposited onto the public highway by egressing vehicles, in the interests of highway safety in accordance with saved UDP policies GP2 and T7.

4. In accordance with the details shown on drawing 1808D the existing vehicular access at the highway junction radius shall be sealed off and replaced with palisade fencing to match the existing fencing and thereafter remain closed to vehicular traffic for the life of the permission.

Reason: To control access to the site due to the relatively narrow adjoining roads for manoeuvring coaches and long vehicles, in the interests of highway safety in accordance with saved UDP policies GP2 and T7.

5. The coach and car parking areas shall be used for those designated purposes only.

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

6. There shall be no more than 14 coaches in total either parked or for repair on the site at any one time.

Reason: To define the permission and to control the number of vehicles movements to the site to protect the amenities of the area in accordance with saved UDP Policy GP2.

7. Notwithstanding the details of lighting shown on drawing 1808D the floodlighting scheme shall be in accordance with Guidance Notes for the Reduction of Obtrusive Light GN01:2011 published by the Institute of Lighting Professionals to prevent light spillage onto adjacent sites and thereafter remain in accordance with these details for the life of the permission.

Reason: To protect the amenities of surrounding areas in accordance with saved UDP policies GP2 and ENV11.

8. Notwithstanding the information shown on submitted plans, the development hereby approved shall not be constructed otherwise than to meet the following minimum security measures and thereafter the security measures shall be retained;

PAGE 114 OF 201

a) CCTV system showing coverage of external views of the buildings, external view of the all entrances to the building including fire exits to the building and all parking and maintenance areas. Any images should be recorded onto a secure system and be held for a minimum of 31 days in accordance with guidelines given in the following:

[http://www.ico.gov.uk/for\\_organisations/data\\_protection/topic\\_guides/~media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/ICO\\_CCTVFINAL\\_2301.ashx](http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/~media/documents/library/Data_Protection/Detailed_specialist_guides/ICO_CCTVFINAL_2301.ashx)

b) Security locking mechanism to all gates in accordance with guidelines given in the following: [http://www.securedbydesign.com/pdfs/SBD\\_Commercial\\_2015.pdf](http://www.securedbydesign.com/pdfs/SBD_Commercial_2015.pdf)

Reason: To ensure the safety and security of the development and its occupiers in compliance with saved UDP policy ENV32.

### **Notes for Applicant**

#### **Fire Service**

Water supplies for firefighting should be in accordance with “National Guidance Document on the Provision for Fire Fighting” published by Local Government Association and WaterUK: <https://www.dropbox.com/s/5s5i45fxr3m3hrt/national-guidance-document-on-water-for-ffg-final.pdf?dl=0>

For further information please contact the WMFS Water Office at the address given above or by email on [Water.Officer@wmfs.net](mailto:Water.Officer@wmfs.net)

Vehicle access route to meet the requirements of ADB Volume 2, Table 20, noting that WMFS appliances require a carrying capacity of 15 tonnes.

#### **Police**

1. I am unsure as to whether the containers in the new aspect of the site will be the be subject of an intruder alarm. If not, I would recommend that one be installed. It should be to a police response standard.

2. If the application were to be approved I would ask that any work be carried out to the standards within the Secured by Design ‘Commercial 2015’ guide. This is available to be accessed at;

[http://www.securedbydesign.com/pdfs/SBD\\_Commercial\\_2015.pdf](http://www.securedbydesign.com/pdfs/SBD_Commercial_2015.pdf)

3. I note that there is no indication that a CCTV system is, or will be, installed at the site. I would recommend that a suitable system be installed. This should provide coverage of external views of the buildings, external view of the all entrances to the building including fire exits to the building and all parking and maintenance areas. Any images should be recorded onto a secure system and be held for a minimum of 31 days (and complies with the Information Commissioner’s CCTV guidance document - please see -

[http://www.ico.gov.uk/for\\_organisations/data\\_protection/topic\\_guides/~media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/ICO\\_CCTVFINAL\\_2301.ashx](http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/~media/documents/library/Data_Protection/Detailed_specialist_guides/ICO_CCTVFINAL_2301.ashx)

4. Any CCTV system should be compatible with any existing, or proposed, lighting scheme. Any scheme should follow the guidelines and standards as indicated in 'Lighting Against Crime' guide that is available to view and download at;

[http://www.securedbydesign.com/pdfs/110107\\_LightingAgainstCrime.pdf](http://www.securedbydesign.com/pdfs/110107_LightingAgainstCrime.pdf)

5. I am unsure as to the current condition of the existing boundary treatment, the gate or the current locking mechanism employed to secure the site. I note that the gate and boundary treatment is indicated as being retained, however I would advise that a careful check is undertaken to ensure that all parts of the fencing and the gates are in good working order and note in need of repair. Similarly I recommend that the locking mechanism be of a suitable standard, as indicated in the aforementioned 'Commercial 2015' guide.'

### Coal

The Coal Authority records indicate the presence of three recorded mine entries (shafts) within the planning boundary which could pose a very serious risk both to public safety and ground stability.

Building over or within the influencing distance of a mine entry (shaft or adit) can be dangerous and has the potential for significant risks to both the development and the occupiers if not undertaken appropriately. The Coal Authority would draw your attention to our adopted policy regarding new development and mine entries:

<https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distanceof-mine-entries>

### 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.



**Objections to Business Use and Operating Hours**

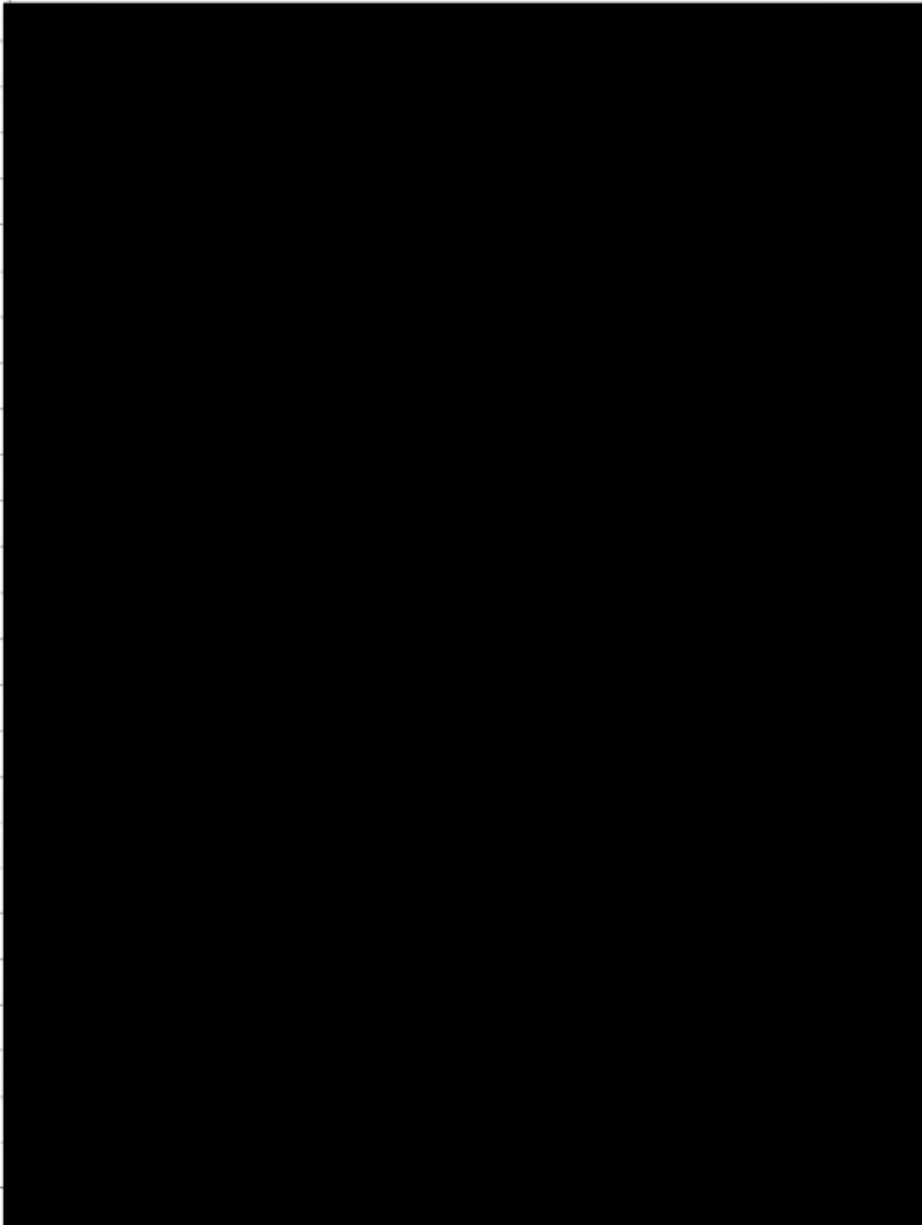
- i. Main objection is the fact these people moved in at a time when the council were on their Christmas break so no one could be accountable.
- ii. The proposed company hadn't put in order any planning permission and just took it upon themselves that they are above the council, thus showing total disregards to town and council planning and the council.
- iii. The proposed company show total disregard to the general public as to how it would affect them.
- iv. That the council wouldn't have been aware if I hadn't have brought it to their attention
- v. These containers are not of a temporary structure, Over the Christmas period workers were seen working late at night using floodlighting to make permanent adjustments to the containers i.e.
  - Welding
  - Fitting Steps
  - Fitting Gangways
  - Fitting lighting and electricity
  - Fitting of floodlights that operate throughout the night to accommodate the coming and going of vehicles
  - Parking and causing disruption to an already exhausted road (Croxstalls Road) owing to the fact that the level crossing is closed.
  - Noise, light and vehicle pollution
  - Flood lights shining onto and into nearby homes.
  - The containers are two-storey, therefore overlooking properties and gardens
  - People working in the containers can see directly into our kitchens and bedrooms.
  - Their parking on Croxstalls Road at time is causing disruption
  - Coaches returning at all hours into the night.

We are not objecting to the coach business but had we known of the full extent of the development of the site, we may have voiced concerns over the operating hours and conduct of the business. There appears to have been a lack of regard for the residents and the council procedure.

ECONOMY AND  
ENVIRONMENT

21 MAR 2018

RECEIVED

|    | HOUSE NUMBERS   |
|----|---|
| 1  |  |
| 3  |   |
| 5  |   |
| 7  |   |
| 9  |   |
| 10 |   |
| 11 |   |
| 13 |   |
| 15 |   |
| 17 |   |
| 19 |   |
| 21 |   |
| 23 |   |
| 25 |   |
| 27 | ECONOMY AND<br>ENVIRONMENT<br>21 MAR 2018<br>RECEIVED                               |

**Recommendation Summary:**



## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 6**

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

**Location:** 2A, MIDDLETON ROAD, BROWNHILLS, WALSALL, WS8 6JF

**Proposal:** PROPOSED DEVELOPMENT IS FOR 6 NEW DWELLINGS COMPRISING 4 X 2 BED SEMI-DETACHED HOUSES, 2 X 3 BED DETACHED (INCLUDING ALL ASSOCIATED INFRASTRUCTURE). THE EXISTING SITE HAS 2 ACCESS POINTS SERVING NO.98 AND NO.2A - THE APPLICATION INCLUDES A PROPOSAL FOR A SINGLE ACCESS POINT SERVING THE PROPOSED NEW DWELLINGS AND ALSO THE EXISTING DWELLING NO.95 CHASE ROAD.

**Application Number:** 17/0227

**Applicant:** R W Services

**Agent:** Mr Aaron McNally

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

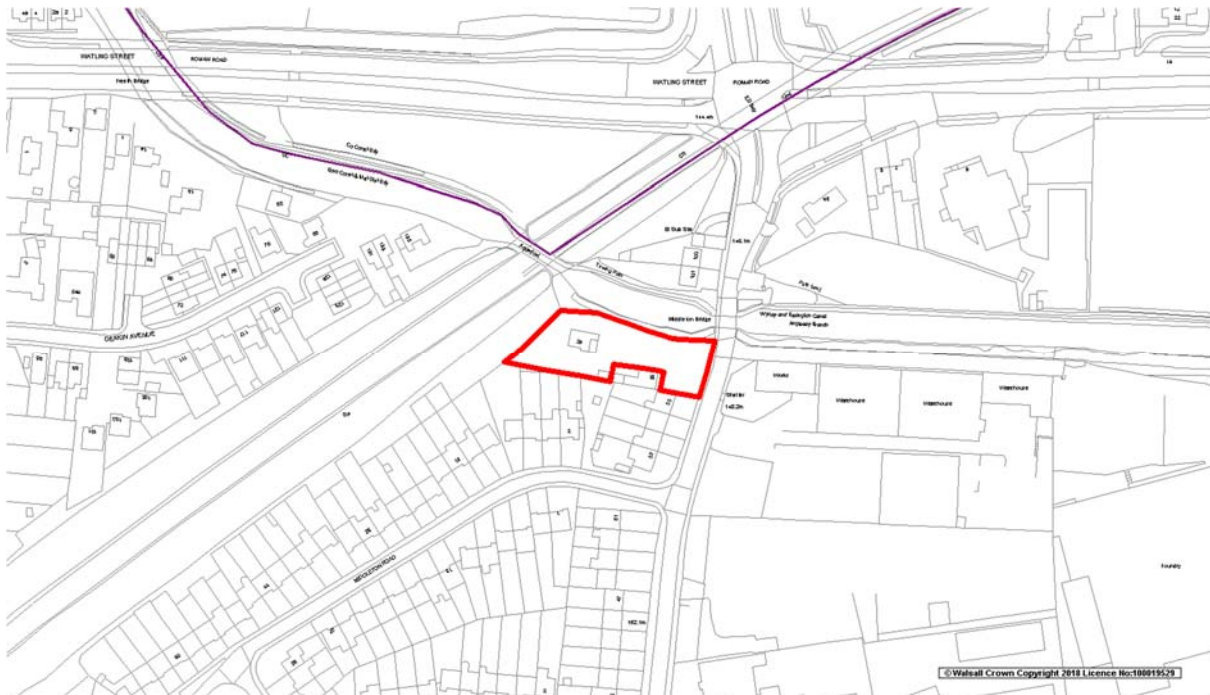
**Case Officer:** Stuart Crossen

**Ward:** Brownhills

**Expired Date:** 18-Apr-2017

**Time Extension Expiry:** 28-Feb-2019

**Recommendation Summary:** Grant Planning Permission Subject to Conditions



## **Proposal**

The proposed development is for 6 new dwellings, 2 pairs of two bedroom semi-detached houses and 2 x three bedroom detached houses

The existing site had 2 access points serving no.95 Chase Road and no.2a Middleton Road - the application includes a proposal for a single access point serving the proposed new dwellings and also the existing dwelling no.95 Chase Road.

The semi-detached houses would have main side gable roofs, one would have a front feature gable, the main habitable room windows would be on the front and rear elevations.

The detached house would have a gable design with no main habitable side elevation windows.

The two pairs of semi-detached houses have a side gable main roof and one pair has a front facing gable.

All dwellings are two-storey.

A new junction is proposed as part of the application following concerns raised by the Transportation Officer.

All of the houses would have 2 car parking spaces, including 2 to serve the existing house. The spaces would be to the front of the respective houses they serve apart from plot three which due to the constraints of the site has a space to the rear of plot 1.

The bin collection point would be to the front of the site next to Chase Road.

## **Site and Surroundings**

The southern boundary of the site meets the side boundary to number 95 Chase Road which is in the applicants ownership, the other side is number 55 which is one half of a pair of semi-detached houses. Number 95 has no side elevation windows. Behind these houses is the Severn Trent access to a pumping station and the rear gardens of houses along Middleton Road which are all over 19 metres deep.

The rear (West) boundary of the site meets the former railway. To the North is the canal and to the East is Chase Road, the bridge to this road over the canal would be 6.5 metres away from the start of the proposed access.

There is a TPO Lime Tree at the front of 95 Chase Road which is to be retained.

## **Relevant Planning History**

None

### **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 (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.

### **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
- ENV10: Pollution
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV24: Wildlife Corridors
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

### **Black Country Core Strategy**

- HOU2: Housing Density, Type and Accessibility
- ENV1: Nature Conservation

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- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV4: Canals
- ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island

## **Walsall Site Allocation Document 2019**

HC2: Development of Other Land for Housing

EN4: Canals

T4: The Highway Network

## **Supplementary Planning Document**

### **Designing Walsall**

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character
- DW9 High Quality Public Realm
- DW10 Well Designed Sustainable Buildings

### **Air Quality SPD**

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

## **Consultation Replies**

**Transportation** – No objection subject to conditions for access specification modification, construction methodology, consolidated parking areas lighting column to be relocated, visibility splays to be provided.

**Canal and Rivers Trust** – No objections subject to conditions for construction methodology, landscape and boundary details, removal of permitted development rights, drainage details and construction and Environmental Management Plan.

**Pollution Control** – No objections subject to conditions for construction management plan, restricted hours of construction, ground investigations, electric car charging point and noise mitigation.

**Inland Waterways** – No objections concern raised about canal bank integrity, landscaping and boundary treatment.

**Fire Officer** – No objections

**Tree Officer** – No objections subject to conditions to safeguard protected tree during construction.

## **Representations**

### **35 objections from 13 people on the following grounds:**

Application taking too long to determine.

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The refuse collection would not be possible safely.  
Loss of privacy.  
No regard for people living there  
Deeds show access from Middleton Road.  
Dangerous access.  
Increase in traffic.  
Brownhills bypass is needed.  
Houses too tall.  
Noise.  
Flooding due to hard surfacing.  
Within 2 metres of a neighbouring boundary and over 3 metres high.  
Access to 2a Middleton Road is owned by a neighbour not the applicant.  
Overlooking.  
Damage to hedge has occurred.  
Overbearing, mass, bulk and proximity to neighbouring houses.  
Water drainage pipe not shown on plan.  
Sewage plans not provided.  
Loss of value to neighbouring houses.  
Hedge should be retained.  
Against any social housing.  
Construction noise.  
Pollution to the Canal.  
Wrong clientele and lowers the tone.  
The Council's website doesn't work.  
Trees missing from the proposed plan.

## **Determining Issues**

- **Principle of Development**
- **Design and Character of the Area**
- **Amenity of Surrounding Occupiers**
- **Contaminated Land**
- **Air Quality**
- **Noise**
- **Canal**
- **Parking & Access**
- **Trees**
- **Local Finance Considerations**

## **Assessment of the Proposal**

### **Principle of Development**

The site is located within a predominantly residential area and comprises land previously occupied by a residential property. The site is considered to be in a sustainable location, with the local convenience shops 400m away and 1.1km from the District Centre of Brownhills. SAD policy HC2 states that "The provision of housing on other previously developed sites will be encouraged" this is on the basis that the scheme can provide satisfactory amenity for residents which is considered below and the design and density meets a minimum of 35dph (the proposal is



35dph). This policy applies to the scheme which is subject to being acceptable in terms of other policies of the plan which is considered below.

### **Design and Character of the Area**

The proposed 2 storey pitched roof design is similar to the neighbouring houses.

The proposed heights as illustrated on the plans are not significantly higher than the neighbouring houses at approximately 9 metre high and on ground lower than Chase Road.

All the residential units would have direct pedestrian access to the street, creating an active frontage and providing enhanced safety and security to the immediate vicinity.

The gardens serving each of the houses exceed the Councils minimum standards as set out in the Designing Walsall SPD.

### **Amenity of the Surrounding Occupiers**

The main habitable room windows are on the front and rear elevations. Plot 1 has a 25 metre gap to the houses at the rear which is sufficient that there would not be any unacceptable overlooking, the remaining plots are approximately in line with one another and this relationship ensures there is little if any potential for overlooking/ loss of privacy, loss of light or any overbearing impact to the amenity of potential occupiers.

The existing house number 95 would be approximately in line with plot 1 of the proposal and 23.9 metres from plots 5 and 6, the side elevation facing plot 1 has no main habitable side elevation windows and the relationship between this house and the proposed houses is acceptable to ensure satisfactory amenity for occupants.

Severn Trent have recommended conditions for drainage details which can be attached to permission if granted in the interests of ensuring satisfactory means of drainage.

### **Contaminated Land**

Pollution Control does not have any historical information of the application site and the Applicant has not submitted any with the application. Pollution Control recommend that the Applicant undertake a contaminated land investigation, Phase 1 desktop to begin with followed by intrusive investigations if necessary which can be conditioned.

Given the access to the site and surrounding residential premises, if permission is granted Pollution Control recommend that the Applicant submit a Construction Management Plan to control construction impacts upon the highway and neighbouring residential premises.

### **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

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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 by pollution control officer that the Applicant make provision for future electric vehicle charging points, which can be conditioned.

### **Noise**

Watling Street is subjected to significant road traffic noise, which may also impact the development site. Rather than undertaking an acoustic survey and then implementing the recommended mitigation measures to ensure compliance with British Standard BS8233:2014 'Guidance on sound insulation and noise reduction for buildings', it is recommended that the Applicant agree acoustic mitigation measures to ensure that future residents will not be subjected to significant noise levels. It is recommended that glazing to habitable rooms have a minimum sound reduction of Rw 38 decibels and are served by either a mechanical ventilation or a passive ventilation system, which also has a minimum sound reduction of Rw 38 decibels in the open position. Furthermore, to provide the rear gardens with some acoustic mitigation it is recommended by pollution control officers that the Applicant install solid boundary treatment of at least 2 metre height, to Plots 1 – 4 which can be conditioned.

### **Canal**

#### Impact on the structural integrity of the canal due to the proximity of the buildings to the canal.

The application site is located immediately south of the Anglesey Branch of the Wyrley & Essington Canal, which sits in a cutting at this point. The cutting slope itself is within the Canal & River Trust ownership. The proposed dwellings are proposed to be built very close to the top of the cutting. It is important that development does not adversely affect the stability of the cutting slope, as this could significantly increase the risk of damage to the adjacent canal.

The NPPF states that planning decisions should ensure that new development is appropriate for its location in the context of avoiding unacceptable risks from land instability, and being satisfied that a site is suitable for its new use, taking account of ground conditions and land instability.

The Canal and River Trust requires that a Construction Methodology, including details of all earthmoving, excavations and the design and construction of all foundations for buildings, hardstanding and fencing adjacent to the top of the canal cutting is secured by condition in order that the extent of the risk of such works to the stability of the cutting can be properly quantified and assessed. This can be secured by condition.

#### Impact on the structural integrity of the canal due to the drainage proposals.

The application form states that the method of foul drainage is 'unknown' and no details are provided in relation to surface water drainage from the site. The drainage methods of new developments can have significant impacts on the structural integrity, water quality and the biodiversity of waterways. It is important to ensure that no contaminants enter the canal from foul or surface water drainage.

It should also be noted that the action of soakaways can adversely affect the stability of cutting slopes, so it is important that this is taken into account when deciding where to locate any soakaways if they are proposed. Full details therefore on foul and surface water drainage should be submitted for assessment and agreed. These details can be conditioned.

The Canal & Rivers Trust have requested that permitted development rights are removed due to the proximity to, and relationship with the canal cutting. It is important to ensure that no additional development is carried out which may adversely affect the stability of the canal cutting adjacent to the northern site boundary without the permission of the local planning authority, in consultation with the Canal & River Trust.

#### Impact on the Character, Appearance and Natural Environment of the waterway corridor.

The existing cutting slope is heavily vegetated and this provides screening of the site from the waterway corridor. The development is in close proximity to the northern boundary and it should be ensured that the development will not adversely impact on the retention of existing planting. The canal is designated as a county wildlife corridor and it is therefore also important to ensure that there is no adverse impact to the boundary trees, habitat or water quality during construction. The details on protection measures can be submitted and assessed and any mitigation measures put in place prior to commencement of development. This detail can be conditioned.

#### **Parking & Access**

The revised proposal looks to reduce the number of new dwellings from 9 to 6 and also relocate street furniture to achieve the required visibility.

#### Visibility splay

The Applicant has provided speed data for Chase Road and the return data shows an 85<sup>th</sup> vehicle speed, in both directions, of 31 mph.

Using this data and the formula for calculating the stopping sight distance (SSD) shown in paragraph 10.1.5 of Manual for Streets 2 the SSD is 49.29 metres when taking into account a driver to bonnet length of 2.4 metres.

The Highways officer has accepted the applicant's view that the visibility splay should be taken to the centre of the oncoming lane as it is unlikely that a vehicle would carry out an overtaking manoeuvre at the location.

#### Form of development access

The development will not be adopted. On this basis it is appropriate that for a private development of this size that the development is accessed by a footway cross-over rather than a bell-mouth.

#### Internal estate road and footway

Currently, the Applicant is proposing a carriageway width of 4.5 metres with a footway width of 1.8 metres (total width 6.3 metres). It is important to allow two vehicles to pass each other within the development to make sure vehicles do not have to wait within Chase Road which would increase congestion. It would be preferable for the development to be serviced by a 4.8 metre carriageway and a 1.5 metre footway (total width remains unchanged at 6.3 metres).

### Relocation of street furniture and telegraph pole

As part of the works a street-lighting column and telegraph pole will need to be relocated out of the visibility splay. To ensure the local highway authority's right of access for maintaining the street-lighting column it will be necessary for the pole to be placed out within the development just beyond the footway and then for this land to be dedicated as highway as part of a section 278 (38) agreement.

### Keep Clear marking

The Highway Officer recommends that the proposed Keep Clear is not provided as part of the Works but that the situation is monitored and reactive works taken accordingly.

### Refuse Collection

The amended site layout include a bin store to the front of the site, the collection of bins here would be similar to the existing situation with houses on Chase Road. The Highway Officer raises no objection in this regard.

### **Trees**

There is a protected Lime tree at the front of the site TPO title no. 2/2015. Suitable tree protection measures can be secured by condition on planning permission if granted to ensure that construction works do not affect this protected tree. There are other trees within the site, however these are not protected.

### **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 6 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.

### **Other issues raised through consultation**

The delay in determining the application is at the request of the applicant to address the Councils Highway concerns and this approach is in accordance with positive and pro-active engagement with applicants.

Any personal concerns raised about the applicant are not a determining issue of a planning application.

Land ownership is a matter for interested parties and not a determining issue of a planning application.

The hedge is not protected and its ownership unclear, this is a matter for interested parties.

Any potential loss of value to neighbouring houses as a result of the development is not a determining issue of a planning application.

The social status or background of the potential occupiers of the houses is not a material consideration of this application.

One of the objections is on the basis that the Council refuses development within 2 metres of a neighbouring boundary and over 3 metres high. This is considered to be a reference to permitted development rights which is not relevant to this application. Construction noise is temporary and not a reason to refuse planning permission.

At the time of the complaint about the Council's website not working officers were aware of issues with the Council's website, however taking account of the length of time the application has run, the number of consultations and responses received it is considered that there has been sufficient opportunity for residents and consultees to make representations.

## **Conclusions and Reasons for Decision**

The principle of a residential development at the proposed density is considered acceptable and accords with SAD policy HC2.

The design and layout is compatible with the character of the area and accords with UDP policy ENV32

Pollution Control constraints with regard to noise, ground contamination and air quality can be mitigated for by condition and accords with UDP policies GP2, ENV10 and the Air Quality SPD

The gardens to serve the proposed houses meet the Council's amenity standards, with respect to the lack of private amenity space for the maisonettes it is considered that on balance the design and size of the maisonette combined with the location of the canal nearby which has good links to open space (Brownhills Common) would provide a satisfactory level of amenity for occupants to accord with Designing Walsall SPD.

The potential impact on the character in terms of, pollution stability and character, from this development and through permitted development rights can be protected through conditions in accordance with BCCS policy ENV5 and the NPPF.

On balance, the Highway Authority considers the development will not have severe transportation implications and is acceptable in accordance with NPPF 2018 para 109.

Conditions can be attached to safeguard the protected Lime tree in accordance with UDP policy ENV18.

Taking into account the above factors it is considered that the application should be approved.

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

Officers have spoken with the applicant's agent and in response to concerns raised regarding the layout and highway safety amended plans and details have been submitted which enable full support to be given to the scheme.

## **Recommendation**

Grant 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 92 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: -

Site Layout (30689 02 Rev B) received 22/10/18

Plot 1 Elevations and Floor Plans (30689 04) received 06/02/19

Plot 2 Elevations and Floor Plans (30689 05) received 06/02/19

Plots 3 and 4 Elevations and Floor Plans (30689 06) received 06/02/19

Plots 5 and 6 Elevations and Floor Plans (30689 07) received 06/02/19

Transport Statement V3 received 22/10/18

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).

3a) Prior to the commencement of the development, a Construction Methodology Statement shall be submitted to and approved by the Local Planning Authority which provides the following information:

- Details of parking and turning facilities for site operatives and construction deliveries will be located
- Details of the wheel cleansing arrangements to prevent mud from being deposited on the highway during the period of construction.
- Details of all earthmoving adjacent to the northern site boundary with the Anglesey Branch of the Wyrley & Essington Canal
- Details of the design and method of construction of the foundations of the dwellings
- Details of construction hours

3b) This provision shall be retained during construction in accordance with the approved details.

Reason: In order to minimise on street parking by site operatives and the potential disruption to the free flow of traffic along the public highway, in the interests of

highway safety and to ensure that the design of the foundations for the dwellings and any excavations and/or earth moving required during construction work does not adversely affect the stability of the canal cutting adjacent to the northern site boundary and to accord with the advice and guidance relating to land stability in accordance with UDP policies ENV10 and SAD policy EN4 and contained in Paragraphs 120 and 121 of the National Planning Policy Framework March 2012, and the current National Planning Practice Guidance.

4a) The development (including any works of demolition / remediation) shall proceed in accordance with a Construction and Environmental Management Plan to be submitted to and approved in writing by the local planning authority.

4b) The development shall be carried out in accordance with the approved details.

Reason: To safeguard the environment and in the interests of the structural integrity of the waterway and to ensure the proposed works do not have any adverse impact on the safety of waterway users and the integrity of the Wyrley and Essington Canal in accordance with Policy ENV4 of the Black Country Core Strategy.

5a) Prior to demolition and construction activities commencing the applicant shall undertake a contaminated land investigation having regard to current best practice (see Note for Applicant CL1).

5b) Prior to built development commencing a copy of the findings of the site investigation, ground contamination survey and ground gas assessment, together with an assessment of the hazards arising from any land contamination and/or ground gas shall be forwarded to the Local Planning Authority. (see Note for Applicant CL2)

5c) Prior to built development commencing a 'Remediation Statement' setting out details of remedial measures to deal with the identified and potential hazards of any land contamination and/or ground gas present on the site and a timetable for their implementation shall be submitted to and agreed in writing by the Local Planning Authority. (see Note for Applicant CL2)

5d) The remedial measures as set out in the 'Remediation Statement' required by part iii) of this condition shall be implemented in accordance with the agreed timetable.

5e) If during the undertaking of remedial works or the construction of the approved development unexpected ground contamination not identified by the site investigation required by part i) of this condition is encountered development shall cease until the 'Remediation Statement' required by part iii) of this condition has been amended to address any additional remedial or mitigation works required and agreed in writing by the Local Planning Authority.

5f) 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)

5g) The applicant shall provide written confirmation that all imported clean cover materials are not contaminated and are suitable for their intended use.

Reason: To ensure safe development of the site and to protect human health and the environment to comply with UDP policies ENV10 and GP2.

6a) Prior to commencement the development hereby permitted drainage plans for the disposal of foul and surface water flows shall be submitted to and approved in writing by the Local Planning Authority.

6b) The scheme shall be carried out in accordance with the approved details before the development is first brought into use.

Reason: This is to ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution of the Canal in accordance with BCCS policy ENV5.

7a) Prior to commencement a landscaping and boundary treatments scheme for the northern site boundary shall be submitted to and agreed in writing by the Local Planning Authority.

7b) The scheme shall indicate details of the design, materials and means of construction to be used in any new boundary fence or wall adjacent to the canal cutting, the boundaries for plot 1 and house number 95, the location and species of any new trees or hedges and shall incorporate a suitable barrier and/or boundary treatment adjacent to the vehicle parking/manoeuvring areas to prevent the risk of vehicles from entering the waterway.

7c) The approved scheme shall be carried out prior to the first occupation of any of the dwellings hereby approved.

Reason: To ensure that any new boundary walls or fences adjacent to the canal cutting are appropriately designed and constructed in order to minimise the risk of adverse impacts on the stability of the cutting, to minimise the visual impact of the development in the interests of protecting the character and appearance of the canal corridor and in the interests of the safety of users of the canal and to provide noise mitigation for occupiers and to comply with Paragraphs 120-121 of the National Planning Policy Framework March 2012 and the current National Planning Practice Guidance, and Policy ENV4 of the Black Country Core Strategy and saved Policies GP2, ENV 32 & 33 of the Walsall UDP.

8a) Notwithstanding the submitted plans a revised site layout plan shall be submitted to and approved in writing by the Local Planning Authority illustrating;-

i) The access road widened to 4.8m,

ii) The access point onto Chase road taking the form of a Vehicular Footway crossing rather than the Bellmouth shown.

8b) The development hereby approved shall be carried out in accordance with the approved revised site layout plan.

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Reason: To ensure the safe and satisfactory operation of the development and in accordance with UDP policy GP2, T7 and T13.

9a) Prior to commencement of the development details of protection for the retained protected Lime tree in accordance with '*BS5837: 2012 Trees in relation to design, demolition and construction – Recommendations*' shall be submitted to and approved in writing by the Local Planning Authority.

9b) The development hereby approved shall be carried out in accordance with the approved tree protection measures shall be fully implemented prior to the commencement of any works on site and shall be retained throughout any construction phase until the completion of development.

Reason: To safeguard the Lime tree included in the Tree Preservation Order on the site in accordance with UDP policy ENV18.

10a) Prior to the first occupation of any dwelling on the development, the access, parking and vehicle manoeuvring areas 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.

10b) These areas shall thereafter be retained and used for no other purpose.

Reason: To ensure the safe and satisfactory operation of the development and in accordance with UDP policy GP2, T7 and T13.

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

Reason: To ensure the safe and satisfactory operation of the development and in accordance with UDP policy GP2, T7 and T13.

12) During any site preparation and building operations no storage of materials, equipment or waste, nor passage of vehicles, nor lighting of fires shall take place beneath the canopy of the protected tree to be retained.

Reason: To safeguard the Lime tree included in the Tree Preservation Order on the site.

13) Prior to the new access road first coming into use, a vehicle footway crossing to align with the new access shall be installed. The access shall take the form of a Vehicular Footway Crossing and not a kerbed bellmouth. The works shall also include reinstating the existing redundant dropped kerb access to the existing dwelling back to full kerb height.

Reason: To ensure the satisfactory completion and operation of the access, in accordance with UDP Policy GP2, the Council's footway crossing procedure and in the interests of highway safety.

14) Prior to occupation of the development the existing street lighting column shall be relocated to provide the necessary visibility at the new access shall be carried out.

Reason: To ensure a satisfactory design to provide adequate visibility is attained at the access in the interests of highway safety in accordance with UDP policy ENV32.

15a) Prior to occupation details shall be submitted to and approved by the Local Planning Authority for Acoustic Mitigation Measures to safeguard occupiers of the houses hereby approved.

15b) Prior to occupancy the Applicant shall submit a written Validation Statement that demonstrates the agreed acoustic mitigation measures have been installed.

Reason: To protect human health and the environment of future occupants in accordance with UDP policy GP2.

16a) Prior to occupation an electric charging point shall be installed in all of the approved houses which meets the following specification:

An external weatherproof and lockable covered 32 Amp external 7 pin charging socket to comply with EN 62196-2 and be compatible with a J1772 Type 2 connector.

The charging unit shall feature a Mode 3 (IEC 61851) communication module.

The power supply and charging point shall be phase 3 compatible and be located near the parking area for each dwelling.

Each charging unit to be supplied by its own independent radial circuit.

All wiring shall comply with BS 7671 or equivalent replacement standard.

16b) The agreed electric vehicle charging points shall be fully implemented in accordance with the approved details before the development is first brought into use.

Reason: In the interests of creating a sustainable form of development and to encourage the use of ultra-low emission vehicles in accordance with Policies ENV8 (Air Quality) and DEL1 (Infrastructure Provision) of the Black Country Core Strategy and to comply with UDP policies GP2 and ENV10

17) Notwithstanding the provisions of the Town and Country Planning ( General Permitted Development ) Order 2015 ( or any order revoking , re-enacting or modifying that Order) the visibility splays at the access point on Chase Road shown on drawing no.30689 02 Rev B shall, at all times, be kept free of structures and planting exceeding 600mm in height above carriageway levels.

Reason: In the interests of highway safety and in accordance with SAD policy T4.

18) Notwithstanding the provisions of the Town and Country Planning ( General Permitted Development ) Order 2015 ( or any order revoking , re-enacting or modifying that Order), no development within Classes A to F of Part 1 Schedule 2 of the said Order shall be carried out to any plots hereby approved.

Reason: That due to the proximity to, and relationship with the canal cutting it is considered important to ensure that no additional development is carried out which may adversely affect the stability of the canal cutting adjacent to the northern site boundary without the permission of the local planning authority, in consultation with the Canal & River Trust and in accordance with Policy ENV4 of the Black Country Core Strategy and to accord with the advice and guidance relating to land stability contained in Paragraphs 120 and 121 of the National Planning Policy Framework March 2012, and the current National Planning Practice Guidance.

### **Notes 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 S278 of the Highways Act 1980 with the Highway Authority or obtain a Road Opening Permit from the Highway Authority for all works within the existing public highway. For further advice please contact Highway Development Control Team on 01922 655927.
3. The access onto Chase Road shall be constructed in accordance with the Council's footway crossing specification SD11/8 dated January 2008 and to the satisfaction of the Highway Authority. All works within the public highway shall be in accordance with all statutory requirements.
4. As part of the works a street-lighting column and telegraph pole will need to be relocated out of the visibility splay. To ensure the local highway authority's right of access for maintaining the street-lighting column it will be necessary for the pole to be placed out within the development just beyond the footway and then for this land to be dedicated as highway as part of a Section 38/278 agreement.
5. The relocating of the street light shall be with the agreement of the Council's street lighting partner Amey and shall be at the applicant's expense.

#### **Canal and Rivers Trust**

1. The applicant/developer is advised to contact the Works Engineering Team on 0303 040 4040 in order to ensure that any necessary consents are obtained and that the works comply with the Canal & River Trust "Code of Practice for Works affecting the Canal & River Trust".
2. The applicant / developer is advised to contact Keith Johnston, Estates Surveyor ([keith.johnston@canalrivertrust.org.uk](mailto:keith.johnston@canalrivertrust.org.uk)) to ensure that any necessary consents/licenses for access to or oversailing of any land within the ownership of the Canal & River Trust are obtained.

#### **Fire Service**

1. Water supplies for firefighting should be in accordance with "National Guidance Document on the Provision for Fire Fighting" published by Local Government

Association and WaterUK: <https://www.dropbox.com/s/5s5i45fxr3m3hrt/national-guidance-document-on-water-for-ffg-final.pdf?dl=0>

2. For further information please contact the WMFS Water Office at the address given above or by email on [Water.Officer@wmfs.net](mailto:Water.Officer@wmfs.net)

3. The approval of Building Control will be required with regard to Part B of the Building Regulations 2010.

### Contaminated Land

CL1 Ground investigation surveys should have regard to current 'Best Practice' and the advice and guidance contained in National Planning Policy Framework; British Standard BS10175: 2011 'Investigation of potentially contaminated sites – Code of Practice'; British Standard BS5930: 1999 'Code of practice for site investigations'; Construction Industry Research and Information Association 'Assessing risks posed by hazardous ground gasses to buildings (Revised)' (CIRIA C665); or any relevant successors of such guidance. You are strongly advised to consult with the Local Planning Authority on the construction, location and potential retention of any boreholes installed for the purposes of ground gas and or groundwater before installation of same.

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 ('topsoil verification' certificate), manufacturer's specification sheets for any materials or systems employed together with certification of their successful installation should also be submitted. Appropriate records and results of any post remediation ground gas testing shall 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.

### Acoustics

1. British Standard BS8233:2014 'Guidance on sound insulation and noise reduction for buildings' has relevance for this application.

2. Acoustic mitigation to habitable rooms may be achieved through the use of acoustic glazing, with a minimum sound reduction of Rw 38 decibels, combined with

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the use of mechanical ventilation or a passive ventilation system (which has a minimum sound reduction of  $R_w$  38 decibels in the open position).

3. Acoustic mitigation to rear gardens of Plots 1 – 4, may be achieved through the installation of solid boundary treatment of at least 2 metre height.





## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 7**

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

**Location:** ALDRIDGE SCHOOL, TYNINGS LANE, ALDRIDGE, WALSALL, WS9 0BG

**Proposal:** SINGLE STOREY EXTENSION FORMING MEETING ROOMS

**Application Number:** 18/1447

**Applicant:** Aldridge School

**Agent:** Jacobs Feasey Associates Ltd

**Application Type:** Full Application: Minor  
Use Class D1 (Non-Residential Institutions)

**Case Officer:** Devinder Matharu

**Ward:** Aldridge Central And South

**Expired Date:** 10-Jan-2019

**Time Extension Expiry:** 01-Mar-2019

**Recommendation Summary:** Grant Planning Permission Subject to Conditions



## Proposal

The application proposes the construction of a single storey extension forming two meeting rooms, a conference room and an office. The rooms would be accessed internally from the lobby and circulation space. Windows to the conference room and meeting room would face the front car parking area of the school.

The proposed extension would be irregular in shape extending further out along the eastern part of the site, being 7.5m in length at one end and 4.1m at the other end. The width of the extension would vary from 7.m to 10.3m and would be 3.4m high with a flat roof following the curve of the existing building

The submitted documentation states that the facing materials would match those of the existing building.

The planning agent has stated:

- The meeting rooms are to replace existing accommodation within the school buildings.
- The intention of the new extension is to locate the meeting rooms as close as possible to the existing school entrance so that visitors do not have to wander through the school and they can be supervised by the existing reception staff.
- This will assist in ensuring safeguarding of pupils which is a priority in the school.
- The provision of the meeting rooms will not change or add to the existing school use of the school site.

## Site and Surroundings

Aldridge School is located off Tynings Lane with vehicular and pedestrian access between numbers 6 and 8 Tynings Lane. The school buildings are located to the north of the playing fields and are surrounded by housing in Tynings Lane, Walsall Road, Quicksand Lane, Hepburn Close, Meadow Road and Gaydon Road.

The front part of the school encompassing the lobby, reception and circulation area is single storey where the main school building to the east is two storeys high.

The area in front of the reception, lobby and circulation area is soft and hard landscaped and includes a pathway to the school entrance.

## Relevant Planning History

BC48113P - Erection of Single Storey Extension consisting of 3 Classrooms & Ancillary Accommodation. Grant Permission Subject to Conditions 1997-01-03.

03/0641/FL/E4 - Geography block infills extensions and new windows. Grant Permission Subject to Conditions 2003-06-30.

04/0080/FL/E4 - Installation of lift for disabled access. Grant Permission Subject to Conditions. 2004-03-12.



06/2069/FL/E6 - Replacement of glazed wall to swimming pool with masonry and windows (east wall). Grant Permission Subject to Conditions 2007-01-23.

06/2068/FL/E6 - Replacement of windows with cladding panels and replacement of doors at A Block Sports Hall. Grant Permission Subject to Conditions 2007-01-23.

12/1647/FL - Demolition of existing side garage and rear conservatory at 6 Tynings Lane to allow the widening of existing access to Aldridge School to form a designated pedestrian access. Grant Permission Subject to Conditions 2013-02-06.

13/0210/FL - Variation of conditions 2a (details of bollards) and 4 (approved plans) on planning approval 12/1647/FL to amend boundary wall to fence and approve details of bollards. Grant Permission Subject to Conditions 2013-03-25.

16/0518- Outline planning permission for the erection of 3 no. dwellings with access details to be considered, and all other matters reserved. Grant Permission Subject to Conditions 05-12-16

18/0228- The proposal is to create a 'Ground-Art feature' in the form of an Analemmatic ("Human") Sundial in the grounds of Aldridge School. Grant Permission Subject to Conditions 24-Apr-2018

## **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 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 (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.

### **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
- ENV10: Pollution
- ENV11: Light Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV32: Design and Development Proposals
- ENV40: Conservation, Protection and Use of Water Resources
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis
- LC1: Urban Open Spaces
- LC6: Sports Pitches

### **Black Country Core Strategy**

- Vision, Sustainability Principles and Spatial Objectives
- CSP4: Place Making
- HOU5: Education and Health Care Facilities
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island

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

T4: The Highway Network

### **Supplementary Planning Document**

### **Designing Walsall**

- DW3 Character

## Consultation Replies

**Pollution Control** – No objection

**Fire Officer** – No objection

**Public Health** – No objection but makes comments on design, insulation, will the proposal take away open space activity from students, will there be alternative provision of space, and will there be opportunities for green infrastructure provision.

**Strategic Policy** – No objection

**Community Safety** – No objection but makes comments that the siting of the proposed addition would foreshorten the view of approaching pedestrians (currently provided by the windows set into the block to be enclosed) to the reception block. CCTV camera or additional windows and lighting at this elevation to ensure that a full view of approach to reception is maintained.

**Police**- No objection subject to secure by design.

**Highways** – No objection subject to note for applicant regarding mud on the highway

## Representations

Three letters have been received objecting to the proposal on the following grounds:

- No details as to where the proposed extensions are to be located
- Large meeting rooms would attract more people to the school
- Access and parking issues including Tynings Lane is a narrow road and extremely busy during school day, additional construction traffic, previous experience construction vehicles arriving at 7am and leaving engines running whilst waiting for access to school, all construction vehicles to use the main entrance to school and not Quicksand Lane, use of Quicksand Lane causes additional noise, nuisance, disruption and pollution for neighbours, vehicles using Quicksand Lane endanger pupils arriving on foot or by car when they are accessing the school before and after school hours, not clear whether the proposal would result in the increase use of the gate at Gaydon Road.

## Determining Issues

- Principle of development
- Design and character of the area
- Impact upon neighbouring occupiers
- Access and parking

## Assessment of the Proposal

### Principle of development

Policy HOU5 of the Black Country Core Strategy supports the provision to enhance educational facilities in the Borough. The proposal to provide a conference room,

meeting room and an office would therefore be supported in accordance with this policy.

The area where the proposed extension is to be undertaken is soft and hard landscaped with a pedestrian pathway to allow access into the school. This pathway would not be affected by the proposals.

Public Health have commented on whether the proposal would take away open space activity from students, will there be alternative provision of space, and will there be opportunities for green infrastructure provision. The area where the proposed extension is to be constructed is not a formal playing space for pupils, it is an area of soft and hard landscaping in front of the school building between the primary entrance and car park. The proposal would not result in the loss of any playing field and as such should be supported. An area of planting outside this part of the school would remain.

### **Design and character of the area**

The proposed extension would be single storey to match the existing single storey element to the front of the existing school and as such would match this design. The proposed extension would be seen against the back drop of the existing school buildings and as such would not unduly harm the character of the area.

Furthermore, the proposed extension would only be visible from within the school grounds and not from the main public domain. A planning condition can be attached to ensure the facing materials used to construct the proposed extension matches that of the existing school building.

Public Health have comments on the design and insulation of the proposed extension. The design is acceptable as it matches the design of the existing school. The insulation of the proposed extension is a matter for Building Regulations.

Community Safety consider that the siting of the proposed addition would foreshorten the view of approaching pedestrians (currently provided by the windows set into the block to be enclosed) to the reception block. The reception area would not be affected by the proposed extension and the existing windows within the reception area would allow views out onto the entrance of the school site and car park. Furthermore, there are windows within the conference and meeting rooms, which are located towards the front of the extension, which would provide views out to this part of the school and give opportunities for surveillance of these areas.

A note for applicant can be attached regarding CCTV, although the Police have no objections to the proposed extension subject to secure by design. Lighting details around this proposed extension can be sought by way of planning condition.

### **Impact upon neighbouring occupiers**

The proposed extension would be within the school grounds, so as not to impact upon the amenities of neighbouring occupiers. Whilst the proposed extension would be seen from long views from the rear of the nearest residential properties on Tynings Lane, it is considered that the proposed extension would be seen within the backdrop of the existing school, so as not to adversely affect the visual amenities of

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these neighbouring properties. Furthermore, any views towards the school from the rear of these neighbouring properties would be interrupted by way of boundary treatments and the car park in front of the school that forms a boundary between the school building and these neighbouring properties.

Neighbouring occupiers have stated that they are not sure of where the proposed extension is to be undertaken. The submitted block plan does highlight the area where the proposed extension is to be undertaken, outside the main school entrance area.

Neighbouring occupiers have also stated that large meeting rooms would attract more people to the school. There is no evidence to the contrary suggesting that this is the case.

Neighbouring occupiers have raised concerns over previous experience with contractors and engines running. This is a matter that can be dealt with under Environmental Health legislation, should it be the case in future.

### **Access and parking**

The Highway Officer has no objection to the proposed extension. The existing pedestrian and vehicular access to the school entrance would not be altered.

Neighbours have raised concerns over construction vehicle access to the school and do not want Quicksand Lane to be used for construction vehicles. The proposed extension is to the front of the main school building where access from Tynings Lane is the closest. Access from any other vehicular access points to the school i.e. Quicksand Lane, Gaydon Road and Hepburn Close would bring construction workers to the wrong side of the school site and unlikely to be used. Nevertheless the issue of construction traffic is a temporary one and not necessarily a material planning consideration.

## **Conclusions and Reasons for Decision**

Policy HOU5 of the Black Country Core Strategy supports the provision to enhance educational facilities in the Borough. The proposal to provide a conference room, meeting room and an office would therefore be supported in accordance with this policy.

The proposed extension would be single storey to match the existing single storey element to the front of the existing school and as such would blend into the existing school background. The proposed extension would be seen against the back drop of the existing school buildings and as such would not unduly harm the character of the area. The existing pedestrian and vehicular access to the school entrance would not be altered.

The proposed development complies with the aims and objections of the NPPF, Policies HOU5, ENV2, ENV3 and CSP4 of the BCCS, Saved policies GP2, ENV14, ENV32, ENV40, T7 and T13 of the UDP, Policy T4 of the SAD and Policy DW3 of Designing Walsall SPD.

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

Officers have confirmed to the applicant's agent that the submitted details are acceptable and no further changes have been requested.

## **Recommendation**

Grant subject to conditions

## **Conditions and Reasons**

1: The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Reason: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development shall be completed in accordance with the following plans:

- site location plan, drawing number 18013-001A submitted 15-11-18
- roof plan proposed, drawing number 18013-102A submitted 15-11-18
- site block plans existing and proposed, drawing number 18013-002A submitted 15-11-18.
- plans and elevations, drawing number 18013-101B submitted 15-11-18.

Reason: To define the permission

3a. Prior to the commencement of development above damp proof course, details of lighting around the proposed extension hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The lighting details shall include, the location/position of the lights, the level of illumination, type of lamp, external finish of the lamp and manufacturers details.

3b. Only the lighting details approved under part a of this condition shall be installed on site/the proposed extension prior to the first use of the proposed extension.

Reason: For safety and security for pupils and staff on site and to prevent light pollution in accordance with Policies GP2 and ENV11 of the UDP.

4. The proposed extension hereby approved shall only be constructed in facing materials that match the existing school building, that exist at the time of this application. The facing materials shall be retained and maintained at all times.

Reason: In the visual amenities of the school in accordance with Policies ENV2 and ENV3 of the BCCS, Saved Policies GP2 and ENV32 of the UDP.

## **Notes for Applicant**

Police:

New aluminium windows are certified to the material performance standards BS 4873 and should meet the recognised and accepted security standard for schools – LPS 1175 Issue 7 2013 SR3 rating. However, given that the recorded crime against the fabric of the school has remained low a window certified to SR2 would suffice. All internal doors in the new extension should have locks certified to either BS EN 3621 (no internal thumb turn) or to DHF TS007 3 star if a Euro cylinder lock is chosen. The doors themselves should be STS202 BR2 for commercial doors as a minimum and where fire safety requires there are now dual certification doors that will satisfy mandatory fire safety requirements and still provide good certified security.

As with all schools recommend the opportunity to forensically mark all new equipment.

#### Highways:

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.





## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 8**

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

**Location:** 10, DOWNHAM CLOSE, WALSALL, WS5 3BX

**Proposal:** CONSTRUCTION OF ONE 4 BEDROOM DETACHED HOUSE ON LAND ADJACENT TO 10 DOWNHAM CLOSE.

**Application Number:** 18/1328

**Applicant:** Mr G Jones

**Agent:** PALMER DESIGN

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

**Case Officer:** Paul Hinton

**Ward:** Pheasey Park Farm

**Expired Date:** 24-Dec-2018

**Time Extension Expiry:**

**Recommendation Summary:** Grant Permission Subject to Conditions.



## Proposal

This application seeks planning permission for the erection of a four bedroom detached house on land adjacent to 10 Downham Close and follows a refusal in August 2018 for construction of 2 x detached dwellings, creation of new vehicles accesses and extensions and alterations to the existing detached house (No.10) to the side and rear garden of this existing detached house.

The application no longer seeks permission for a house between 9 and 10 Downham Close but continues to propose a detached house within the rear garden of the property which would front Elmstead Close. The current proposal reflects the previous application in respect of this plot.

The current application proposes:

- 9.5m wide property (13m plot width)
- Eaves height of 5.1m and ridge height of 7.4m
- Set 3m from the road
- Double drive and garage
- Four bedrooms.
- 105sqm rear garden, 10m in length.
- Brick and tile finish
- Side facing windows to the ground floor wc, first floor landing and bathroom.
- The design has a central ridgeline across the width of the property, single storey dual pitched roof garage to the side and canopy to the front.

*Documents submitted in support of the previous planning application:*

### *Flood Risk Assessment*

Concludes that the application site is in Flood Zone 1, flooding from groundwater would be negligible and surface water flooding would be low to high and recommends mitigation measures.

### *Sustainable Urban Drainage Assessment*

Concludes surface water run-off could be discharged via the existing underground culvert or to the surface water sewer and include indicative SUD schemes.

### *Preliminary Bat Roost Assessment*

Concludes there is negligible risk to bats arising from the proposal and recommends precautions during works.

## Site and Surroundings

The application house and nearby houses along Downham Close are modern detached two storey houses with pitched main roofs and front gables with part-tiled front elevations.

Single storey flat roof side sections exist at numbers 7 & 9 Downham Close between 7m-9m wide each. Numbers 2 & 8 Downham Close have extended at first floor above the original single storey sections. Gaps between detached properties are

between 6.3m and 11m (at first floor) and between 1.2m and 6.5m (at ground floor). The existing application house currently measures between 5.6m - 8m deep, 14m wide at ground floor, 6m wide and 8m deep at first floor, 6.9m high to ridge of main pitched roof (4.6m to eaves) and 2.7m high to single storey flat roof section nearest No.9.

The area has a mix of houses including a row of 4 x modern terraced two storey houses and 2 x semi-detached modern two storey houses are present at the end of Downham Close. Link-detached modern two storey houses are also present along Elmstead Close (with 2.5m gaps at first floor).

2 x large detached houses have recently obtained planning permission on former residential garden land at Fallowfield Road (No.1 and land rear of 426-428 Sutton Road) which are of simple modern design. The density of the vicinity is between around 15 and 29 dwellings per hectare.

## **Relevant Planning History**

### Application site

17/1410 – Construction of 2 x detached dwellings, creation of new vehicles accesses and extensions and alterations to the existing detached house (No.10). Refused 24/8/18 for the following reason:

The proposed contrived development is considered would not be in keeping with the surrounding properties, is over-development of the plot and would be incongruous and out of character with the street scene and wider area. This application is contrary to NPPF12, BCCS Policies CSP4, ENV2 & ENV3, saved UDP Policy ENV32 and DW3 of the Designing Walsall SPD

### Land Rear of 426 to 428 Sutton Road (off Fallowfield Road)

17/1095 - Erection of two storey house and creation of vehicle access off Fallowfield Road. GSC 06/12/2017

### 1a Fallowfield Road

09/0672/OL - Outline application for erection of a detached bungalow to include scale and layout. Allowed at appeal 22/6/2010.

11/0570/FL – New Dormer Bungalow. GSC 04/07/12

15/0440/FL – New detached house. GSC 12/6/15

16/1057 - Retrospective: Retention of detached house including omission of previous approved integral garage. GSC 05/12/2016

## **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

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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.

### **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.

### **Local Policy**

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

### **Black Country Core Strategy**

- CSP4: Place Making
- CSP5: Transport Strategy
- DEL1: Infrastructure Provision
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- 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
- ENV8: Air Quality

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- GP5: Equal Opportunities
- GP6: Disabled People
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV23: Nature Conservation and New Development
- ENV32: Design and Development Proposals
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

## Walsall Site Allocation Document 2019

- HC2: Development of Other Land for Housing

### 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
- DW7 Diversity

#### 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

**Highways** – no objection.

**Pollution Control** – no objection subject to use of recommended conditions in regard to construction working hours and measures to comply with the Air Quality SPD.

**Police Crime Prevention Design Advisor** – no objection subject to use of recommended security measures in regard to, defensible planting, window and door standards, lock standards, boundary treatment details and intruder alarm.

**Community Safety** – recommend security measures.

**Severn Trent Water** – no objections. Has limited impact on the public sewerage system, does not require a drainage condition. Note for applicant in regard to public sewer.

**Fire Services** – no objection.

## Representations

Surrounding occupiers notified by letter.

Eight letters have been received objecting on the following grounds:

- Out of character, scale and rhythm with surroundings
- Cause harm to the appearance of the area, would appear isolated.
- Interrupts the building line
- Fails to incorporate any of the architectural features of existing properties on Elmstead Close, Fallowfield Road and Downham Close.
- Overdevelopment, causes harm to the density of the area.
- Create overlooking.
- Existing trees have been removed (*trees were not subject to a Tree Preservation Order and can be removed without planning permission*).
- Loss of green space
- Increase in traffic
- Cars parked on the road will be a hazard
- Existing roads are inadequate for use by additional property.
- Noise and dust during prolonged building work.
- Construction vehicles will make things dangerous for existing residents.
- Elmstead Close needs to be kept clear for emergency vehicles. (*outside the scope of the planning legislation in this instance*)
- Contravenes the NPPF as garden land is not previously developed land.
- Loss of significant wildlife and shrubs.
- Developments on Fallowfield Road cannot be considered a precedents. (*each application is taken on its own planning merits*)
- Sets a precedent for others. (*each application is taken on its own planning merits*)
- Inappropriate separation distances between dwellings.
- Insufficient garden sizes.
- Impact upon daylight and sunlight at 5 Fallowfield Road, 9 and 10 Downham Close.
- Impact on no. 9 exaggerated when consider planning permission for extension to this property.
- Would impact upon views and amenity of 5 Fallowfield Road.

- Privacy of proposed development would be compromised as overlooked from all directions.
- Insufficient space to accommodate two vehicles on the drive.
- New boundary fence significantly alter the appearance and character of the area and the rear views of 9 and 10 Downham Close.
- An Ecology and Arboricultural report should be submitted to assess the impact of the development.
- Increased hard surfacing could lead to increased flooding.
- Would negatively impact on the drainage system.

## **Determining Issues**

- Whether the application overcomes the previous reason for refusal in regard to
  - Impact on the character and appearance of the area
- Principle of development
- Impact upon residential amenity
- Access and Parking
- Local Finance Considerations

## **Assessment of the Proposal**

### **Impact on the character and appearance of the surrounding area**

The previous application was refused on the grounds that the contrived development was considered not to be in keeping with the surrounding properties, is over-development of the plot and would be incongruous and out of character with the street scene and wider area.

The previous application included a house between 9 and 10 Downham Close, extensions to the existing house and a new house facing Elmstead Close. The current application seeks planning permission for a detached house facing Elmstead Road.

The NPPF says that developments 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. Policies CPS4, HOU2, ENV2, ENV3 of the BCCS; 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.

This is a two storey house within an area of two storey properties. The house would have direct street access and have a width of 9.5m, and would occupy 73% of the plot width. In comparison some of the properties in Elmstead Close occupy the full width of the plot. Properties in Downham Close and Fallowfield Road have more generous gaps to the sides. The proposal reflects this with a gap of 16m between Downham Close and the application site.



The proposal would be 3m from the back of the pavement. In comparison there are examples of properties along Downham Close that are set back 3m, Elmstead Close 5m, Elmstead Wood, 5m and Fallowfield Road 5m. The existing boundary fence to the side of no. 10 is set back 4m. Accordingly the proposal has a similar relationship to others in the area and reflects the immediate character of the area. Furthermore, the part retention of a grass verge along Elmstead Close and deep set back of No.5 Fallowfield Road helps to soften the appearance of the proposal.

The house had been designed with a central ridge line across the width of the house, a design feature of this side of Elmstead Close and 5 Fallowfield Road. Front canopies are also a feature of Elmstead Close which is also included. Subject to the use of bricks and tiles that are similar to those used in the area, the architectural detailing would not cause visual harm.

BCCS Policy HOU2 states that all developments should aim to achieve a minimum net density of 35 dwellings per hectare. It also states density and type of new housing will be informed by the need for a range of types and sizes of accommodation to meet sub regional and local needs, the level of accessibility and the need to achieve high quality design and minimise amenity impacts. The NPPF says that decisions should optimise the potential of the site to accommodate development. Downham Close has a density of 16 dwellings per hectare and Elmstead Close 26 dph. The proposal would have a density of 33ddp.

Over-development results in designs which impact unduly on the character and amenity of the locality. In this instance, the applicants design approach, addresses these concerns and demonstrates that overdevelopment of the site would not occur.

BCCS Policy CSP4 states that design of spaces and buildings will be influenced by their context and the current scheme is reflective of the local character and surrounding area. The layout shows an appropriate building size and position that achieves appropriate gaps between the buildings, separation distances, provides private amenity space to accord with Council requirements.

Designing Walsall SPD local character guidance indicates that new development should respect the spacious and low density form of development in the area. Whilst the proposals provide a higher density than the surrounding area, this is as a result of smaller garden than those in the surroundings. From the street the proposal has gaps to the side and landscaping to the frontage, reflecting the character of the area.

Only partial details of boundary treatment have been provided, full details can be through the use of a condition that meets the six tests.

Accordingly the proposal would not be overdevelopment of the site and would reinforce the local character of the area. In weighing the planning assessment of the current proposal against the previous reason for refusal, it is considered this new family house would not be incongruous to the street scene or the wider area and has overcome the reason for refusal.

### **Principle of the development**

The NPPF says that decisions should encourage the effective use of land by re-using land that has been previously developed. The application is within the garden

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of this existing house. Residential curtilage is not defined as brownfield land. The NPPF also says that housing applications should be considered in the context of the presumption in favour of sustainable development. In Walsall, the five year requirement of housing supply is currently being met through the allocation of housing land and granting of planning permission (which is significantly brownfield land); there is no requirement to release non-brownfield land at this time. The development of brownfield land, however, is encouraged and not the only way to support sustainable economic development to deliver the homes that the country needs.

It is considered this is a sustainable location within an existing residential area with shop, public house, church, a primary school, open space and bus stops all within walking distance. The principle of new housing in this location is considered acceptable, subject to impact upon the character of the area, residential amenity and parking.

Whilst concerns the development would set a precedent for others, has been put forward, each planning application is considered on its planning merits and as stated above, it is considered that in this instance, the previous reason for refusal has been overcome.

### **Impact upon residential amenity**

The proposed blank side elevation of the house would be 16m from the rear habitable windows of the 10 Downham Close. This separation is in accordance with the guidance of Designing Walsall SPD.

The front facing habitable windows of 5 Fallowfield Road would be 13.5m away from the single storey garage and 17m from the two storey elevation with non-habitable windows are proposed. These separation distances and layout would ensure there is no loss of outlook or privacy. As the proposal is to the east, it is considered there would be no loss of light to the neighbour.

Whilst there would be potential for the proposal to overlook the end part of the gardens serving No.9 Downham Close and 5 Fallowfield Road, this is not significant and would have the same relationship to the neighbouring gardens that currently exists, resulting in no further harm, which would sustain a refusal. Concerns about the relationship with the approved side and rear extension at 9 Downham Close. The proposed house would be 19m from no. 9's extension and set 90 degrees to the side boundary. The proposal would not result in a material loss of amenity.

Objectors explain the new boundary fence significantly alters the appearance and character of the area and the rear views of 9 and 10 Downham Close. A 2m high boundary fence within a rear garden is a characteristic feature of the area and could be erected utilising permitted development. The position of the fence would not result in a loss of outlook for neighbours.

Concerns about the privacy value for potential occupiers of the proposed house. The proposed relationship is a characteristic of an urban environment and would not result in an unacceptable level of privacy for potential occupiers.

The proposals rear garden of 10m in length and 87sqm in area, reflects Designing Walsall SPD annex D. For the existing occupiers of 10 Downham Close, a garden of 288sqm would be retained which exceeds Designing Walsall SPD annex D whilst providing for the needs of occupiers of that property.

The recently adopted Black Country Air Quality SPD sets out guidance on minimising air quality impacts. The proposed new house could assist with reducing potential air quality impacts by providing electric vehicle charging points so that future occupiers are encouraged to use electric vehicles and low emission boiler. This would be relevant and necessary and can be secured by condition. Pollution Control recommend a condition requiring a construction management plan and a control of construction working hours; given the location and the availability of other legislation these conditions would not be reasonable for this application.

Whilst neighbours' concerns about noise and dust during construction works are noted this would be insufficient to sustain refusal of this planning application as the construction of a single dwelling is unlikely to take an extended period of time to construct. Any unnecessary noise and dust nuisance experienced by neighbours can be enforceable through third party environmental legislation.

The Police raise no objections subject to the use of recommended door, window and garage door standards no lead or metal on the ground floor and alarm systems. The NPPF says decision should aim to achieve safe places, BBOS policy ENV3 require development to consider security and references Secured by Design principles. This can be addressed by use of a safeguarding condition that meets the Governments 6 tests.

It is considered, the development would not have a significant impact upon the amenity of surrounding occupiers and there is sufficient amenity provision for potential occupiers.

### **Ecology and Trees**

The Preliminary Bat Survey submitted with the previous application, concludes a negligible risk to bats arising from the proposed development and that no further actions are necessary in this instance. While it recommend that care is taken during works this was in regard to the works to the existing dwelling as part of the previous application. The current proposal does not propose such works.

Objections have been received in regard to the loss of significant wildlife and shrubs and that an Ecology and Arboricultural report should be submitted to assess the impact of the development. There is no evidence of any protected species within the application boundary. The existing trees are not subject to a Tree Preservation Order or have such high amenity value to warrant the submission of a detailed report.

The proposed site plan shows the retention of some trees on-site along with new planted and landscaped areas. This is considered to minimise any potential impacts to existing wildlife and proportionate to the scale of development and suburban location.

A condition to ensure the removal of any existing trees, hedges and shrubs is undertaken outside of the bird nesting season to safeguard the local wildlife population is considered reasonable.

Neighbours objections relating to impacts on local wildlife populations, have all been considered and found to be acceptable, subject to conditions, as set out above.

### **Flooding and Drainage**

A culvert and foul drain exist below the application site. The proposed site plan shows the building would not be located directly above these assets / equipment. The Flood Risk Assessment submitted with the previous application concludes that the application site is in Flood Zone 1, flooding from groundwater would be negligible and surface water flooding would be low to high and recommends mitigation measures in the form of raised finished floor levels, flood resilient design, SUD strategy and maintenance of underground culvert/sewers.

SUDs feasibility reports previously submitted concluded that surface water run-off could be discharged via the existing underground culvert or to the surface water sewer along Downham Close (subject to agreement with Severn Trent Water). The reports also include indicative SUD schemes including permeable paving areas, drainage channels and use of a hydro-brake to control the flow of surface water into the existing culvert or sewer. This is considered acceptable in principle and proportionate to the scale of development. Conditions would be included to require submission of a SUD and surface water scheme, along with raised finished floor levels and SUD schemes, in line with the previous recommendations of the Lead Local Flood Authority.

Whilst neighbours objections relating to surface water flooding, impacts on existing culvert and sewer and drainage, have all been considered and found to be acceptable, subject to conditions, as set out above.

### **Access and parking**

Neighbours object that the existing road is inadequate for use by an additional property and cars parked on the road will be a hazard. Saved UDP policy T13, for a four bedroom property is required to provide three off-street parking spaces. The proposal seeks to achieve 3 parking spaces with a garage and driveway. The additional vehicle trips associated with one further dwelling would be limited and would not result in severe transportation impacts. Appropriate visibility is provided. Accordingly the proposal would not impact upon highway safety. Conditions in regard to retention of the garage and provision of the front drive is necessary and meets the six tests.

The Local Highway Authority requested a further condition to secure works to provide a new footway crossing and kerbs. However, paragraph 55 of the revised NPPF reinforces the government's aim to reduce the number of conditions, and to ensure they are "only imposed where they are necessary, relevant to planning...". As these works are in the public highway and can be dealt with under separate Highways legislation, it is considered not necessary, or relevant, to include these works by way of condition in this instance. A note to applicant would be included.

Concern has been raised about construction vehicle making things dangerous for existing residents and emergency vehicles. Vehicles parked in the highway causing an obstruction is not a material planning matter and there is third party legislation that can be used to deal with this.

### **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 one new home.

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 principle of development is consistent with the provisions of the development plan. The design of the house would cause no further harm to the character or appearance of the area. The proposal would not result in a material loss of amenity to neighbouring occupiers. The proposal would also provide sufficient amenity for potential occupiers. Sufficient off-street parking is provided to meet the needs of the development. The proposal has overcome the previous reason for refusal

Safeguarding conditions in regard to materials, boundary treatment, electric charging points, no further openings, security and parking provision are necessary and meet the six tests. Taking into account the above factors it is considered that the application should be recommended for approval. The development is considered to meet the aims and objectives of the National Planning Policy Framework, policies CSP4, HOU2, TRAN2, ENV2, and ENV3 of the Black Country Core Strategy, policy HC2 of the Walsall Site Allocation Document and saved policies GP2, 3.6, ENV10, ENV32 and T13 of Walsall Unitary Development Plan and Supplementary Planning Document Designing Walsall.

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

Officers have worked with the applicant securing amended plans and clarification over the details of the scheme to recommend approval.

### **Recommendation**

**Grant permission subject to conditions.**

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## Conditions and Reasons

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

Reason: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

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

- Location and block plan received 29/10/18
- Land survey received 5/10/18
- Proposed site plan received 12/2/19
- Floor plans and elevations received 12/2/19

Reason: For the avoidance of doubt and in the interests of proper planning, (except in so far as other conditions may so require).

3a. Prior to commencement of development, drainage plans for the disposal of foul and surface water flows shall be submitted to and approved by the Local Planning Authority.

3b. The scheme shall be implemented in accordance with the approved details prior to the development first coming into use.

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution.

4a. Prior to commencement of development, a detailed scheme to protect existing culverts, surface water system for the site, and Sustainable Urban Drainage scheme along on-going with maintenance details shall be submitted to, and approved in writing by, the Local Planning Authority.

4b. The approved details shall be implemented prior to first occupation of the development and thereafter retained in accordance with the approved details.

4c. Finished floor levels set no lower than 300mm above local ground level.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site. To reduce the impact of flooding on the proposed development and future occupants and to accord with Revised NPPF14, BCCS Policy ENV5 and Saved UDP Policy ENV40.

5a. Prior to the commencement of development above damp proof course a schedule of facing materials to be used in the external walls, roofs, windows, doors and rainwater goods shall have first been submitted for written approval of the Local Planning Authority.

5b. The approved scheme shall be implemented in accordance with the approved details.

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

6a. Notwithstanding the details submitted no development above damp proof course shall commence until details of boundary treatment shall have first been submitted for written approval of the Local Planning Authority.

6b. The approved details shall be installed prior to first occupation of the premises and shall be retained thereafter.

*Reason:* In the interests of visual amenity, highway safety and securing the development.

7a. No development above damp proof course shall commence until details for an electric vehicle charging point, to be provided for the dwelling has been submitted to and approved in writing by the Local Planning Authority.

7b. Prior to first occupation of the development the electric vehicle charging point shall be installed in accordance with the approved details and shall be retained and maintained for the life of the development.

*Reason:* In the interests of creating a sustainable form of development and to encourage the use of ultra low emission vehicles in accordance with Policies ENV8 (Air Quality) and DEL1 (Infrastructure Provision) of the Black Country Core Strategy.

8a. Prior to the first occupation of the dwelling hereby approved the driveway and parking areas shown on the approved plan shall be consolidated, hard surfaced and suitably drained to ensure surface water from the parking area does not discharge onto the public highway.

8b. The garage and two frontage parking spaces shall 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. The first floor side facing windows as shown on the approved plans shall be top opening only and shall have obscure glazing to Pilkington level 4 privacy glass standard or equivalent and shall be retained.

*Reason:* To safeguard the amenity of adjoining occupiers.

10. The development shall be constructed to meet the following minimum security measures and thereafter retained as such;

-All ground floor windows and any accessible windows should be fitted with BS EN 356 grade P1A glass this includes French doors and patio doors

-PAS 24:2016 doors should be on all entrance and exit doors.

- A minimum standard of TS-007 3 star rated cylinders with Secure By Design and Sold Secure Diamond standard certification should be used on all door locks
- Where thumb turn locks are to be installed these should be those that cannot be 'by passed' such as the ASB Thumb turn 3 star cylinders or the Ultion Locks.
- No Lead or metal should be used on the ground floor, this includes outside taps to the front of properties as the West Midlands is suffering high levels of metal theft where possible lead substitute products should be used.
- Garage doors must be certificated to one of the following standards - Loss Prevention Certification Board standard LPS1175 security rating 1 or WCL 2 BR 1
- Suitable intruder alarm, with a siren box front and back, and should have dual or quad technology sensors and auto dialler function.
- Rear boundary treatment shall include 1.8m high close boarded fencing with 0.3m trellis on top.
- All gates should have access control measures, be self-closing with hinges mounted to the rear of the public side and located as close as possible to the front building line.

*Reason:* To ensure the safety and security of the development and its occupiers in accordance with BCCS policy ENV3.

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or succeeding Orders, no side facing windows or doors other than those approved by this permission shall be installed.

*Reason:* To retain sufficient amenity space and in the interests of the amenity of occupiers of adjacent dwellings.

12. No boilers shall be installed and used in any of the units hereby approved, save for boilers which have maximum NOx emissions no greater than 56 mg/kWh for gas and liquefied petroleum gas (LPG) boilers and a maximum of 120 mg/kWh for oil-fired boilers.

*Reason:* To conserve and enhance the natural environment in accordance with BCCS policies ENV8 and DEL1.

13. Existing trees, hedges and shrubs shall not be removed during the bird nesting season of between May and September.

*Reason:* To conserve local wildlife populations and to comply with Revised NPPF15, BCCS Policy ENV1, Saved UDP Policy ENV23 & NE1 to NE6 of the Natural Environment SPD.

14. A 2.4m x 43m visibility splay shall be retained at the Downham Close/Elmstead Close junction at all times within which no structure or planting shall exceed 600mm in height above carriageway levels.

*Reason:* To ensure highways safety and in accordance with Revised NPPF9, and Saved UDP policies T7 and T13.

### **Notes for Applicant**

1. The attention of the Applicant is drawn to the need to keep the highway free from

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any mud or other material emanating from the application site of any works pertaining thereto.

2. Measures must be implemented by the Applicant to ensure that, so far as is reasonably practicable, surface water from the private land flowing on to, or over, the footway of the highway is prevented.

3. The Applicant will be expected to either enter into an agreement under Section 278 of the Highways Act 1980 with the Local Highway Authority or obtain a Road Opening Permit from the Local Highway Authority for all works within the existing public highway. For further advice please contact the Highway Development Control Team on 01922 655 927.

4. The Applicant will be expected to obtain the necessary Road Opening Permit from the Highway Authority for the construction of the dropped kerb footway crossing within the public highway. For further information please contact the Traffic Management Team on 01922 654675.

#### Severn Trent Water

Severn Trent Water advise that there is a public sewer located within this site. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent. You are advised to contact Severn Trent Water to discuss the proposals. Severn Trent will seek to assist in obtaining a solution which protects both the public sewer and the building. Please note, when submitting a Building Regulations application, the building control officer is required to check the sewer maps supplied by Severn Trent and advise them of any proposals located over or within 3 meters of a public sewer. Under the provisions of Building Regulations 2000 Part H4, Severn Trent can direct the building control officer to refuse building regulations approval.

#### Note to Applicant Air Quality SPD

Pollution Control is of the opinion that the Application falls under the Type 1 category. Therefore the Applicant needs to install at least one electric vehicle charging point per Plot and/or one charging point per 10 parking spaces for shared parking, and low NOx boilers –have maximum NOx emissions of 56 mg/kWh for gas and liquefied petroleum gas (LPG) boilers and a maximum of 120 mg/kWh for oil-fired boilers.

The Air Quality SPD (Section 5.6) advises the following about Electric Vehicle Charging Points:

An external weatherproof and lockable covered 32 Amp external 7 pin charging socket to comply with EN 62196-2 and be compatible with a J1772 Type 2 connector. The charging unit should feature a Mode 3 (IEC 61851) communication module.

Wherever possible the power supply and charging point should both be phase 3 compatible and be located near the parking area for each dwelling. Where only single-phase power supply is available the charging unit should be capable of handling 3-phase power if supply is subsequently upgraded.

The charging unit is to be supplied by its own independent radial circuit.

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Further information on Electric Vehicle Charging Points and the necessity to provide these can be found in the following:

- West Midlands Low Emissions Towns and Cities Programme, Good Practice - Air Quality Planning Guidance,
- Black Country Air Quality Supplementary Planning Document (SPD),
- General Procurement Guidance for Electric Vehicle Charging Points, UK Electric Vehicle Supply Equipment Association (April 2015),
- Institute of Engineering and Technology (IET) Code of Practice for Electric Vehicle Charging Equipment Installation.



## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 9**

**Reason for bringing to committee:** Called in by Councillor Gultasib on grounds of public interest and the creation of jobs

**Location:** SHOPS 3 AND 4, 498-500 PLECK ROAD, WALSALL, WS2 9HE

**Proposal:** RETROSPECTIVE:- CHANGE OF USE FROM CLASS A1 RETAIL SHOP TO CLASS A3 RESTAURANT/CAFE.

**Application Number:** 18/1068

**Applicant:** Mr Zubair Mohiuddin

**Agent:** Mr Adil Bashir

**Application Type:** Full Application: Change of Use

**Case Officer:** Paul Hinton

**Ward:** Pleck

**Expired Date:** 23-Oct-2018

**Time Extension Expiry:**

### Recommendation Summary: Refuse



This is a retrospective planning application that seeks planning permission for the change of use to a restaurant/cafe (A3 use) to which the applicant specifically refers to the use being for a dessert parlour with light cooking only. It is proposed to be open between 9am and 11pm Monday to Saturday and 10am to 11pm on Sunday and Bank Holidays. The proposal has a floor area of 190sqm.

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

### *Planning Statement and Sequential Test*

- Heavenly Desserts is a cafe/restaurant offering a range of luxury desserts.
- Applicant is eager to secure a premises within the Walsall area which will provide a dining experience that is not currently available in the local area.
- Franchise concept is that new outlets should be located in areas which offer convenient parking and good passing foot and vehicular traffic.
- Imperative that a new premises offers public frontage with a minimum of 120sqm of floor space to accommodate 50 seat cafe.
- Franchise targets rental units only.
- External space to accommodate refuse waste and service yard for deliveries are crucial.
- 17 alternative premises have been considered and discounted on a number of grounds demonstrating that there are no sequentially preferable properties to meet the applicant's requirements.
- Proposal provides total of 15 jobs, 5 full-time and 10 part-time.
- No existing dessert cafes in the local centres of Pleck and Palfrey and will not skew consumer movements away from existing centres.
- Would provide a facility within walking distance of local neighbourhoods.
- Would support nearby sites allocated for housing.
- Size is commensurate with neighbouring local facilities and falls within the 200sqm of policy CEN6.
- The site is accessible by sustainable measures reducing reliance on the motor vehicle.

### *Supporting statement from franchisee of Heavenly Desserts*

- Clearly demonstrated that the application site is our sequentially preferred site based on our Sequential Assessment.
- Application site was previously occupied by retail uses and is adjacent to a restaurant,
- Would complement the existing neighbouring restaurant.
- Heavenly Dessert business model is a popular destination for 16-24 year olds, mainly from ethnic backgrounds.
- Site is located central to the areas of Pleck, Palfrey and Caldmore, which have a high concentration of families from ethnic backgrounds.
- Offers a facility, which is within walking distance of our intended customers and therefore a sustainable location.
- The 'Heavenly Desserts' brand is well known and fast expanding, the presence of such a brand in Pleck would improve the overall profile of Walsall.

- Have made a substantial financial investment in the region of £200,000, in renovating and upgrading the application premises.
- If the planning application were to be refused we would be unable to offer a Heavenly Desserts franchise elsewhere in Walsall.
- The loss of such a popular franchise from Walsall would mean that our intended customers would continue to venture outside Walsall, resulting in continued expenditure outside of Walsall.
- Have already undertaken a local recruitment drive and offered 30 full and part time jobs to local residents. We also offer excellent training and job prospects. The refusal of planning permission would result in the loss of these excellent opportunities. Moreover, the additional income for local residents would increase expenditure in Walsall's economy.

## **Site and Surroundings**

This is a two storey detached building on the corner of Pleck Road and St John Street. There are two vehicle access points fronting Pleck Road with a car parking area at the front. The upper floors of the building are in residential use. Unit 1 and 2 is in use as a restaurant and takeaway operated by Pepe's Piri Piri. It is explained that the application property was last used for retail purposes. To the adjoining western boundary is a car repairs centre, to the adjoining southern boundary is a vacant site that has planning permission for new housing. Across Pleck Road are residential properties served by on-street parking.

There is a car wash within part of the site.

The application site is located over 400m away from Pleck local centre.

There are bus stops along both sides of the road within the immediate vicinity of the site. Service 39 between Bilston and Walsall runs every 20mins during the day and every hour into the evening, the last bus from the stop is 18.55 to Bilston and 19.39 into Walsall Monday to Saturdays; 17.50 to Bilston and 18.35 to Walsall on Sundays. Service 637 is a circular route between the Manor Hospital and Walsall Town Centre with hourly service, last bus to Walsall is 15.37 weekdays, 14.37 Saturdays with no Sunday service.

## **Relevant Planning History**

BC58566P - After Representations Hearing: Erection of building for MOT, exhaust & tyre fitting including roller shutters to the front elevation and associated offices, continued use of the existing ground – GSC 24/01/2002

04/1089/FL/W3 - Variation of Condition to allow (1) retail sales and (2) equipment showroom. Condition 14 of planning permission BC58566P. No decision or appeal details on file.

### Units 1-2

17/1277 – Change of use from A1 retail to A3/A5 restaurant. GSC 5/12/17.

## **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 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**

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.

### **Development Plan**

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

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

- GP2: Environmental Protection
- GP5: Equal Opportunities
- GP6: Disabled People
- ENV10: Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV29: Conservation Areas
- ENV32: Design and Development Proposals
- ENV35: Appearance of Commercial Buildings
- ENV40: Conservation, Protection and Use of Water Resources
- S1: Definition of Town Centre Uses
- S2: The Hierarchy of Centres
- S3: Integration of Developments into Centres

- S4: The Town and District Centres: General Principles
- S6: Meeting Local Needs
- S7: Out-of-Centre and Edge-of-Centre Developments
- T1 - Helping People to Get Around
- T7 - Car Parking
- T8 – Walking
- T9 – Cycling
- T10: Accessibility Standards – General
- T13: Parking Provision for Cars, Cycles and Taxis

## **Black Country Core Strategy**

- CSP1: The Growth Network
- CSP4: Place Making
- CSP5: Transport Strategy
- DEL1: Infrastructure Provision
- CEN1: The Importance of the Black Country Centres for the Regeneration Strategy
- CEN2: Hierarchy of Centres
- CEN3: Growth in the Strategic Centres
- CEN4: Regeneration of Town Centres
- CEN6: Meeting Local Needs for Shopping and Services
- CEN7: Controlling Out-of-Centre Development
- 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
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

## **Walsall Town Centre Area Action Plan 2019**

- AAPS1: Primary Shopping Area
- AAPS2: New Retail Development

## **Supplementary Planning Document**

### **Designing Walsall**

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character
- DW5 Ease of Movement
- DW8 Adaptability
- DW9 High Quality Public Realm

### **Shop Front**

- SF5: Access to shops



## 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

**Planning Policy** – objects. There are sequentially preferable sites which could accommodate the proposal. The vulnerable health of the centre coupled with the flexible nature of the centre mean that the potential for adverse impact cannot be ruled out in this instance.

**Highways** – no objection.

**Pollution Control** – no objection subject to use or recommended conditions in regard to a noise insulation scheme between the commercial operations and the residential above and next door, noise levels of external machinery and a system to control grease.

**Environmental Health** – no comments received.

**Fire Services** – no objection.

## Representations

Surrounding occupiers notified by letter.

Pepe's Piri Piri next door support the application on the following grounds:

- Our customers interested in buying desserts either have to go elsewhere or do without one.
- Heavenly Desserts is a national brand with an instant recognition and appeal, it has been encouraged to open next door to complement each other.
- Our customers have been asking when it will open.
- Very much demanded by customers giving Walsall residents a one-stop food offering with amply parking.

A petition with 1214 signatures has been submitted, supporting the application on the following grounds:

- Local shoppers, residents and businesses support the additional opening of Heavenly Desserts franchise.
- There is a demand and community need in this vicinity.
- Would be next door to another national brand Pepe, fast food takeaway
- A one stop shop for fast food and dessert is much needed at this location to complement the other.

## Determining Issues

- Extant use
- Principle of use
- Impact upon character and appearance of the area
- Impact upon adjoining occupiers
- Highway safety

## Assessment of the Proposal

### Extant use

The application form presents the application as a change of use from retail (A1) to cafe/restaurant (A3). A review of the planning history of the site and photographic evidence demonstrates that while this unit has been used for retail, this was not approved by a planning application. The retail use at the site has not gained lawful use through the passage of time. This is material to the consideration of the principle of the proposed use.

### Principle of use

This is an out of centre location, with the next nearest local centres at Pleck, 484m away, Palfrey 950m away and Caldmore 1255m. The Primary Shopping Area of Walsall Town Centre is 1312m away.

The proposal is for an A3 cafe/restaurant use, 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. A sequential test should be applied for main town centre used which are not within the town centre.

BCCS Policy CEN6 explains new small scale local facilities outside of defined centres up to 200sqm will be permitted if it can be shown that a number of tests have been met, including provision could not be better met by investment in a nearby centre. Saved UDP policy S1 defines town centre uses, S4 seeks to safeguard the existing level of shopping provision in the Town Centre and S6 sets out eight tests (similar to those in CEN6) required to be fulfilled for town centre use proposals in out-of centre locations which are considered below. Walsall Town Centre Area Action Plan Policies AAPS1 and AAPS2 seek to concentrate firstly new retail floorspace and secondly other town centre uses within or immediately adjacent to the Primary Shopping Area boundary, only permitting such development away from the PSA where it can be demonstrated there are no suitable development site to vacant premises within or immediately adjacent to it.

*Appropriate scale and nature to meet a specific day-to-day need of a local population within convenient safe walking distance.*

The petition, supporting letter and comments from the franchisee all explain that there is a local need for the development and it would complement the adjacent restaurant and takeaway. The applicant's planning statement emphasises local need on the basis, there's no existing dessert cafes in Pleck and Palfrey local centres. Pleck benefits from existing dessert shops called 'Sweet' on Wednesbury Road plus 'Yaadgaar' restaurant and takeaway, also on Wednesbury Road provide desserts.

In Palfrey 'Sundus Sweets' in Milton Street provides desserts. It is considered the existing local need is met through Pleck and Palfrey local centres.

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

The NPPG guides, if there are no suitable sites in sequentially preferable locations then the sequential test is passed. On the other hand, as explained in the NPPF where an application fails to satisfy the sequential test it should be refused.

The applicant has considered 17 premises which are concluded to be unsuitable and therefore have directed this proposal to this out-of-centre location. The NPPG guides, there should be flexibility in the format and/or scale of the proposal. It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed.

The applicant seeks planning permission for single floor unit with a minimum of 120sqm floorspace (the proposal has floorspace of 190sqm) that has an area for refuse storage, a service yard and parking opportunities.

Whilst the Council can agree that seven of the 17 premises identified would not be suitable to meet the applicant's needs, for the other ten premises, insufficient evidence has been demonstrated why they could not be suitable. For example the applicant dismisses the sites at 83 and 87 Bradford Street, 6 and 71 Bridge Street, Tudor House, Bridge Street and 14 High Street in Walsall Town Centre on the grounds, they are existing A1 retail or offices uses within areas specifically allocated for that purpose. AAP Policy AAPS1 explains that *any significant proposal for non-retail use will have to demonstrate that the retail function is not prejudiced*. The re-use of a vacant retail unit for a dessert shop is considered not to be significant or to have an impact on the retail function of the Primary Shopping Area (PSA). In addition a mix of uses within the PSA is required to create a vibrant centre, especially in the evenings and the dessert proposal, would contribute to the Town Centre PSA vibrancy.

A number of premises are dismissed as they are across two floors with the applicant seeking single storey. It has not been explained in sufficient detail why a two storey premises would be so harmful to the operation of the use. Upper floor seating is common in established centres as has been demonstrated by the recently completed A3 use on Littleton Street and Wisemore

Some of the 17 units have been dismissed as they do not benefit from parking or have a service yard. The town centre is well served by a number of car parks and importantly a wide range of bus services in both geographical pull and duration. Some of the existing units have operated as retail uses, which include visits by members of the public and the need to be serviced. It has not been sufficiently evidenced that a dessert shop must have its own car park and service yard to function as experienced by a number of A3 uses within established centres.

The Council is aware of a number of other vacant sites within the Town Centre that have not been considered as part of the applicant's sequential test, which could be suitable for the proposed development. The details of these premises have been shared with the applicant's advisor, to date no comments have been offered in response.

There are units within Park Place, units within the recently constructed St. Matthews Quarter, units within Leicester Street, there are a couple of units within Bridge Street, the former Olive Tree Restaurant at St Pauls building, last used as an A3 use. In addition there are units within the Saddlers Centre and a vacant A3 unit at the Waterfront. All of these in planning use terms would be suitable for this type of proposal. In addition, typically national chains locate where there is maximum footfall as offered by the applicants statement. The Town Centre would maximise footfall, consequently offering a benefit to the proposal, whilst adding to the town centres overall vibrancy.

Overall it is considered that the evidence submitted by the applicant fails to demonstrate that there are no suitable premises in the established centres. Walsall Town Centre has a number of suitable vacant units and a dessert shop (A3) use is exactly the type of business that should be directed towards the town centre. Walsall Town Centre is not in good health. There is an increased need to focus all potential investment in the centre and to resist out-of-centre developments. As set out in the NPPF *“applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored”*. The current sequential assessment does not show a sufficient level of flexibility.

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

This part of the policy is in regard to depriving residents of easy access to a basic shop. The proposal would not have any impact to depriving residents of a basic shop, as explained in the applicant's statement; it offers luxury desserts to customers.

*Access to facilities by means other than by car would be improved and will be within convenient, safe walking distance of the community it is intended to serve.*

This part of the policy is in regard to reducing the need to travel, especially by car. The vacant and available units within the Town Centre are served by public car parks, two bus stations with a range of regular frequent bus services, a train station, cycle parking opportunities and coupled with likely linked trips i.e. customers would have visited other shops in the locality during the visit.

The proposal includes a car park shared with customers and staff to Pepe's Peri Peri, the residential uses above and the hand car wash. Whilst there are bus stops in close proximity, they do not run after 19.39 Monday to Saturdays or past 18.35 on Sundays. The dessert parlour proposal would be open until 23.00 Monday –Saturday and 22.00 on Sundays. Consequently the proposal is not well served by public transport throughout its opening times. While there may be walk-in trade from local residents, it is noted that a number of signatures to the petition are outside of the immediate neighbourhood and reasonable walking distance of 400metres. The attraction of a national chain is unlikely to be limited to custom from local people. Accordingly the proposal would be heavily reliant on travel by car.

Accordingly the proposal fails to meet the tests of saved UDP policy S6 and BCCS policy CEN6. The proposal would not meet a purely local need and it has not been demonstrated that it cannot be located within a more sequentially preferable location.

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

The proposal does not propose any external changes other than bringing a vacant unit back into use.

**Impact upon adjoining occupiers**

The applicant explains that the dessert parlour requires minimal cooking which would ensure there would be limited impact for the residential use above from odour. As the proposed use would be a cafe/restaurant other future users under this use class at this location could give rise to odour and would need to be controlled by extraction system. If the application were approved details of odour suppression to take account of this scenario would be required. Pepe's Peri Peri required a condition for a noise insulation scheme to address noise between the commercial operations and the residential. Should the Heavenly Desserts proposal be approved, it would be conditioned for noise insulation to be installed between the commercial and residential uses within 3 months of the decision with a validation report including photographs of the insulation being installed to protect the amenity of residents above the commercial unit.

Full details of refuse and waste recycling including servicing arrangements (days and times) would also be required, as would a control over the opening hours as proposed. Subject to the implementation of these measures a satisfactory relationship with neighbours could be provided.

**Highway safety**

There is a car park to the front of the site shared by Pepe's Peri Peri, the occupiers of the residential units above and the customers of the car wash. Highways have considered the proposal and consider there to be sufficient off-street parking to meet the needs of the development.

**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 ground level difference of approximately 0.3m between the car park and the threshold of the dessert parlour. The application has not been supported by any details of a fully inclusive access ramp. In addition due to the space between the rear of the car parking bays and the front of the building, less than 6m, it is not clear whether any access ramp could function without the loss of existing parking spaces. It is established that a reversing aisle of 6m is required, anything less would be contrary to highway safety.

Officers have raised this with the applicant and his agent who has confirmed a ramp would be provided but have not submitted any detailed drawings demonstrating how this would be accommodated. Therefore people with protected characteristics would be disadvantaged by the development contrary to the requirements of the Equality Act 2010. Should the application be approved, a safeguarding condition, requiring the submission of details for a ramp and any changes to the car park, should be submitted within one month of the decision and then installed within 3 months of agreeing the ramp details.

## Conclusions and Reasons for Decision

In weighing the key material considerations and consultee responses against the national and local planning policies and guidance, it is considered that the proposed use would be contrary to the policies of the development plan in that there are existing vacant and available units within the established centres that could accommodate the size of the development hereby proposed. This out-of-centre would detract investment away from the already vulnerable Primary Shopping Area within Walsall Town to the detriment of the vitality and viability of the centre. The dessert parlour in this location would be reliant on customers having to visit by car. Further, the application fails to demonstrate that people with protected characteristics would not be disadvantaged by the development due to the level difference between the car park and the threshold of the building

Taking into account the above factors the economic harm would outweigh any social and environmental benefits and 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, Black Country Core Strategy policies CEN3, CEN6, TRAN1 and TRAN2 and saved policies GP2, GP5, GP6, S1, S2, S4 and S6 and T13 of the Walsall Unitary Development Plan and policies AAPPS1 and AAPPS2 of the Walsall Town Centre Area Action Plan, the Equalities Act 2010 and policy SF5 of supplementary Planning Document Shop Fronts.

## Positive and Proactive Working with the Applicant

Officers have worked with the applicant and agent securing a sequential site assessment. In response officers have shared concerns about the findings and offer additional sites for consideration. In addition concerns about the lack of an access ramp to the building have also been shared. There has been no information provided that outweighs these concerns.

## Recommendation

### Refuse

## Reasons for Refusal

1. The application has failed to demonstrate that the use cannot be provided by directing this investment within one of the existing vacant and available units within the Primary Shopping Area of Walsall Town Centre, within the other units within the Town Centre or other established centres. The occupation of this out-of-centre site would result in the diversion of trade away from the Primary Shopping Area which is already suffering from high vacancy rates and whose health is already considered to be vulnerable. The proposal would be to the detriment of vitality and viability of the established centres. The proposal has failed to satisfy the sequential test. In addition due to its location customers would be predominately reliant on travel by car. Accordingly the development is contrary to the aims and objectives of the National Planning Policy Framework, Black Country Core Strategy policies CEN3 and CEN6 and saved policies S1, S2, S4

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and S6 of the Walsall Unitary Development Plan and policies AAPS1 and AAPS2 of the Walsall Town Centre Area Action Plan.

2. Due to the ground level difference between the car park and the threshold of the proposed unit it has not been demonstrated that people with protected characteristics would not be disadvantaged by the development and that any access ramp could be provided without causing harm to the safe movement of vehicles within the car park. 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, policy SF5 of the Shop Front Supplementary Planning Document and contrary to guidance on incorporating equalities into development schemes as set out in the Equalities Act 2010.

# PETITION

The local shoppers, residents and businesses support additional opening of Heavenly Dessert franchise in 498-500 Pleck Road, Walsall. There is a demand and a community need in this vicinity and to be next door to another national brand known as Pepe which is a fast food takeaway(Halal). A one stop shop for fast food and dessert is much needed at this location to complement the other.

We the under-signed support above plans and ask Pleck Ward Councillors and Walsall Council's Planning Committee to approve the proposals (Ref.18/1068) on Community and local need basis.

| NAME | ADDRESS                        | SIGNATURE | DATE    |
|------|--------------------------------|-----------|---------|
|      | Pleck Road Walsall             |           | 12/1/19 |
|      | Pleck Road                     |           | 12/1/19 |
|      | <del>PLECK ROAD, WALSALL</del> |           | 12/1/19 |
|      | PLECK ROAD                     |           | 12-1-19 |
|      | FED WALSALL                    |           | 12.1.19 |
|      | Pleck Road, EH.                |           | 12/1/19 |
|      | Pleck Road E.H                 |           | 12/1/19 |
|      | " "                            |           | 13/1/19 |
|      | PLECK ROAD, WALSALL            |           | 13/1/19 |
|      | Pleck Road                     |           | 13/1/19 |
|      | PLECK RD - 406                 |           | 13/1/19 |
|      | Pleck Rd, 406                  |           | "       |
|      | Pleck RD, 402                  |           | 13/1/19 |
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|      | pleck RD 402                   |           | 13/1/19 |
|      | Pleck RD, 374                  |           | 13/1/19 |
|      | Pleck Rd 374                   |           | 13/1/19 |
|      | Pleck Road 380                 |           | 13/1/19 |
|      | 376 Pleck Road                 |           | 13/1/19 |
|      | 372 Pleck Road                 |           | 13/1/19 |
|      | 366 Pleck Road                 |           | 13/1/19 |
|      | 366 Pleck Road                 |           | 13/1/19 |





## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 10**

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

**Location:** 47 , GORWAY ROAD, WALSALL, WS1 3BE

**Proposal:** CHANGE OF USE FROM C3 DWELLING HOUSE TO C2 RESIDENTIAL CARE HOME.

**Application Number:** 18/1203

**Applicant:** Mr Sanah Akram

**Agent:** Mr G Siddique

**Application Type:** Full Application: Change of Use

**Case Officer:** Paul Hinton

**Ward:** St Matthews

**Expired Date:** 09-Jan-2019

**Time Extension Expiry:**

**Recommendation Summary:** Grant Planning Permission Subject to Conditions



## Proposal

This application seeks planning permission for the change of use from this four bedroom detached house to a residential care home for three children. No external changes are proposed but internally the following are proposed:

- Ground floor – existing store room to be converted to an office.
- First floor – conversion of one bedroom to a staff bedroom and provision of staff w/c.

Four parking spaces are shown within the existing drive with a bin storage area to the side of the house and a secure cycle store also proposed.

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

### *Design and Access Statement*

- Redundant building back into use.
- Concept of design is to help people with mental difficulty make their life more comfortable, allowing them to become more self-sufficient.
- Accommodation would be for children with behaviour difficulties.
- There will be four full time staff present on site at all times, 2 part-time staff will be employed.

### *Statement of purpose*

- Will accommodate up to three young people of any gender from 8-18 years old.
- Will consider young people who have had a history or missing from home, exhibit verbal/physical aggression, expose themselves to risk of harm, are and have been victims of abuse, self-harm, are in a cycle or criminal offending, have poor life skills and are approaching independence, mild learning difficulties such as ADHD and autism.
- Young people's needs assessed prior to being referred to the home.
- Will be equipped to deal with outbursts of anger that can lead to aggressive episodes.
- Will be instances where no suitable education provision is available, will work alongside other professionals to allow the young person to meet their academic potential.
- 3:3 staff to young person ratio during day and until late. Night shift 2:3 ratio.
- Will offer short to long term placement.
- Will help young people recover from their earlier life issues and prepare them to move forward whether with their own family or a placement with a foster family or transition to adulthood.
- All staff have safeguarding training
- Children will be encouraged to continue to attend their existing school, if this is not possible arrangements will be made for the child to attend appropriate local schools or colleges. For children not in school, an education programme will be run.
- Encouraged to be a member of a weekly club or group.
- During school vacations holidays are planned with the young people.
- Staff accompany children and young people to community-based events.

- All young people placed at the lodge will always be supervised.
- No young person will be left alone at any time unless the young person is in their bedroom.
- House alarm can be part set and all windows and doors can be secured prior to staff retiring at night.
- Home will operate with one sleep in staff and one wake night staff.
- All staff will be training in Management of Actual or Potential Aggression.
- Will fit surveillance cameras at the front and rear for safeguarding.
- Scheme of discipline measures for negative behaviour.

*Supporting letter from Ade cyn Homes February 2019 (Ade cyn Homes are a shareholder of the business)*

- A care home should look and feel like a home, there are no bars on the windows, it is fully furnished.
- Do not cater for young people with severe learning difficulties or high risk (which includes highly violent young people or terrorist)
- Work with young people with low to medium risk, who may get upset and angry as they don't know how to express themselves, young people whose parents have neglected or abused them.
- Will complete an Impact Risk Assessment. This identifies the risk to the child from the community, the risk to the community and the risk from other young people. If this assessment shows that the child is too high risk, then we will not admit.
- The home will have rules in place for young people to follow and consequences to appropriately manage each risk the young person displays. For example, if a young person should play music loud enough that it may disturb the neighbours the music would be taken away from them.
- If as a company we believe that we are failing to keep a young person safe either in the community or in the home then we will give notice on their placement and move the young person to another home which may be better able to meet their needs.
- Have two annual inspections from Ofsted who also review the quality of care being provided.
- If a young person should be out independently and a safeguarding concern should arise a member of staff is always available on the home to go out and manage that situation.

## **Site and Surroundings**

This is a large 4 bedroom detached house within a residential area characterised by detached houses with generous rear gardens and mature landscaping including street trees. The property has an in and out driveway. The neighbouring property to the west is a residential home with a further residential home directly across the road.

The existing house is 746m walking distance to Birmingham Road bus stops with regular services to Walsall and Birmingham. Caldmore Local Centre is 800m walking distance away.

## Relevant Planning History

### Other residential to care home applications

09/1694/FL – 92 Broadway North, Walsall - Change of use from dwellinghouse to residential care home for 4 children aged 8-16 years. Dismissed at appeal 12/8/10. Inspector felt that the property being semi-detached was in itself insufficient reason to dismiss the appeal and that the proposal would not result in an excessive or unusual amount of occupants. No evidence to suggest that the proposal occupants would be likely to create unusual levels of noise (based on Children being at school or a period of time), giving weight to the proposed level of staffing.

## Relevant Policies

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

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**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**

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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

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

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

## **Development Plan**

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

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

- 3.6 to 3.8 Environmental Improvement
- GP2: Environmental Protection
- GP5: Equal Opportunities
- GP6: Disabled People
- ENV10: Pollution
- ENV14: Development of Derelict and Previously-Developed Sites

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- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- H6: Nursing Homes and Rest Homes for the Elderly
- H7: Hostels and Houses in Multiple Occupation
- T7 - Car Parking
- T9 – Cycling
- T10: Accessibility Standards – General
- T11: Access for Pedestrians, Cyclists and Wheelchair users
- T12: Access by Public Transport (Bus, Rail, Metro and Ring and Ride)
- T13: Parking Provision for Cars, Cycles and Taxis

### **Black Country Core Strategy**

- Vision, Sustainability Principles and Spatial Objectives
- CSP2: Development Outside the Growth Network
- CSP4: Place Making
- CSP5: Transport Strategy
- HOU5: Education and Health Care Facilities
- 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
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

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

- HC2: Development of Other Land for Housing
- HC3: Affordable Housing and Housing for People with Special Needs

### **Supplementary Planning Document**

#### **Designing Walsall**

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character
- DW7 Diversity
- DW8 Adaptability

### **Consultation Replies**

**Highways** –no objection.

**Police Designing Out Crime** – no objection. Management practices are very thorough. Has concerns about general ASB and crime in the area. Recommends maximum number of low risk child residents being 3 and new resident will be informed to the local police neighbourhood team

**Children's Services** – Children's Services is likely to need the services of private Children's homes. However, this particular planning application is not essential to meeting the needs of Walsall children.

**Public Health** – no comments received.

**Fire Services** – no objection.

**Pollution Control** – no objection.

**Housing Standards** – building would not be subject to HMO licencing.

## **Representations**

Surrounding occupiers notified by letter and site notice displayed. Officer comments in *italics*.

Four letters have been received objecting to the application on the following grounds:

- Already two care homes in the street (*The Council has no policy limiting care homes in locations*)
- Noise.
- Increase in traffic.
- Insufficient parking.
- Do not know who would live there. (*Not a material planning consideration as the application process is about land use*)

Following re-consultation in regard to additional supporting statement

59 letters have been received objecting to the application on the following additional matters:

- Detrimental to wellbeing of existing residents.
- Loss of property value. (*not a material planning consideration*)
- Not clear how long placements would be (*not a material planning consideration*)
- What sort of assessment does the child have (*not a material planning consideration*)
- What sort of safeguarding checks are in place (*not a material planning consideration*)
- What safeguards when children are out and about? (*not a material planning consideration*)
- How is challenging behaviour dealt with (*not a material planning consideration*)
- Anti-social behaviour
- Building more suited to family residence, would deprive a family of a home.
- Insufficient public consultation. (*In accordance with the planning legislation, adjoining occupiers notified by letter, plus a site notice has been displayed since the 20/12/18*).
- Would not feel safe with such a home in the area.
- Unsafe for existing children in the area to be around people with learning difficulties who may not understand the consequences of their actions. (*not a material planning consideration*)

- Children would need more space and leisure facilities.
- Would have detrimental impact on Walsall Cricket Club and its nursery.
- Lacks the space to meet modern care quality standards
- Will set a precedent for others (*each planning application is considered on its merits*).
- Will add to litter problems. (*No evidence submitted to substantiate this comment relates to future occupiers. The proposal illustrates a bin store as part of the proposal*)
- No detail to how many children and their ages
- (*Not a material planning consideration although this is explained in the Statement of Purpose*).
- Will cause violent or sexual behaviour. (*No evidence submitted to substantiate this comment relates to future occupiers*)
- Will encourage more theft (*No evidence submitted to substantiate this comment relates to future occupiers*)
- Existing drug dealing in the area, unwise to subject vulnerable persons to this environment.
- Primary school 500m away.
- Stress and anxiety caused to parents and staff of nearby businesses.
- Falls into Conservation Area and any alteration should come under strict scrutiny (*site is not within a Conservation Area and no external changes are proposed*).
- Many of the occupiers will be mentally unstable and ex-offenders who spend much time in the life of crime and prison. (*No evidence submitted to substantiate this comment relates to future occupiers*)
- General crime, drug dealing and using, prostitution and violent and sexual behaviour will increase tenfold (*No evidence submitted to substantiate this comment relates to future occupiers*)
- Will not allow children to walk along the any longer.

A petition with 52 signatures has been received objecting to the planning application on the following grounds:

- Increased noise and traffic from staff and visitors at irregular hours.
- Local residents not informed or consulted. (*In accordance with the planning legislation, adjoining occupiers notified by letter, plus a site notice has been displayed since the 20/12/18*).
- Planning notice was not displayed properly on house, was folded over to obscure it from the public (*On 20/12/18 site notice affixed to front wall of the property to notify public of the planning application*).
- Already two large scale nursing homes in Gorway Road. (*The Council has no policy limiting care homes in locations*)

One letter has been submitted in support of the planning application on the grounds of:

- Ideal for this client group.
- Opposition appears to be driven by undue fear, prejudice and self-interest.



## Determining Issues

- Principle of development
- Character of the Area
- Amenity of neighbours and occupiers
- Access and Parking

## Assessment of the Proposal

### Principle of Development

This existing house is in a sustainable location in an established residential area close to the amenities of Caldmore Local Centre. There is a medical centre nearby and the house is within walking distance of the nearest bus stop. The NPPF seeks to deliver a wide choice of quality homes to create sustainable, inclusive and mixed communities. BCCS Policy HOU5 regarding new health care facilities seeks to incorporate a mix of compatible community service uses on a single site. BCCS Policy H6 says that care homes can be a compatible use within a residential area ensuring communities are mixed. Saved UDP Policy H5 encourages the provision of housing for people with special needs. The NPPF and SAD policy HC2 encourages the provision of residential accommodation through the conversion of existing buildings in sustainable locations.

The proposal makes no external visual changes, so from the street, continues to have the appearance as a dwellinghouse. In addition a safeguarding condition preventing any external advertisements to the property maybe imposed. UDP Policy H6 directs, when granting permission the Council will normally restrict permission to the specific use applied for and the number of bed spaces for which permission is sought. A condition is recommended in accordance with this policy.

The property would retain four good-sized bedrooms (including one staff bedroom), a living room, quiet room, a large kitchen, bathroom facilities and a good-sized rear garden, providing sufficient amenity for future occupiers. The proposals aim is to ensure three young people that may have behavioural issues are given 24hour support to help them become a positive part of the community.

Whilst neighbours object on the grounds that there are already two care homes in the street and the proposal would deprive the community of a family home. Saved UDP policy H5 does limit the amount of care home uses in an area or the borough as a whole, nor does it prevent existing houses being converted. The principle of the change of use to a care home is considered appropriate subject to having a minimal impact upon adjacent residential amenity.

The Equality Act places a duty on public bodies to minimise disadvantages by taking steps to meet needs and encouraging participation in public life. Accordingly the Council is unable to object on planning policy grounds to the principle of use.

### Character of the Area

The character of the area is defined by residential uses, dominated by detached houses. The change of use from a residential use, to another residential use, in a residential area is considered compatible with this character.

### **Amenity of neighbours and occupiers**

The proposal may include users prone to having autism and ADHD, which may result in behavioural problems, which could result in noise and disturbance. Weight is given to this being an existing four bedroom house which has the potential to generate a level of noise and disturbance associated with the comings and goings of a large family. In regards to the use of the garden given the high staffing ratios, unnecessary noise could be managed by bringing the young people back into the house. In further mitigation the young people would not be house bound, they will be required to continue with school and outside activities like any other child. It is explained that there would be six people during the day and five people at night, which is not an unknown amount of people at a four bedroom detached house.. Pollution Control raise no objection.

Whilst neighbours object on the grounds that they do not know who would live there, not clear how long placements would be, what safeguards are in place and existing residents and their children would not feel safe with such a home in the area, these are not material planning considerations.

The applicants explain that they will consider up to three young people, 8-18 years old who have had a history or missing from home, exhibit verbal/physical aggression, expose themselves to risk of harm, are and have been victims of abuse, self-harm, are in a cycle or criminal offending, have poor life skills and are approaching independence, mild learning difficulties such as ADHD and autism. There will be trained staff on a 3:3 ratio during day and until late and 2:3 during the night. Placements could be short to long term while young people recover from their earlier life issues and prepare them to move forward whether with their own family or a placement with a foster family or transition to adulthood. Children will be encouraged to continue to attend their existing school and local clubs or groups. Staff accompany children and young people to community-based events. No young person will be left alone at any time unless the young person is in their bedroom. House alarm can be part set and all windows and doors can be secured prior to staff retiring at night. The home will operate with one sleep in staff and one wake night staff. The applicants proposed to fit surveillance cameras at the front and rear for safeguarding purposes. Staff will be equipped to deal with outbursts of anger that can lead to aggressive episodes and a scheme of discipline measures for negative behaviour.

Whilst the fear of crime is a material planning consideration, its weight to be attributed in the planning assessment is often limited, unless there is significant evidence to show that the increased fear of crime would actually occur.

In regard to the objection from the Police, the application has been supported by a statement that sets out how the site would be managed, the age of the young people and their needs. While the Police comment that it is not clear if this supports Walsall children or other Borough's children, this is not a material planning consideration.

The high crime rate in the area and the position of the Children's Act is acknowledged. The NPPF explains that decisions should ensure that places are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. As the young people would be supervised throughout their time at the property by trained staff in safeguarding, it is considered, provision would be in place to protect both the interests of the young people whilst not undermining community cohesion in the area.

While the Police have concerns above general ASB and crime in the area the NPPF explains that decisions should ensure that places are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. As the Young People would be supervised throughout their time at the property by people trained in safeguarding it is clear that provision would be in place to protect both the interests of the young people and to not undermine community cohesion in the area.

The Police raise no objection to the proposal explaining that Management practices are very thorough. In addition the Police have looked at other homes the applicant is associated with and raise no issues with how these operate within those communities. The Police recommend a maximum number of low risk child residents being 3 and new residents will be informed to the local police neighbourhood team. It would be outside the scope of the planning legislation to control the category of children to be cared for or require the operators to contact the Police each time there is a new resident. The number of children can be controlled by condition.

Crime and anti-social behaviour is ultimately a matter for the relevant authorities and crime and disorder is not an inevitable consequence but rather a question of individual behaviour and appropriate management of the premises.

Whilst neighbours object, the children would need more space and leisure facilities, the existing four bedroom family home has a generous rear garden sufficient to meet the needs of three young people. In addition this is a sustainable location with the amenities of Walsall Town Centre and the arboretum a short journey away. Accordingly sufficient space, leisure facilities and amenity space would be provided for three future young people.

Housing standards have no concerns about the layout and any additional requirements are covered through separate legislation.

### **Access and Parking**

Whilst neighbours have concerns about insufficient parking, the proposal includes provision for four off-street parking spaces. Saved UDP Policy T13 refers to car parking standards for residential homes, one space per three beds. The provision of four spaces accords with this policy taking into account there would be three staff on site. In addition the property is within a sustainable location being within walking distance of the local bus stop. The associated vehicle movements may be marginally higher than that of a large family home but would not be severe. Whilst a cycle shelter is proposed within the front drive, want this to be in a more secure position, plus need it to be covered and illuminated. These details can be secured by a necessary condition that meets the government's six tests.

The Highway Authority has no objection to the application, as it is considered, the development would not give rise to conditions prejudicial to highway safety.

## **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

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the proposal would be an acceptable use of this previously developed site within an existing residential area. The application has demonstrated sufficient measures are in place to manage the use of the site without giving rise to an increase fear of crime in the area. There is no evidence that the proposal would increase crime and anti-social behaviour in the area or give rise to an unacceptable level of noise and disturbance. The proposal would not result in a significant loss of amenity for adjoining neighbours. The application has demonstrated sufficient off-street parking to serve the needs of the development.

Conditions in regard to the use, amount of young people, no adverts and provision of cycle store are necessary and meet the six tests. Taking into account the above factors and weighing the overall planning balance it is considered that the application should be recommended for approval. The development is considered to meet the aims and objectives of the National Planning Policy Framework, policies, CSP4, HOU2, TRAN5, ENV2, ENV3 and ENV8 of the Black Country Core Strategy, policy HC3 of the Walsall Site Allocations Document and saved policies GP2, GP5, ENV10, ENV14, ENV32, 57 and T13 of Walsall Unitary Development Plan.

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

Officers have worked with the applicant and agent securing additional information to enable support can be given.

### **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: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

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

- Site and location plan received 14/11/18
- Existing plans received 14/11/18
- Proposed plans received 14/11/18

Reason: For the avoidance of doubt and in the interests of proper planning, (except in so far as other conditions may so require).

3a. Prior to first occupation of any part of the development, details of a covered and illuminated cycle shelter, shall be submitted to and approved in writing by the Local Planning Authority

3b. Prior to the first occupation of any part of the development, the cycle shelter facility shall be installed in accordance with the approved details.

3c. The cycle shelter facility shall thereafter be retained for the life of the development, available for future occupiers to store/use cycles and used for no other purpose.

*Reason:* To encourage sustainable modes of travel and in accordance with UDP policy T13 and Black Country Core Strategy TRAN4.

4. The premises shall be used for the purposes of a residential care home for up to a maximum of three children between the ages of 8 to 18 and for no other purpose (including any other purpose in Class 2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

5. There shall at no time be any advertisement(s) displayed to the frontage of the property.

*Reason:* In the interests of maintaining the character of the area.

**Petition to stop new proposed care home for young adults with learning and behavioural problems at 47 Gorway Road Walsall**

1. Increased noise and traffic from staff and visitors at irregular hours. This is in addition to already substantial traffic and noise from users of Walsall University and Cricket Club.
2. Local residents were not informed or consulted
3. Planning notice was not displayed properly on house (it was folded over to obscure it from the public)
4. There are already two large scale nursing homes at top of Gorway Road. Keep remaining houses for residential use to preserve character of neighbourhood.

Please support by signing of behalf of your household. Objections need to be posted/emailed to council before february 14th planning meeting

| Household Address | Name | Sign |
|-------------------|------|------|
| 86 Jesson Road    |      |      |
| 1, FORWAY WAY,    |      |      |
| 2A GORWAY ROAD    |      |      |
| 72 JESSON RD      |      |      |
| 19 JESSON RD      |      |      |
| 19 Jesson Rd      |      |      |
| 19A Jesson Rd     |      |      |
| 68 Jesson Rd.     |      |      |



## Planning Committee

Report of Head of Planning, Engineering and Transportation on 21-Feb-2019

**Plans List Item Number: 11**

**Reason for bringing to committee:** Contrary to Policy

**Location:** 47, BIRMINGHAM ROAD, ALDRIDGE, WALSALL, WS9 0AJ

**Proposal:** RETENTION OF GROUND AND FIRST FLOOR REAR EXTENSIONS.

**Application Number:** 18/1464

**Applicant:** Ms Grace Bannister

**Agent:** Spooner Architects

**Application Type:** Full Application:  
Householder

**Case Officer:** Sally Wagstaff

**Ward:** Aldridge Central And South

**Expired Date:** 11-Jan-2019

**Time Extension Expiry:** 28-Feb-2019

**Recommendation Summary:** Grant Planning Permission Subject to Conditions



## Proposal

The application seeks retention of ground and first floor rear extensions to a detached house on west side of Birmingham Road close to the junction with Tynings Lane. The application states works commenced in March 2018.

The ground floor extensions are 2.4m deep and 9m wide spanning the entire width of the dwelling at the rear. The first floor extensions are 2.4m deep and 5.5m wide positioned in line with the original first floor northern elevation and stepped in 1m from the original first floor southern elevation. The proposals allow for creation of a new fourth bedroom.

The extensions comprise matching facing brick and there are rear facing windows only. One of the first floor bedroom windows in the extension has a full height window with glazed Juliet balcony.

Extensions have also been carried out at front of the dwelling comprising a lounge, porch and garage extension with combination gable and pitched roof above. Permission 18/1465 to retain these works was granted for this in December 2018.

A petition with 4 signatures in support of the proposals was provided with the application stating no objections to the building works and extensions and they are satisfied with the completed work. This is appended to this report.

## Site and Surroundings

The application site is in a residential area. The two dwellings 48 and 50 Tynings Lane are at right angles to the application site and their gardens border the side of elevation of the plot. The surrounding properties are detached houses.

There is a service road adjacent.

## Relevant Planning History

18/1465 - Retention of ground floor front extensions – GSC 21/12/18.

## 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 12 – Achieving well-designed places**

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.

### **Development Plan**

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

### **Black Country Core Strategy**

- CSP4: Place Making
- 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 Designing Walsall SPD are consistent with the NPPF.

## Consultation Replies

None.

## Representations

A petition with 4 signatures in support of the proposals was provided with the application stating no objections to the building works and extensions and they are satisfied with the completed work.

## Determining Issues

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

## Assessment of the Proposal

### Design of Extension and Character of Area

The extensions are located to the rear of the dwelling and whilst this is the end property before the junction with Tynings Lane the extensions are not obtrusive within the street scene. The extensions are masked by the existing dwelling and adjacent dwellings in Tynings Lane.

The extensions are considered to be subservient to the main dwelling as they are fairly shallow in depth and located to the rear. Whilst the roof above the first floor extension has an unequal pitch this is not obvious from the public realm.

The applicant acknowledges that the extensions were partially complete before applying for permission but this was a genuine mistake as they thought they had permitted development rights to extend in the manner they have done.

It is considered the proposals do not have a detrimental impact upon the character of the existing property and wider area.

### Amenity of Nearby Residents

The proposed extensions comply with the 45 degree code guidelines in respect of the nearest habitable room windows in the adjacent dwelling 49 Birmingham Road as the extensions draw level with the rear of this neighbouring dwelling. In the circumstances the proposals do not harm the outlook, daylight or privacy of this neighbour.

The neighbouring dwelling 50 Tynings Lane faces the proposed extensions with a distance separation of just 12.3 metres between first floor windows in the rear of number 50 and the first floor rear extensions at the application site. This does not meet the Council's guidelines where there should be at least 13m distance separation between a rear elevation and blank walls exceeding 3m high. The shortfall is therefore just 0.7m. The neighbouring property also has single storey extensions at the rear shortening this distance further. Nevertheless the proposed first floor extensions are in line with the original side elevation of the house so draw

no nearer to the neighbour at 50 Tynings Lane. The neighbour is also one of the signatories to the letter of support.

In respect of the distance separation between the ground floor extensions and neighbouring property to the rear at 1 Meadow Road there remains a distance of 20m. This does not achieve the 24m distance recommended in Council guidelines but is reflective of the distances between other neighbouring dwellings in the surrounding area and the extensions are relatively shallow in depth. Also given the orientation between the application property and 1 Meadow Road the proposals will not significantly reduce daylight to this neighbouring property. Again this neighbour is one of the signatories to the letter of support.

### **Parking**

The extensions convert this 3 bed dwelling to a 4 bed dwelling. The front of the dwelling is almost entirely hard surfaced allowing sufficient space to accommodate three off-street parking spaces in accordance with saved UDP policy T13.

## **Conclusions and Reasons for Decision**

The design of the proposed extensions does not harm the character of the area as they are not prominent from the public realm and accords with saved UDP policy GP2 and ENV32.

The extensions do not harm the residential amenities of surrounding occupiers to such an extent as to warrant refusal of permission as the distance separation between dwellings is reflective of that between surrounding properties and accords with saved UDP policies GP2 and ENV32.

The parking provision at the dwelling is adequate to cater for the proposed number of bedrooms and accords with saved UDP policy T13.

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 design and distance separation supporting information has been submitted to justify the proposals and enable full support to be given to the scheme.

## **Recommendation**

Grant permission subject to conditions.

## **Conditions and Reasons**

1: The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Reason: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

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

- Location Plan 1811:15A received 16/11/18
- Site Plan 1811:14A received 11/02/19
- Proposed Plans 1811:12 received 01/11/18
- Proposed Elevations 1811:13 received 01/11/18

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

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

### **Notes for Applicant**









Low Risk Coal

Grace Bannister  
47 Birmingham Road  
Aldridge  
Walsall  
WS9 0AJ  
19th October 2018

Reference: Walsall Council Planning Department

Dear Sirs,

With regards to building works and extensions at the above address, we the below have no objections and are satisfied with the completed work.

| Name  | Name  | Name  | Name  |
|---|---|---|---|
|            |            |            |             |
| 49 Birmingham Road<br>Aldridge<br>Walsall<br>WS9 0AJ  | 50 Tynings Lane<br>Aldridge<br>Walsall<br>WS9 0AS   | 48 Tynings Lane<br>Aldridge<br>Walsall<br>WS9 0AS   | 1 Meadow Road<br>Aldridge<br>Walsall<br>WS9 0ST   |
| Sign<br> | Sign<br> | Sign<br> | Sign<br> |

Sincerely,

  
Grace Bannister