



Planning Committee

Report of Head of Planning and Building Control on 20 June 2022

Plans List Item Number: 3

Reason for bringing to committee

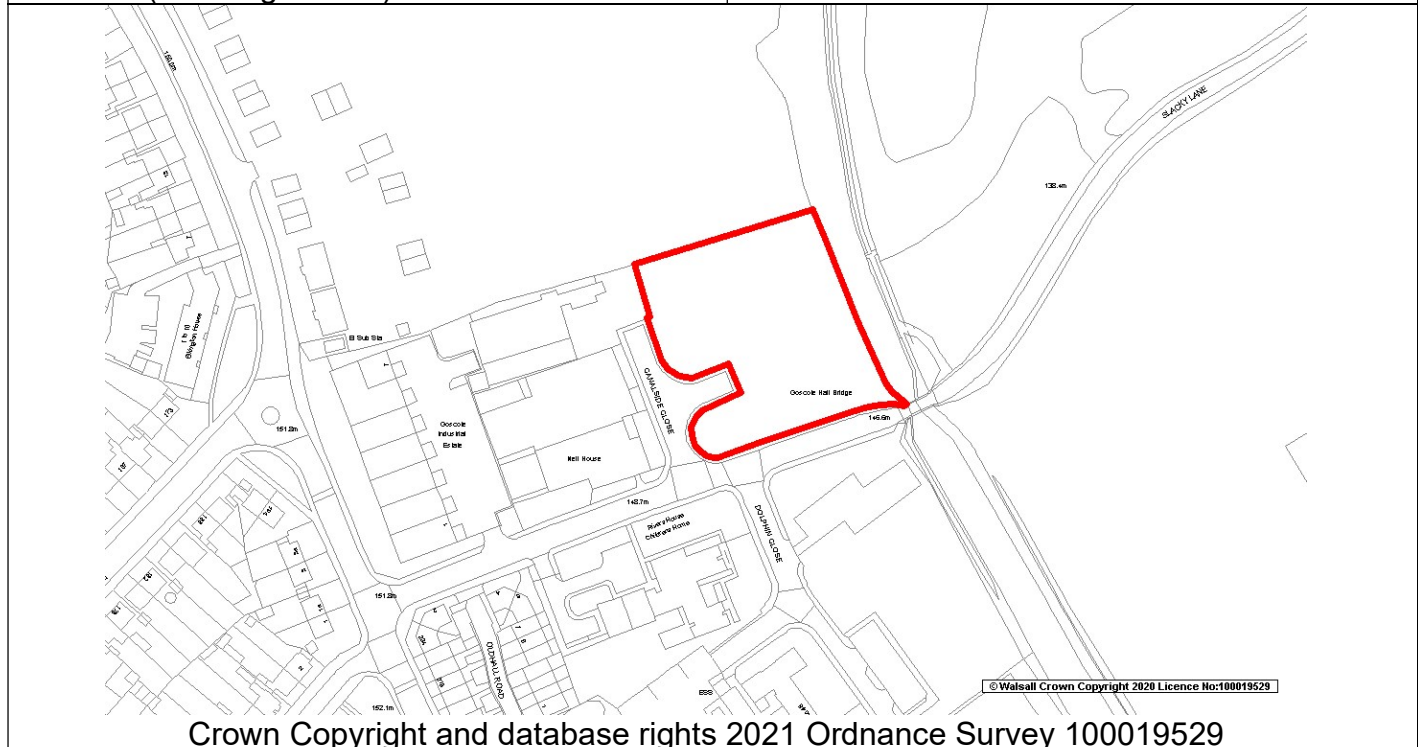
Major Application

Application Details

Location: LAND BETWEEN CANALSIDE CLOSE AND CANAL, CANALSIDE CLOSE, WALSTALL

Proposal: ERECTION OF 33 DWELLINGS, TO INCLUDE 3 X TWO BEDROOM DWELLINGS, 12 X 3 BEDROOM DWELLINGS AND 9 X 1 BEDROOM APARTMENTS AND 9 X 2 BEDROOM APARTMENTS CONTAINED WITHIN A THREE STOREY APARTMENT BUILDING. FORMATION OF A NEW ACCESS, BIN AND CYCLE STORES, ASSOCIATED PARKING AND AMENITY SPACE.

Application Number: 21/1781	Case Officer: Leah Wright
Applicant: Keon Homes	Ward: Blakenall
Agent: CT Planning	Expired Date: 21-Mar-2022
Application Type: Full Application: Major Use Class C3 (Dwellinghouses)	Time Extension Expiry:



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Recommendation:

1. Planning Committee resolve to Delegate to the Head of Planning & Building Control to Grant Planning Permission Subject to Conditions and a S106 to secure a contribution to Affordable Housing, Open Space, Landscape Management and access improvements and wayfinding to the Wyrley & Essington Canal towpath and subject to ...
 - Forming a set of planning conditions in order to make the development acceptable in planning terms;
 - Overcoming the outstanding objections raised by the Local Highways Authority, Ecology, Canal and River Trust, Lead Local Flood Authority and Environmental Protection which may require substantive layout changes.
 - Addressing any outstanding comments from the Council's tree officer.
 - No further comments from a statutory consultee raising material planning considerations not previously addressed including following any layout changes.

Proposal

This application is a full application seeking the erection of 33 dwellings which will include 9 one bedroom apartments, 9 two bedroom apartments, 3 two bedroom houses and 12 three bedroom houses, formation of a new access, bin and cycle stores, associated parking and amenity space.

Since the application was original submitted there have been a number of changes to the scheme which are detailed as below:

- Reduction of number of units to 33.
- Proposed site plan amended to include a turning facility for refuse vehicles and bin collection points and landscaping between parking bays.

Site and Surroundings

The site is located on the Southwestern side of the Wyrley and Essington Canal, it currently comprises a patch of waste ground bounded by Slacky Lane to the south, Canalside Close to the West and a new residential development (LPA reference 17/1656) to the north. The land is currently vacant and overgrown, with scrub planting and vegetation. There are no Tree Protection Orders (TPOs) on the site.

The site is approximately 0.44ha.

In terms of the surrounding area it is considered to be mixed in use with existing residential uses to the south, light industrial uses to the west and a large former industrial site to the north which is the subject of application 17/1656. There is a large area of green space opposite the bank of the canal which is designated as a Site of Importance for Nature Conservation (SINC); it should be noted that the site itself is not part of the SINC designation.

The site is considered to be in a sustainable location, in a developing residential area within 3 minutes walk of local bus stops and approximately 12 minutes walk from local shops and amenities.

The site will have access from Canalside Close which also serves as a turning head.

In terms of the wider context of the site, it is located on the east of the Blakenhall area, approximately 2 miles north of Walsall town centre and around 1 mile to the east of the local centre at Bloxwich.

The site is not within a Conservation area, nor does it comprise a listed building. To the east of

the site is the West Midlands Green Belt. The site is within a Coal Development High Risk Area.

Relevant Planning History

J.K.L ENGINEERING,CANALSIDE CLOSE,WALSALL,WEST MIDLANDS

06/0781/FL/W5- Change of use and installation of portacabin for the use of taxi base/office, with parking for 4 vehicles- Refuse permission 21-Aug-2006

FORMER CERRO E M S LTD, GOSCOTE LANE, BLOXWICH, WALSALL

17/0491- Screening Opinion as to whether an environmental statement is required for redevelopment of the site to provide 270 dwellings- Screening Opinion EIA not required- 09-May-2017

17/0996- Remediation works comprising: Soil stabilisation, excavation, storage and disposal or cleaning of soil contaminated with hydrocarbon, grouting and capping of mine-workings and mine shafts- GSC 03-NOV-2017

17/1656- Hybrid planning application comprising

- An outline application for the construction of up to 263 dwellings with associated garden areas, minor estate roads, parking areas and driveways, along with public open space provision and all other associated works

- A full planning application for three new points of access, main estate roads through the site, as identified on the submitted plans, and for the site infrastructure drainage strategy- GSC 16-nov-2020

20/1301- Approval of reserved matters (layout, scale, appearance, landscaping, and internal access) relating to hybrid planning permission (ref: 17/1656), comprising 263 residential dwellings, public open space, hard and soft landscaping, attenuation basin, SWALE and associated drainage, car parking, vehicular access from Goscote lane, and associated infrastructure works- Approve reserved matters subject to conditions- 31-Mar-2021

Relevant Policies

National Planning Policy Framework (NPPF)

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 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 (para 56) says:

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

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

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

Saved Policies of Walsall Unitary Development Plan

- GP2: Environmental Protection
- GP3: Planning Obligations
- ENV10: Pollution
- ENV11: Light Pollution
- ENV17: New Planting
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- ENV40: Conservation, Protection and Use of Water Resources
- T7 - Car Parking
- T12: Access by Public Transport (Bus, Rail, Metro and Ring and Ride)
- T13: Parking Provision for Cars, Cycles and Taxis

Black Country Core Strategy

- CSP4: Place Making
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- HOU3: Delivering Affordable Housing
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV4: Canals
- ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island
- ENV6: Open Space, Sport and Recreation
- ENV7: Renewable Energy
- ENV8: Air Quality

Walsall Site Allocation Document 2019

HC1: Land allocated for New Housing Development (Under site reference HO61.
HC3: Affordable Housing and Housing for People with Special Needs
OS1: Open Space, Sport and Recreation
EN1: Natural Environment Protection, Management and Enhancement
EN3: Flood Risk
EN4: Canals
T2: Bus Services
T3: The Rail Network
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

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

Archaeology

- No Archaeological implications for the proposal.

Canal and River Trust

-Concern with the following:

- a) The visual impact of the proposal on the canal corridor.
- b) The impact of the proposed lighting scheme on the ecology of the canal.
- c) Surface water disposal.
- d) The impact of desired connectivity with the neighbouring site.
- e) The impact of the proposal on use of the canal towpath.
- f) The navigational safety of the canal.
- g) The structural impact of the proposal on the Canal's infrastructure.

Further information is needed to address matters a to d and suitably worded conditions and a legal agreement are necessary to address matters e to g.

Clean and Green

- Manoeuvring of a refuse vehicle is a concern. Communal bin collection points recommended. Bin store needs to be relocated to a position that will be accessible to refuse collection vehicle.

Coal Authority

- Concur with the recommendations of the Coal Mining Risk Assessment that coalmining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to the development to establish the exact situation. Conditions recommended to address the above.

Ecology BBC Wildlife

- No response.

Environmental Protection

- Applicant needs to undertake additional intrusive contaminated land investigations and possible remediation, agree details to reduce impacts from horn noise due to vehicles, crossing the nearby bridge, agree measures to comply with the Black Country Air Quality SPD and implement a Construction Environmental Management Plan.

Highways England

-No objection

Historic England

- No objection

Housing Strategy

- Black Country Core Strategy policy HOU3 requires 25% affordable housing contribution on sites of 15 units and over. The contribution should be provided on site and would equate to 9 units (5 x social rent 3 bed houses, 4 x first homes, or 3 first homes and 1 shared ownership, 2 bed houses).

Lead Local Flood Authority

- Objection; Insufficient information has been submitted to demonstrate that an acceptable drainage strategy is proposed. Recommend that planning permission is not granted.

Local Highways Authority

- No objections to the principle of development but raise a number of concerns with parking spaces, lack of a segregated pedestrian route from Canalside Close, lack of turning facility and concern that the layout is car dominant.

Natural England

- No objection.

Network Rail

- No comment.

Public Health

- No objection

Severn Trent Water

-No objection subject to condition regarding the submission of drainage plans for the disposal of foul and surface water flows.

Strategic Planning Policy

- Support in principle but have concern with the density of development, amenity space, parking and impact on the adjacent canal.

West Midlands Police

- Applicant should consider construction site security, principles of secure by design, external lighting and CCTV. No objections.

West Midlands Fire Service

- No objection- note to applicant regarding compliance with building regulations.

Representations

One representation was received in support of the application from Cllr Robertson and is summarised as follows:

- Fully support- the area is a site for fly tipping and drug trafficking.

Determining Issues

- Principle of Development
- Design, Layout and Character
- Amenity of Neighbours and Amenity of Future Occupiers
- Highways
- Ground Conditions/Coal Authority
- Noise
- Air Quality
- Construction Environmental Management
- Ecology
- Canal
- Flood Risk / Drainage

- Trees / Protected Trees
- Planning Obligations
- Local Finance Considerations
- Presumption in favour of sustainable Development

Assessment of the Proposal

Principle of Development

The site is allocated for housing by SAD policy HC1 as site reference HO61. However, the site is also identified as a potential site for travelling showpeople by SAD policy HC4.

Policy HC1 explains that a small number of these sites (referred to as GT or TS in Table HC1) could also be suitable instead, in whole or in part, for use as Gypsy and Traveller or Travelling Showpeople Sites, as described in Policy HC4. Proposals for general housing on these sites, that would prevent provision on them of at least the number of pitches or plots referred to in Table HC4a below, will be opposed unless it can be demonstrated that the total capacity of Gypsy and Traveller or Travelling Showpeople sites elsewhere in the Borough, on existing sites and / or other sites that are available for development for these uses, is at least equal to the total set out in Table HC4b (66 pitches and 90 plots).

The need for showpeople plots set out in table HC4b is based on evidence prepared for the BCCS in 2008. This is now rather old, however evidence remains of need for additional plots in the area. The council is currently considering a planning application for an additional plot adjacent to Strawberry Fields on Goscote Lane (application 21/0249) on a site in the Green Belt.

Nevertheless, the Showmen's Guild confirmed in 2018 that the current site, at Canalside Close, was unsuitable for them. The need for showpeople plots is being reviewed as part of the Black Country Plan. However, on the basis of the 2018 advice, the use of Canalside Close for general housing can be supported in principle.

Policy HC1 indicates that the capacity of the site is 15 dwellings. This is based on a density of 35 dwellings per hectare, reflecting the density for sites with moderate accessibility as set out in table 8 attached to BCCS policy HOU2.

The application has been amended since its submission to 33 dwellings as opposed to the originally submitted 36 dwellings. The amended application for 33 dwellings equates to a density of 75 dwellings per hectare. Table 8 indicates that densities in excess of 60 dwellings per hectare are only appropriate within a strategic centre or town centre. It is considered whilst the number of dwellings has been reduced the density raises concern and is not appropriate in this location and thus raises concern, especially when taking into account that the gardens for the proposed dwellings are below the minimum standards.

In summary it is considered that whilst the principle of housing is supported in principle the density is of concern. The suitability of the residential development will also be subject to other material considerations as set out below.

Design, Layout and Character

The Design and Access Statement states that the design has been driven by the aspiration of creating a development that will be an asset to the area, regenerating the vacant land, being of a well-detailed contemporary design.

The application proposes 33 new dwellings and comprises a mix of townhouses and apartments.

The townhouses are two storey properties, whilst the apartment building is three storeys in height.

In terms of the design, the apartment building is three stories in nature with a hipped roof with multiple pitches. The maximum height of the building is 12.4m with eaves of 8m in height. To the front and side elevations there will be entrances to the building with a lean to canopy above and to each elevation there is an extensive amount of glazing ranging from two to three pane windows. The depth of the building will be 18.15m whilst the width of the building will be 25.75m.

House type '723' will measure 8.1m in maximum height with a dual pitch roof (gable fronting the side as opposed to the front of the street) with eaves of 4.9m. The dwelling would measure a maximum width of 4.8m whilst the depth would be 8.2m. There are windows and a front door with a gable canopy above to the front elevation and first floor window and French doors to the rear elevation.

House type '769' will measure 8.35m in maximum height with a dual pitch roof (gable fronting the side as opposed to the streetscene) with eaves of 5m. The dwelling would measure a maximum width of 4.8m whilst the depth would be 8.7m. There are windows and a front door with a gable canopy above to the front elevation and first floor windows and French doors to the rear elevation.

House type '751' will measure 8.5m in maximum height with eaves of 4.9m. The dwelling would measure a maximum width of 5.18m whilst the depth would be 8.96m. There are windows and a front door with a gable canopy above to the front elevation and first floor windows and French doors to the rear elevation. It should be noted that plot 1 will have additional side facing windows.

The scale of the proposed development, being two and three stories is considered to reflect the character of the area where there are examples of three storey apartment buildings and two storey dwellings.

In terms of materials, the proposal would utilise two types of bricks and tiles; type 1 brick will be dark red/brown and type 2 will be light red/brown whilst type 1 tile will be grey (Russel Grampian 'Slate Grey' or similar), type 2 will be red/brown (Russell Grampian 'Peat Brown' or similar approved). The doors and rainwater goods will be PVCu/composite coloured black and the windows, fascias will be PVCU coloured white. These materials are considered to be acceptable.

The layout is a courtyard-style layout and is outward facing; the parking and serving spaces are contained within the site. It's considered that the layout is inadequate with a poor relationship between the proposed dwellings and the existing and proposed public realm. The proposed layout is car dominant with a large amount of hard standing and a lack of landscaping. There is a lack of private amenity space for the proposed apartments and the proposed gardens of the dwellings are also inadequate as discussed in the below section of this report (amenity of future occupiers). Further to the above, the bin and cycle stores are remote, unsecured and separated from the development being located in the north-west corner of the site and are therefore unlikely to be utilised. Further it is considered that the boundary treatments as proposed are unacceptable and would fail to secure to the development.

In addition to the proposed development, there is a development to the north of the site to consider. The layout as proposed exposes the rear gardens of the adjacent development and also means that parking will be built up to neighbouring residents gardens which would be unacceptable leading to impacts on the neighbours amenity.

All of these issues with the layout contribute to a poor development and raise issues of anti-social behaviour and fear of crime, given the site is relatively remote.

It's considered given the above, the layout brings about visual harm to the surrounding area and existing street scenes. In order for the development to be supported it is considered a revised layout would need to be submitted, addressing the above issues. It is recommended the report be delegated back to officers to resolve the layout and fear of crime concerns.

Amenity of neighbours and future occupiers

The applicant states they need to demonstrate up to 33 dwellings can be achieved on this site. The Council has minimum standards for residential amenity the key standards relevant to this case are:

- 24m separation between habitable windows in two storeys (and above) developments. This standard will be applied more robustly at the rear than across roads at the front
- 13m separation between habitable windows and blank walls exceeding 3m in height
- 45 degree code: particularly where new development impacts on existing (details of this code are available on request or can be downloaded from www.walsall.gov.uk)
- Garden dimensions: 12m in length or a minimum area of 68 sq m for houses and 20 sq m of useable space per dwelling where communal provision is provided.

The proposed dwellings would benefit from front and rear facing windows and there would be no side windows to the dwelling with the exception of plot 1. The proposed site plans illustrates some shortfalls in separation distances between habitable room windows. Between plot 2 and apartment B (south facing) there is only 19.89m separation distance and between plot 1 and apartment building A (south facing) there is only 22.31m separation distance. Plots 9 to 13 face onto the front of the apartment building with a separation distance of 17.1 to 19.3m. The range from 17.1m to 19.3m. It is considered that there is concern with this shortfall in separation standards and whilst the standard will be applied more robustly at the rear than across roads at the front (which is relevant in this case) it is still considered that the shortfall will impact on the privacy of occupiers of the dwellings.

The National Space standards (NSS) stipulate various standards including the minimum floor area of single and double bedrooms (7.5 and 11.5sqm) and the minimum gross internal floor areas of dwellings.

House type 'D' (as per the proposed site plan) is a 2 bed 4 person dwelling over two storeys. Internally there will be a kitchen, WC, dining area and lounge at ground floor in an open plan format, whilst at first floor there would be 2 no bedrooms and 1 bathroom. The NSS state that this type of dwelling should have a minimum GIA of 79sqm. The Internal Gross internal area (GIA) is 67.2sqm, bedroom 2 measures 14.9sqm and bedroom 1 measures 11.28sqm. It is considered whilst the bedrooms meet the standards the internal GIA is a shortfall of 11.8sqm.

House type 'E' (as per the proposed site plan) is a 3 bed, 4 person dwelling over two storeys. Internally there will be a kitchen, WC, dining area and lounge at ground floor in an open plan format, whilst at first floor there would be 3 no bedrooms and 1 bathroom. The NSS state that this type of dwelling should have a minimum GIA of 84sqm. The Internal Gross internal area (GIA) is 71.4sqm, bedroom 1 measures 11.18sqm, bedroom 2 measures 7.8sqm and bedroom 3 measures 6.5sqm. It is considered whilst bedroom 1 and 2 meet the NSS, bedroom 3 and the overall internal GIA is a shortfall of approximately 13sqm.

House type 'F' (as per the proposed site plan) is a 3 bed 5 person dwelling over two storeys. Internally there will be a kitchen, WC, dining area and lounge at ground floor in an open plan format, whilst at first floor there would be 3 no bedrooms and 1 bathroom. NSS state that this

type of dwelling should have a minimum GIA of 93sqm. The Internal Gross internal area (GIA) is 79.1sqm, bedroom 1 measures 11.98sqm, bedroom 2 measures 10.7sqm and bedroom 3 measures 6.78. It is considered whilst bedroom 1 and 2 meet the NSS, bedroom 3 and the overall internal GIA is a shortfall of approximately 14sqm.

The apartment building is made up of two types of apartment, a 1 bed, 2 person apartment with a GIA of 43.2sqm and a 2 bed 3 person apartment with a GIA of 52.6sqm, both over one storey. Internally the apartments include a kitchen, dining and lounge area which is open plan and a bathroom. Bedroom 1 of the 1 bed apartment measures 11.2sqm, whilst bedroom 1 of the 2 bed apartment measures 9.5sqm and bedroom 2 measures 7.4sqm. The apartments would again not meet NSS having a shortfall of approximately 6.8sqm for the 1 bed apartment and a shortfall of 8.6sqm for the two bed apartment. It is considered there is a tiny shortfall of 0.1sqm for bedroom 2 of the 2 bed apartment.

All of the dwellings proposed would have a shortfall of internal GIA and most have a shortfall in terms of the GIA of the proposed bedrooms. It is considered that if there was adequate private amenity space provided for the dwellings that this shortfall would not be as detrimental to future occupiers as there would be other space to utilise outside of the dwellings, however given there is not there is concern that the amenity provided for future occupiers could be potentially detrimental.

In terms of amenity space, the dwellings are all provided by private amenity space ranging from 15sqm to 49sqm. It's noted that none of the garden sizes meet the standards as stipulated in the Designing Walsall SPD as above. Further the apartment building will not have any shared amenity space and there has been no justification given as to why this is the case. This would represent a poor standard of amenity for future occupiers and would not be acceptable and would be reason to refuse the scheme as is, given the impact to the future occupier's amenity. It is recommended the application is delegated back to officers to resolve the layout and design.

Highways

As above this application proposes the construction of 33 dwellings with access will be from Canals Close which is an adopted road.

54 parking spaces are proposed across the development which equates to 154% provision. It's considered that whilst the highway authority has no objections to the principle of residential development on the site, the originally proposed site layout raised a number of concerns with the parking spaces being on the radius of the junction, a lack of segregated pedestrian route from Canalside Close to plots 12 and 18, lack of a turning facility for a large delivery type vehicle to minimise potential reversing movements along the parking access way and the fact that the layout is car dominant with extensive rows of parking bays.

An amended site layout was received which has dealt with some of the issues, including the pedestrian route and a turning facility, however it is still considered that the layout is car dominant and thus unacceptable. The LPA is awaiting formal comments from highways for the current layout and therefore request to delegate back to the head of planning and building control to overcome the outstanding objection from the Local Highways Authority.

Ground conditions/Coal Authority

The Coal Authority concurs with the conclusions and recommendations of the Coal Mining Risk Assessment (CMRA) Report; that coal mining legacy poses a risk to the proposed development and that intrusive site investigation works should be undertaken in order to establish the exact situation regarding coal mining legacy issues on the site and to inform a comprehensive scheme of remedial measures to ensure the safety and stability of the proposed development.

The Coal Authority recommends that the LPA impose a Planning Condition, should planning

permission be granted for the proposed development.

The Applicant has submitted a Phase II Site Appraisal and an Environmental Noise Assessment in support of their planning application.

'Phase II Site Appraisal (Ground Investigation)', by GRM Development Solutions Limited, Ref. P9383, September 2020.

The Phase II Appraisal mentions the presence of coal mining works, shallow mine workings, and recommends measures to further identify and address these, as well as possible ground stabilisation (piling), drilling and grouting works. As above the Coal Authority concurs with the conclusions and recommendations of the CMRA and relevant conditions would be implemented on any approval.

The Phase II Appraisal advises that a full ground gas monitoring exercise was not undertaken and recommends further monitoring, however, if piling works are to be undertaken, then these will have an impact on the ground gases that are present on the site. If further gas monitoring is to be undertaken, then the Applicant should consider undertaking this after any ground stabilisation works. Alternatively, the Applicant needs to incorporate ground gas mitigation measures within the foundations of all buildings. At present, the applicant has not clarified what their intentions are.

Some of the boreholes have identified contamination present on the site and the Consultant has made recommendations to further delineate the areas of contamination and mitigate the impacts of the contaminants e.g., off-site disposal of contaminated topsoil and importation of clean topsoil.

It is noted that the consultant has made recommendation to strip the site to enable for the further identification of coal mining works. Before the site is to be stripped, then the Applicant needs to remove the possible areas of contaminated soils, to ensure that these are not distributed to other parts of the site i.e., spreading the area to manage for contamination.

It is considered that based on the above, the applicant and their consultant need to advise the Local Planning Authority on how they will address contaminated soils, ground gases, and ground stabilisation before they undertake any further works on the site. Potential conditions could be drafted and implemented to address the above.

Noise

The application is supported by an **'Environmental Noise Assessment'**, by noise.co.uk Ltd, Ref. 21874-1, 26 November 2021.

Environmental Protection have raised concerns about the noise assessment and the consideration of horn noise being sounded vehicles as the cross over the nearby hump-back bridge on Slacky Lane. There is outstanding concern that persons within habitable rooms that are close to the bridge may be significantly affected by the horn noise. A potential solution to this could be a noise acoustic barrier, however this could have implications on visual amenity.

As already pointed out to the Applicant, such horn noise is being used by Drivers to warn other vehicles that they are crossing over the bridge, therefore, as a Council, legal or enforcement action to stop such noise cannot be taken, compared to noise from an individual or premise.

The applicant has been advised that options to overcome this issue include making road improvements, such that the need to sound the horn are avoided e.g. placing a set of traffic lights on the bridge (subject to Highways Department agreement) or installing glazing and ventilation systems that significantly better than the minimum that has been suggested by the Acoustic

Consultants.

In order to look favourably upon this application, Environmental Protection are recommending that prior to any construction works commencing, the Applicant agree what measures they will take in writing with the Local Planning Authority. At present, due to the lack of information on the above issue, refusal would be recommended. As such it is request that members delegate back to the head of planning and building control to overcome the outstanding concerns from Environmental Protection.

Air Quality

Although the site is in an area that is not affected by poor air quality, the Air Quality SPD remains relevant, and the Applicant is required to agree how they will meet the requirements in writing with the Local Planning Authority. It is noted that the Applicant has provided a Travel Plan, which goes part way into meeting the requirements, however, the Applicant will also need to provide information on the installation of electric vehicle charging points; it is considered this can be dealt with by an appropriate planning condition.

Construction Environmental Management

Due to the location of the site near to the canal and the highways network, the Applicant will be required to agree and implement a Construction Environmental Management Plan to control local impacts such as noise, dust, and debris drag-out. This point can be dealt with by an appropriate planning condition.

Ecology

The application is supported by a Preliminary Ecological Assessment. The Council's Ecologist has reviewed the report and application and has two areas of concern in addition to conditions in order to make the development acceptable.

The first concern is that the entire development has gone to the footprint with no greenspace provided. The NPPF asks for net gain which none of the development has been put forward to deliver. The development also borders the Canal SLINC and as such confirmation is sought on drainage and storm water control to ensure prevention of runoff that may impact the SLINC and downstream habitats. The current flood risk assessment seems to be completed at outline stage with recommendation that approval with lead flood authority and Severn Trent water are required to confirm drainage. This should be completed prior as this will ensure no negative impact to the SLINC. If all of the above was resolved planning conditions to secure the recommendation in the report and for a Construction Ecological Management plan and Landscape Ecological Management Plan would be recommended. Given there is concern and outstanding issues from an Ecology perspective it is requested that members delegate back to the head of planning and building control to overcome the outstanding objection.

Canal

The Canal and River Trust have raised concern with the application in a comprehensive response and have advised that further information is required to address the visual impact of the proposal on the canal corridor, the impact of the proposed lighting scheme on the ecology of the canal, surface water disposal and the impact of desired connectivity with the neighbouring site. In addition they have stated that a legal agreement is necessary to address the impact of the proposal on use of the canal towpath, the navigational safety of the canal and the structural impact of the proposal on the canal's infrastructure. Whilst it is acknowledged that there has been correspondence between the LPA and the agent for this development on the above issue, it is considered that there are still outstanding matters to address it is requested that members

delegate back to the head of planning and building control to overcome the outstanding objection.

Flood Risk / Drainage

The site and immediately boarding areas are within Flood Zone 1. The Local Lead Flood Authority (LLFA) have commented on the application and consider that insufficient information has been submitted to demonstrate that an acceptable drainage strategy is proposed. It's considered that the proposed development may present risks of flooding on-site and/or off-site if surface water runoff is not effectively managed. The absence of an adequate drainage strategy is therefore sufficient reason in itself for a refusal of planning permission.

In order to overcome this objection, there should be further location specific testing to BRE 365 to confirm whether infiltration methods can be used (as specified within the submitted Flood Risk Assessment). If infiltration methods are found to be suitable an updated drainage strategy, inclusive of attenuation storage utilising infiltration should be provided. If infiltration methods be unsuitable, evidence of an agreement from the local sewerage provider that connection to the surface water sewer is agreeable at the proposed discharge rate. The objection will be maintained until further infiltration testing has been undertaken and when the local sewerage provider has confirmed that connection to the surface water sewer is agreeable at the proposed discharge rate.

It is acknowledged that the LPA and agent for this development have discussed the above objection however as it is still outstanding it is requested the members delegate back to the head of planning and building control to overcome the outstanding objection raised by the LLFA.

Trees / Protected Trees

At present there have been no comments provided by the tree officer. It is considered that a comprehensive landscaping scheme would be conditioned as any approval of the development and a landscape management plan would be signed up to a s106 in order to maintain the site. Given that formal comments are yet to be received in regard to trees/landscaping, it is requested that members of this committee delegate back to the Head of Planning and Building Control in order to address any concerns from the Council's tree officer.

Planning Obligations

The applicant has submitted a viability appraisal along with their planning application which is currently being independently assessed. The conclusions of the viability assessment will determine what level of, if any, planning obligations can be secured in relation to this development. The LPA has asked the independent assessor to consider the viability of the development on the following basis; (a) S106 contributions paid upon commencement of the development.

Where a developer claims the proposed development is not viable, such that he should not be required to meet policy requirements for financial contributions, open space, affordable housing etc. caselaw and legislation provides that planning permission should be refused, as the development is not acceptable in planning terms. As Walsall has a lot of brownfield land with underlying issues which may lead to lack of viability, Members may decide to grant planning permission if other material considerations are considered to outweigh the lack in viability but subject to an updated viability assessment being carried out part way through the development, capturing any "unexpected" improvement in prospects by way of a clawback.

Members are asked to provide their S106 Priorities (*affordable housing/urban open space etc*) as part of their resolution for this development (*if Members are minded to support the application*).

Where a development is deemed by the independent assessor to be **wholly viable** officers will secure the full policy level of obligations, which in this instance would be:

- £47,265.00 for Open Space and 9 affordable housing units on site (5 x social rent 3 bed houses, 4 x first homes, or 3 first homes and 1 shared ownership, 2 bed houses) and £5000.00 towards "Access improvements and wayfinding to the Wyrley & Essington Canal towpath.

Where the development is found to be **wholly unviable** officers will not seek to secure any financial contributions or in-kind obligations that affect the development's viability other than for those which are absolutely necessary for example protection of listed buildings, protected species etc.

Where a development is found to be **unviable**, officers will apply a viability clawback provision into the a S106 agreement to reappraise the development's viability part way through the construction/occupation process to consider whether any changes in the market or profitability of the development could provide increased planning obligations up to, and not exceeding, the policy-compliant level. This process is applied at a balance point in the development to enable the market changes and profitability to be assessed against the whole site, but with a portion of the site still to be developed in order to render the payment of any contributions enforceable. Where the assessment includes provision for affordable housing, the obligation is converted into a financial contribution for off-site affordable housing as a proportion of on-site housing may already at this stage be occupied.

Members should choose their Priorities from the following options in the event the development is found by the independent assessor at application stage or viability clawback stage to be partially viable:

- a) Any available financial contribution is to be split equally between Open Space and Off-Site Affordable Housing and access improvements and wayfinding to the Wyrley & Essington Canal towpath.];
- b) Any available financial contribution should be spent on Open Space up to the policy-compliant level and any additional financial contribution should be spent on Off-Site Affordable Housing and access improvements and wayfinding to the Wyrley & Essington Canal towpath [in a [50/50] split].
- c) Any available financial contribution should be spent on Off-Site Affordable Housing up to the policy-compliant level and any additional financial contribution should be spent on Open Space and access improvements and wayfinding to the Wyrley & Essington Canal towpath [in a [50/50] split]

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 33 new homes.

The Government has indicated that, for 2021-22, it will award £350 for each affordable dwelling, but the payment for all new homes (including both affordable and others) varies. There is no fixed payment of £1,000 per home: the sum will vary from £0 to an undisclosed figure. Essentially there is a fixed pot of money each year that is divided between all authorities depending on how many homes in total have been completed across the country.

The money is worked out based on performance in previous years (18 months in arrears), so the

payment in 2022-23 will be based on the number of homes completed between October 2020 and October 2021.

Presumption in favour of sustainable development

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

Conclusions and Reasons for Decision

It's considered that whilst the principle of housing is supported there is concern in regard to the layout and density of the scheme, a lack of adequate private amenity space, a shortfall of internal amenity, and outstanding issues to overcome in regard to highways, noise, ecology, canal and river trust and the LLFA, in addition to overcoming any concern from the Council's tree officer.

Given the Council has failed the Housing Delivery test and there is now a presumption in favour of sustainable development, on balance it is considered that if the above issues were resolved by delegating back to the head of planning and building control the development could be supported.

Positive and Proactive Working with the Applicant

Approve

Officers have spoken with the applicant's agent and in response to concerns raised from consultees and due to the current layout of the scheme, amendments and additional information is being sought to enable full support be given to the scheme.

Recommendation

1. Planning Committee resolve to Delegate to the Head of Planning & Building Control to Grant Planning Permission Subject to Conditions and a S106 to secure a contribution to Affordable Housing, Open Space, Landscape Management and access improvements and wayfinding to the Wyrley & Essington Canal towpath and subject to ...
 - Forming a set of planning conditions in order to make the development acceptable in planning terms;
 - Overcoming the outstanding objections raised by the Local Highways Authority, Ecology, Canal and River Trust, Lead Local Flood Authority and Environmental Protection which may require substantive layout changes.
 - Addressing any outstanding comments from the Council's tree officer.
 - No further comments from a statutory consultee raising material planning considerations not previously addressed including following any layout changes.

END OF OFFICERS REPORT