Walsall Council

Planning Committee

Report of Head of Planning and Building Control

30 October 2025

Plans list item number

Item number: **1**

Reason for reporting to the planning committee.

Called in by the Head of Service due to the application being subject of a non-determination planning appeal

Application details.

Application reference: 25/0420

Site location: FORMER SIMONS RESTAURANT, 520, CHESTER ROAD, ALDRIDGE, WALSALL, WS9 0PU

Application proposal: Proposed change of use of vacant restaurant and cafe (class E(b)) to Class E(f)) childrens nursery (up to 130 children) and associated access, parking and landscaping. (Resubmission of planning application 23/1380). Adjacent to Public Right of Way Ald38.

Application type: Full Application: Change of Use

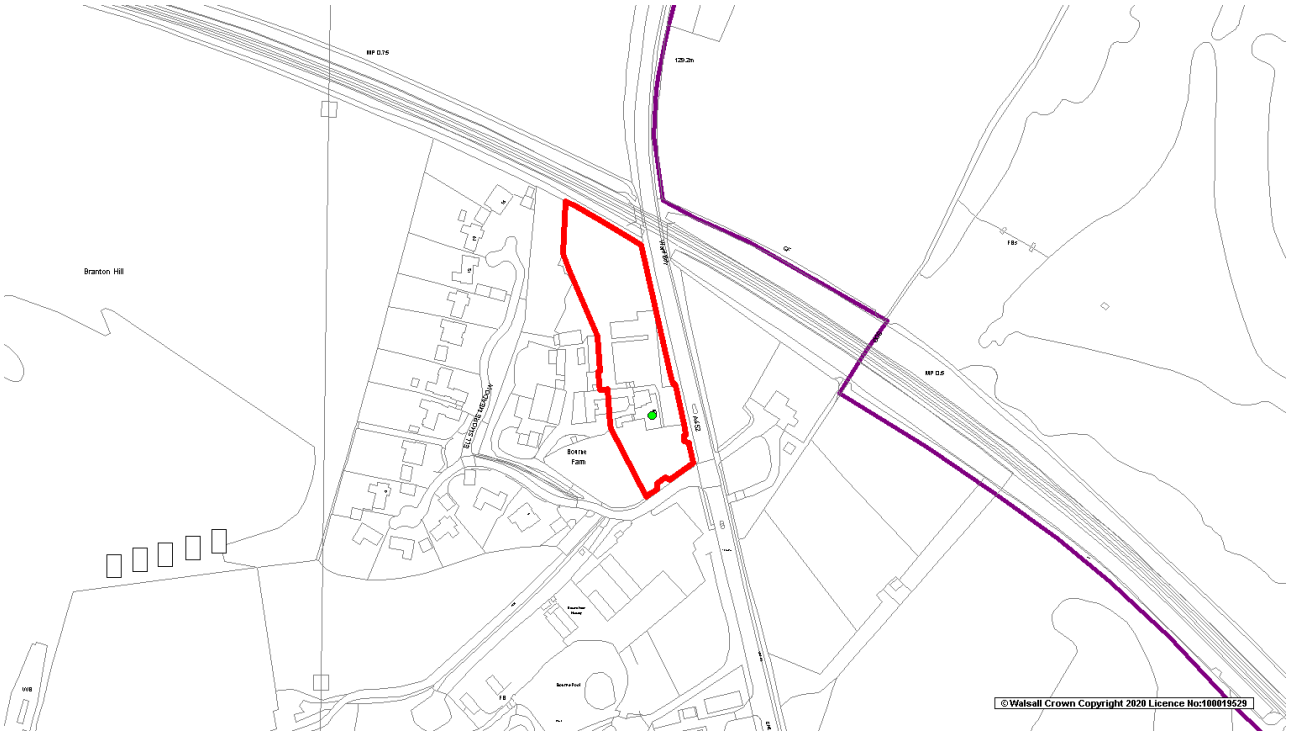
Link to application documents: https://go.walsall.gov.uk/planningapps?id=25/0420

Applicant: The Little Ripley Day Nurseries SIMONS RESTAURANT, 520, CHESTER ROAD, ALDRIDGE, WALSALL, WS9 0PU

Planning agent: Mr Brian Mullin, Marrons

Ward: Aldridge Central And South

Red line location



Recommendation

Refuse permission if the Local Planning Authority were to have made a decision prior to the non-determination appeal.

Site and surroundings

A site visit was carried out on 29/04/25.

The application site is the former Simon's restaurant and surrounding land along the A452 Chester Road (district distributor) approximately equidistant between Aldridge, Little Aston and Streetly.

The site is within the Green Belt and is a Locally Listed Building. The entry in the local list states: Early mid C19 farm house, stucco faced, sash windows, steep pitch tile roof.

There is a Tree Preservation Order (12/1991) covering the trees in front of the existing building to the south, and one tree to the north of the building (AB 9/1964) although this appears to have been removed some time ago. There are also mature trees along the property boundary to the rear of the building.

The existing road junction also serves a Garden Centre and a small private housing development off Ellsmore Meadow.

The frontage to the application site entrance benefits from security gates and a low brick wall. The private access road leads up to the main building and associated car parking.

The site is set at a higher level than Chester Road and the land slopes gently down to the south and east, putting the rear car park and land to the rear of the building at a higher level than the main structure, such that a retaining wall of approximately 0.5m and grass bank to the rear of approximately a further 1.5m has been introduced at the northern edge of this rear car park.

The surrounding area is characterised by low intensity mixed development compatible with the semi-rural green belt location of the site, as well as open fields.

Planning history

Planning applications

BC43883P

Full Application, Redevelopment of Bourne Farm to Comprise Restaurant, Tea Room, Managers/Staff Accommodation and Associated Access and Parking, GSC 12/09/1995

BC50579P

Variation of condition 10 of Planning Permission. BC43883P to allow extension of opening times of restaurant only from 11:00-15:30/18:00-23:30 to 11:00-15:30/18:00-00:30. Refuse Permission, 02/02/1998

BC63705P

Application to remove condition 9 attached to planning permission BC43883P so that the premises can be used for any purpose within Class A3 of the schedule to the Town & Planning Order 1987. Refuse Permission, 22/11/2001

BC63707P

Application to vary condition 10 of permission BC43883P as amended by permission BC50579P to read as follows. The use hereby permitted shall not be open to customers outside the following times. 10.00 hours to 00.30 hours. Refuse Permission, 26/11/2001

BC63711P

Application to remove condition 9 attached to planning permission BC43883P so that the premises can be used for any purpose within Class A3 of the schedule to the Town & Planning Order 1987. Refuse Permission, 22/11/2001

BC63713P

Alterations to exterior of building. GSC, 03/08/2001

19/1142

Proposed change of use of existing restaurant to 145 child day nursery and associated works including new single story rear extension adjacent to Public Right of Way Ald38. Withdrawn Full Valid Application, 29/04/2020

20/0491

Proposed change of use of existing restaurant to provide a 75 No. child day nursery and associated car parking, alterations to building and erection of canopy (re-submission of 19/1142) adjacent to public right of way ALD38. Withdrawn Full Valid Application, 22/10/2020

20/1359

Creation of internal roundabout, external play area, erection of 2m high fence and alterations to existing building including covered canopy to south elevation, balustrade to

east elevation and creation of openings to the north elevation. Refuse Permission 14/06/2021:

The development would formalise the use of an additional 1700m^2 of land in a way that is not compatible with the countryside character of the green belt, and would result in a material change of use having a significant and harmful impact on the openness of the area to the rear of the property. The proposal is therefore contrary to the aims of the green belt included in paragraph 134 of the NPPF, fails to provide very special circumstances to justify the material change of use contrary to paragraph 144 of the NPPF and BCCS Policy CSP2 and SAD Policy GB1.

This application fails to provide sufficient information regarding the number of vehicles expected to use the proposed roundabout and traffic management system, its appropriateness and impact on the highway. Highway safety cannot therefore be assessed and fails to demonstrate that the proposal would not result in unacceptable harm to highway safety. The proposal is therefore contrary to NPPF paragraph 109.

This application fails to provide sufficient information on the protection of trees including those with tree protection order 12/1991 that would need to be protected through the construction phase of the development. The proposal is contrary to saved policy ENV18 of the UDP.

The removal of the chimneys, addition of the front canopy and the addition of four white uPVC doors to the rear elevation would constitute incongruous additions that would harm the historic distinctiveness of the locally listed building, contrary to saved Policy ENV27 of the UDP, and policy ENV2 of the BCCS.

The lack of a structural survey carried out to provide clarity as to whether the alterations could be undertaken without further damage or alterations to the locally listed building, means that there is insufficient information to determine the implications of the application on the locally listed building. The proposal is therefore contrary to saved Policy ENV27 of the UDP, and policy ENV2 of the BCCS.

The proposed amendments to enable the outside play areas, coupled with the proposed hours of usage from 07:00 to 18:00 on weekdays has the potential to introduce significant additional noise and disturbance to the surrounding occupiers that had not previously been exposed to it at. This application fails to demonstrate how these impacts would be

mitigated. As such, the proposal is harmful to the amenity of the surrounding occupiers and contrary to saved UDP policies GP2 and ENV10.

21/1312

Resubmission of 20/1359 for proposed external alterations. Refuse Permission, 04/02/2022:

The development would formalise the use of an additional 773m2 of land in a way that is not compatible with the countryside character of the green belt, and would result in a material change of use having a significant and harmful impact on the openness of the area to the rear of the property. The proposal is therefore contrary to the aims of the green belt included in paragraph 138 of the NPPF, fails to provide very special circumstances to justify the material change of use contrary to paragraph 147 of the NPPF and BCCS Policy CSP2 and SAD Policy GB1.

This application fails to provide sufficient information regarding how the amenity, character, sustainability, and safety of the proposal will be addressed and managed. In addition this application has omitted the Civil engineering works to the access, car park and internal roundabout however they are required to cope with the volume of cars at the site and therefore it is considered to be unacceptable because the works would require planning permission and would be required to be assessed and approved for the site to operate safely. Highway safety cannot therefore be properly assessed and this application fails to demonstrate that the proposal would not result in unacceptable harm to highway safety. The proposal is therefore contrary to NPPF paragraph 111.

This application fails to provide sufficient information on the protection of trees including those with tree protection order 12/1991 that would need to be protected through the construction phase of the development. The proposal is contrary to saved policy ENV18 of the UDP.

The proposed glazing to the west elevation and the introduction of a solid metal door to the east elevation would constitute incongruous additions that would harm the historic distinctiveness of the locally listed building. Further there is insufficient information regarding the material of the remaining proposed doors and therefore this has the potential to harm the historic distinctiveness of the locally listed building. The proposal is therefore contrary to saved Policy ENV27 of the UDP, and policy ENV2 of the BCCS.

The lack of a structural survey carried out to provide clarity as to whether the alterations could be undertaken without further damage or alterations to the locally listed building, means that there is insufficient information to determine the implications of the application on the locally listed building. The proposal is therefore contrary to saved Policy ENV27 of the UDP, and policy ENV2 of the BCCS.

The proposed amendments to enable the outside play areas has the potential to introduce significant additional noise and disturbance to the surrounding occupiers that had not previously been exposed to it at. This application fails to demonstrate how these impacts would be mitigated. As such, the proposal is harmful to the amenity of the surrounding occupiers and contrary to saved UDP policies GP2 and ENV10.

21/1470

Application for Lawful Development Certificate for the proposed use of 520 Chester Road as a Day Nursery (Class E). Refused LDC: Appeal Dismissed 28/06/2022.

22/0131

Certificate of Lawful Existing Use: Class E Restaurant (Formerly A3) Withdrawn Full valid application 30/06/2022.

23/1380

Proposed change of use of vacant restaurant and cafe (class E(b)) to Class E(f)) childrens nursery (up to 130 children) and associated access, parking and landscaping. Adjacent to Public Right of Way Ald38 – Refuse permission on 26-01-24 and subsequently dismissed:

The proposal would introduce an intensive use in an unsustainable and inaccessible location and this application fails to provide sufficient information to demonstrate that the proposal would not result in unacceptable harm to highway safety. The proposal is therefore contrary to saved policies GP2 (Environmental Protection), GP5 (Equal Opportunities), GP6 (Disabled People) of Walsall Council's Unitary Development Plan, Black Country Core Strategy polices TRAN2 (Managing Transport Impacts of New Development), TRAN4 (Creating Coherent Networks for Cycling and for Walking) and TRAN5 (Influencing the Demand for Travel and Travel Choices) and Walsall Site Allocation

Document Policy T4 (The Highway Network) and T5 (Highway Improvements) and NPPF paragraphs 114-117 (Considering Development Proposals).

The proposal would introduce an enclosure and intensified outdoor play area use on part of the existing rear car park which would result in a detrimental impact on the character and openness of the Green Belt and insufficient information has been submitted to demonstrate the full level of harm arising from the development. No very special circumstances have been provided that would outweigh the harm. The proposal is therefore contrary to the aims of the green belt included within NPPF (paragraphs 151-154, Proposals affecting the Green Belt), Saved Policies GP2 (Environmental Protection) and ENV7 (Countryside Character) of the Walsall Unitary Development Plan, Policy CSP2 (Development Outside the Growth Network) of the Black Country Core Strategy and Policy GB1 (Green Belt and the Control of Development in the Green Belt) of the Walsall Site Allocation Document.

The proposed external play area would introduce significant noise and disturbance to the surrounding occupiers that had not previously been exposed to it at hours between 07:00-18:00 weekdays where it would normally be expected to be particularly quiet and peaceful. Coupled with intensified vehicle trips during peak times, the proposal is considered to be harmful to the amenity of the surrounding occupiers and contrary to Saved Policies GP2 (Environmental Protection) and ENV10 (Pollution) of the Walsall Unitary Development Plan.

The proposed site layout will have a detrimental impact upon the long term health of high value protected trees (T44 Sycamore), (T6 Sycamore) and (T42 Yew) due to the proposed access path adjacent to the existing driveway, the proposed extension of the hard standing towards the southwest corner of the building and the proposed the creation of retaining structures and steps on the pedestrian access from Chester Road. The proposal is contrary to Saved Polices ENV18 (Existing Woodlands, Trees and Hedgerows), NE8 (Retained Trees, Woodlands or Hedgerows) of the Walsall Unitary Development Plan.

Pre-application advice

ENQ/0375

A proposed change of use of vacant restaurant and café (class E(b)) to Class E(f)) child nursery to accommodate up to 130 children with associated access, parking and landscaping – Agent advised a full response would not be provided due to the in principle

objection to the development of the site as a nursery, taking into consideration the previous refusals on the site A partial refund was provided.

Enforcement investigations

E21/0073

Unauthorised Operational Development – Closed due to no planning breach identified 16-11-21

The enforcement enquiry related to internal works taking place at the property. An investigation was carried out and there was no evidence of works occurring within the property would require planning permission.

Relevant policies

National Planning Policy Framework (NPPF)

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". The NPPF is a material consideration in the determination of a planning application.

Human rights and reducing inequalities

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

- Article 8 – Right to Respect for Private and Family Life
- THE FIRST PROTOCOL – Article 1: Protection of Property

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected

characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

Walsall Council Development Plan

Planning law requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Our Development Plan includes:

- Black Country Core Strategy (BCCS)
- Walsall Site Allocation Document (SAD)
- Saved policies of Walsall Unitary Development Plan (UDP)
- Walsall Town Centre Area Action Plan (AAP)

Planning guidance is published within a number of Supplementary Planning Documents. Those of relevance will be referenced in this assessment.

Public consultation has been carried out in accordance with the Development Management Procedure Order and the council's Statement of Community Involvement.

Consultee comments (planning officer's summary)

Ecology

No objection subject to Ecology/BNG conditions in addition to a S106 being signed to secure the monitoring fees for 30 years of management

Environmental Health

No objection subject to advisory notes on food preparation areas

Environmental Protection

No objection subject to an acoustic mitigation scheme to be secured by a pre commencement condition

Lead Local Flood Authority

No comments

Lichfield District Council

No objection to the principal of development

Local Highway Authority

Objection over the new pedestrian access on Chester Road and the lack of sufficient information to secure a Travel Plan

Ofsted

Neutral comments. Unable to locate Ofsted registration details. *(This is because the applicant would be awaiting permission before registering with Ofsted)*

Strategic Planning Policy

In view of the latest appeal decision, it would not be possible to support a refusal on planning policy grounds

Tree Preservation Officer

No objection subject to tree protection conditions

Walsall Health Protection Team (NHS)

No objection

West Midlands Fire Service

This proposal does not appear to have any detrimental impact on B5 Access & Facilities, as such there are no adverse comments. Advisory notes to the applicant are recommended should planning permission be granted

West Midlands Police

No objection, advisory notes on security measures are recommended should planning permission be granted

Neighbour and interested parties' comments (planning officer's summary)

Objection(s)

4 comments received objecting to the proposal for the following reason(s):

- Comments regarding the previous appeal that was dismissed and why this application has been resubmitted again
- Safety concerns from the Highway speeds, junction and existing operations of the access with the garden centre.130 pupils will create additional pollution and traffic during peak times and there is no public transport to access the site.
- No notification letter was received *(Upon review, the original neighbour notification was inadvertently missed; however, subsequent letters regarding the reconsultation and the appeal were sent to the property)*
- Concerns regarding the likelihood users will travel by bike, bus and train.
- Loss of privacy
- New pedestrian crossing on a 50mph road is dangerous
- Junction has seen serious accidents and is likely to be a higher risk with pick up and drop off times

Determining issues

1. Principle of development
2. Green belt assessment
3. Heritage assessment
4. Design, layout, and character
5. Amenity of neighbours and future occupiers
6. Highways
7. Ecology and Biodiversity Net Gain
8. Flood risk / Drainage

9. Trees / Protected trees
10. Ground conditions and environment
11. Planning obligations

Assessment of the proposal

Principle of development

The previous application was refused for an in-principle objection over the use residing in an unsustainable location. The previous reason for refusal was as follows:

The proposal would introduce an intensive use in an unsustainable and inaccessible location and this application fails to provide sufficient information to demonstrate that the proposal would not result in unacceptable harm to highway safety. The proposal is therefore contrary to saved policies GP2 (Environmental Protection), GP5 (Equal Opportunities) and GP6 (Disabled People) of Walsall Council's Unitary Development Plan, Black Country Core Strategy polices TRAN2 (Managing Transport Impacts of New Development), TRAN4 (Creating Coherent Networks for Cycling and for Walking) and TRAN5 (Influencing the Demand for Travel and Travel Choices) and Walsall Councils' Site Allocation Document Policy T4 (The Highway Network) and T5 (Highway Improvements) and paragraphs 114-117 of NPPF.

Following a previous hearing on 3rd December 2024 (APP/V4630/W/24/3348824), the Inspector made the following assessment on the site's location, they came to the conclusion: (from paragraph 15 –20 of the decision notice).

'The site is distanced from significant/populous residential areas, and the most direct route to Aldridge is via an unlit/unbound footpath unlikely to be utilised on a day-to-day basis for the purposes of attaining site access. Whilst there are various bus stops in the locality, the closest stops fully accessible via footway and offering regular services (to and from destinations such as Aldridge, Walsall and Sutton Coldfield) are situated considerable walking distances from the site. Further, Chester Road accommodates traffic travelling at speed and does not incorporate any specific facilities for cyclists. In the context just set out, it is highly likely that the large majority of future trips to and from the site would be undertaken by private car.

It is relevant, however, that the appeal building has a lawful restaurant use that could, in theory, generate a high number of vehicular trips. Moreover, through reference to the Trip

Rate Information Computer System (TRICS), the appellant has calculated that traffic generation for the existing land use could exceed that forecast for the proposed development. This is especially so given that the intended nursery would not open at weekends (an operating restriction that could be conditioned in the event the appeal be successful). Nevertheless, on the basis that the appeal building has lain vacant for a considerable period and there is no information before me to clearly indicate that a reopening at (or near) full capacity is likely at any point in the near future, I have treated this fallback position with some caution and apportion it merely moderate weight.

That said, there are other factors relevant to my considerations. For example, it is likely that a noteworthy proportion of parents would choose the proposed nursery facility for their children on the basis they anticipate passing (or travelling close by) on a day-to-day or regular basis in any event. This is fair to anticipate in lieu of the site's immediate proximity to a classified route and the range/extent of built-up areas that prevail in the wider locality.

Furthermore, intended off-site highway works involving the provision of elements of footway and a formalised tactile-paved crossing (incorporating an existing refuge island) over Chester Road to link in with a new on-site pathway would promote – to some meaningful degree – the safe accessibility of bus services on foot. There exists the potential for such off-site works to be suitably secured via Grampian condition in the event the appeal be successful. On this basis, even though bus stops would continue to be situated in excess of 400 metre walking distances, I do not accept any assertion made that the proposal would necessarily exclude disadvantaged families without access to a car. In addition, a further new on-site pathway without steps is intended to connect to Ellsmore Meadow for the purposes of catering for persons with disabilities and/or mobility constraints.

It is also the case that a Travel Plan could be secured in the interests of promoting sustainable travel options. Whilst it has been suggested that the site's sustainability credentials would not allow for a credible Travel Plan to be produced, I do not share this view. Indeed, the future behaviour of staff, and to a lesser extent parents, would be fairly anticipated to be influenceable by initiatives (including sustainable travel events and car sharing/electric vehicle usage schemes) if robustly implemented. Although it is the Council's preference for a legal agreement to be utilised for the purposes of securing a Travel Plan, I am content that a planning condition, which could suitably incorporate monitoring/review measures, would constitute an appropriate mechanism in the circumstances before me.

All related matters considered, I am satisfied that the site offers a suitably accessible location for the proposed use. There is satisfactory compliance with saved Policies GP2, GP5 and GP6 of the UDP, Policies TRAN2, TRAN4 and TRAN5 of the BCCS, and Policies T4 and T5 of the WSAD in so far as these policies promote accessibility and a shift towards using sustainable modes of transport.'

The Local Planning Authority does not dispute these findings, although the specifics regarding the Travel Plan will be covered in the Highways Section. Taking into account the inspector's view, it is considered that this reason for refusal should fall away.

Green belt assessment

The site is located within the Green Belt and the previous application was refused for concerns regarding the intensification of the outdoor area. The reason for refusal was as follows:

T*he proposal would introduce an enclosure and intensified outdoor play area use on part of the existing rear car park which would result in a detrimental impact on the character and openness of the Green Belt and insufficient information has been submitted to demonstrate the full level of harm arising from the development. No very special circumstances have been provided that would outweigh the harm. The proposal is therefore contrary to the aims of the green belt included within NPPF (paragraphs 151- 154, Proposals affecting the Green Belt), Saved Policies GP2 (Environmental Protection) and ENV7 (Countryside Character) of the Walsall Unitary Development Plan, Policy CSP2 (Development Outside the Growth Network) of the Black Country Core Strategy and Policy GB1 (Green Belt and the Control of Development in the Green Belt) of the Walsall Site Allocation Document.*

Following the hearing as part of the previous appeal, the Inspector concluded the following on Green Belt matters from paragraph 7 – 12 of the decision notice:

'Paragraph 154 of the Framework sets out that development in the Green Belt shall be regarded as inappropriate unless one of a list of stated exceptions applies. These exceptions include the re-use of buildings provided that the buildings are of permanent and substantial construction, and provided the development preserves the Green Belt's openness and does not conflict with the purposes of including land within it. In this instance, the on-site building is of permanent and substantial construction. It thus falls for me to consider openness effects.

The proposal involves minor operations associated to the intended re-use of the appeal building as a day nursery with a maximum capacity of 130 children, such as the provision of some limited new areas of hardstanding and the erection of various new boundary treatments. These new enclosures would include an acoustic fence to run along part of the site's western edge and additional fencing to enclose an outdoor play area to be newly established upon a portion of the site's current car park.

The acoustic fence would run immediately alongside an existing boundary fence of comparable height and would occupy a discreet location set away from both Chester Road and Ellsmore Meadow. Meanwhile, the new fencing intended to the perimeter of the play area would also be setback from publicly accessible vantage points and enclose an area of previously developed land that is already part-enclosed by low-level brick walling. To my mind, subject to final specifications being secure via condition, no material loss of openness would arise from the installation of boundary treatments as proposed.

The Council has raised concerns with respect to an alleged intensified use of outdoor space when compared to current circumstances. However, of pertinence here, the proposed outdoor play area would replace part of an existing car park. Even though the appeal building is presently vacant, the site's car parking facilities, as currently laid out, would be reasonably anticipated to accommodate recurrent manoeuvring/parked vehicles should an active lawful use of the appeal building recommence. As a further note, as outdoor play would take place within a designated enclosed space, opportunities to experience such activities, and any associated paraphernalia, would be highly constrained.

Considering all relevant factors, I am content that the intended re-use of the building (and associated minor operations) would preserve the Green Belt's openness and would not conflict with the purposes of including land within the Green Belt. I thus find that the proposal would not represent inappropriate development. Very special circumstances do not therefore need to be demonstrated in order to justify the scheme.

The proposal accords with saved Policy GP2 of the Walsall Unitary Development Plan (March 2005) (the UDP), Policy CSP2 of the Black Country Core Strategy (February 2011) (the BCCS), and GB1 of the Walsall Site Allocation Document (January 2019) (the WSAD) in so far as these policies set out that Green Belt boundaries will be maintained and protected from inappropriate development. Further, the scheme does not conflict with the Framework in so far as it affirms that inappropriate development is, by definition, harmful to the Green Belt.'

In summary, the inspector considered that the use of the outdoor space and the erection of boundary treatments to secure the play area would not harm the openness of the Green Belt.

As part of this application, the play area to the rear has actually decreased in size to allow for further parking and space for manoeuvring to the rear of the site. The boundary treatments proposed would not exceed 1.8m and some would utilise existing dwarf walls, with new fencing positioned on top. It is agreed that this would screen typical nursery paraphernalia, and it is considered that the proposal would not harm the openness of the Green Belt as per the findings of the inspector and the previous reason for refusal falls away in accordance with SAD policy GB1.

Heritage assessment

The existing building on the site is included in the local list as Bourne Farm, and described as “Early mid C19 farm house, stucco faced, sash windows, steep pitch tile roof”. There are further two locally listed building nearby - Bourne Vale Pumping Station (1894), and Chester Road Bridge Remarks: (1879).

Saved Policy ENV27 of the Unitary Development Plan states that in relation to Buildings of Historic or Architectural Interest , “alteration, extension or any other form of development involving a listed building or its setting will only be permitted where it can be clearly demonstrated by the applicant that the internal and/or external appearance, character and value of the building, its curtilage and the contribution the building makes to the surrounding area in which it is situated are not adversely affected by the proposals”.

Policy ENV2, Historic Character and Local Distinctiveness, of the Black Country Core Strategy outlines how all development proposals should aim to sustain and reinforce special character and conserve the historic aspects of locally distinctive elements of the Black Country.

The applicant has submitted a Heritage Statement with the application which considers the key changes to the application site. This confirms that the changes and reduction of the hard landscaping to the rear of the site would represent no additional harm to the Non Designated Heritage Asset (NDHA). The Local Planning Authority also considers that the new means of enclosure to the rear would not necessarily restrict views of the asset, as the principal view would be from the front and side when passing down Chester Road which

would be retained as part of the application. Moderate weight is also given to the fact that this would enable the reuse of the property following a growing stint of vacancy which would help to prevent the historic fabric growing into a state of disrepair.

The proposal also involves a number of internal and some minor external changes including the creation of new openings, removal of some walls and the blocking up of old openings. The Heritage Statement includes a series of images of the interior of the site which clearly shows that very little of the original fabric remains, with all rooms shown taken back to brick. The agent has also supplied a supporting material note, and this confirms that any changes and repair work to the exterior will be done to match the existing materials/colours on site which is supported.

Taking into account the relative improvements to the rear of the site, in terms of the reduction of hard standing, the reuse of the vacant unit and the fact that very little of the internal historic fabric remains, the proposal is considered not to harm the setting or significance of the NDHA in accordance with saved UDP policies ENV28, GP2 and ENV32 and the SPD Designing Walsall policy DW3.

Design, layout, and character

Policy CSP4 of the Black Country Core Strategy states that all development will be required to demonstrate a clear understanding of the historic character and local distinctiveness of the area and show how proposals make a positive contribution to place-making and environmental improvement. Policy ENV32 of the UDP confirms that when assessing the quality of design of any development proposal, the visual relationship of the proposed development with adjacent areas, the street and the character of the surrounding neighbourhood and the effect on the local character of the area are important considerations.

As set out above, there are to be very few changes to the exterior of the NDHA, with those changes proposed to match the appearance of the existing building. It is recognised that there will be new fencing to the rear of the site, but this is considered not to harm the setting of the NDHA nor would it impact the general character of the area. Overall, the proposal is deemed to represent satisfactory design in accordance with BCCS policies CSP4 and ENV2, saved UDP policies GP2 and ENV32 and the SPD Designing Walsall policy DW3.

Amenity of neighbours and amenity of future occupiers

Saved Policy GP2 of the UDP states that The Council will expect all developments to make a positive contribution to the quality of the environment and the principles of sustainable development and will not permit development which would have an unacceptable adverse impact on the environment. In assessing this impact Policy GP2 requires that consideration is given to, visual appearance and overlooking, loss of privacy, and the effect on daylight and sunlight received by nearby property.

As part of the previous refusal, the Local Planning Authority had concerns over the impact of the external play area and residential amenity. The council's reason for refusal was:

The proposed external play area would introduce significant noise and disturbance to the surrounding occupiers that had not previously been exposed to it at hours between 07:00-18:00 weekdays where it would normally be expected to be particularly quiet and peaceful. Coupled with intensified vehicle trips during peak times, the proposal is considered to be harmful to the amenity of the surrounding occupiers and contrary to Saved Policies GP2 (Environmental Protection) and ENV10 (Pollution) of the Walsall Unitary Development Plan.

Following the previous hearing, the inspector made the following assessment on noise related matters (paragraphs 26-31 of the decision notice) :

'It was confirmed by the Council at the Hearing that its noise concerns relate solely to the effect from the proposed outdoor play area during operational weekday hours (0700-1800) upon the living conditions of neighbouring residential occupiers at the Coach House. Indeed, it is a matter of agreement between the main parties that noise created by the movement of vehicles due to additional traffic arising from the proposal would be of no practical concern, and that plant noise and required building sound insulation could be dealt with via planning condition.

The dominant noise source in the locality of the site is road traffic noise from Chester Road. Noise survey work undertaken at the western edge of the site in a location set to the rear of the appeal building has indicated a daytime noise level that is close to the upper guideline of 55dB for external amenity areas. It is not the case, therefore, that the immediate locality can be accurately described as particularly quiet or peaceful, which provides important context.

The appellant, in predicting noise levels from the proposed outdoor play area, has used source noise data taken from the outdoor play area of an existing nearby nursery with a comparable capacity. The highest noise levels recorded during any 15-minute period were used for the purposes of assessment. When accounting for the mitigating influence of an acoustic barrier intended to be installed along part of the site's western boundary, the appellant's 3D noise model calculates noise levels within neighbouring external amenity space serving the Coach House would be beneath 50dB and that the highest predicted noise level incident on any neighbouring residential window would be 44dB.

The noise-related evidence produced by the appellant follows a logical methodology and offers a strong indication that adverse effects upon neighbouring living conditions could be avoided subject to planning conditions being imposed to secure the details and subsequent implementation/retention of various mitigation measures. It nevertheless remains that vocal noise, along with other incidental noise associated with play activities, could be difficult to effectively mitigate for due to its random nature. Indeed, it is acknowledged within the appellant's evidence that children's voices may be considered sounds with a specific character which could attract attention.

Thus, given the changeableness of vocal noise and the immediacy of the site's relationship with the Coach House, it would be reasonable, in my view, to place a restriction upon the number of children able to access the outdoor play area at any one time in the event planning permission be granted. A limit of 30 children, as suggested by the appellant at the Hearing, would, to my mind, secure adequate noise impact assurances whilst not prejudicing the practical day-to-day operation of the facility. A condition to this effect would be monitorable and satisfactorily enforceable, particularly in view of the clearly defined nature of both the proposed outdoor play area itself and the intended operational daytime hours.

For the above reasons, having particular regard to noise, the proposed use would have an acceptable effect upon the living conditions of surrounding residential occupiers. The scheme satisfactorily accords with saved Policies GP2 and ENV10 of the UDP in so far as these policies guard against any unacceptable adverse effect in terms of noise.'

In assessing the site, the inspector confirms that the site would be subject to sustained levels of noise arising from traffic along the adjacent highway. However, the inspector acknowledged the difficulties in predicting and indeed creating mitigation measures for vocal noise would be challenging due to their irregular nature. To mitigate this, the inspector

found that restricting the number of children using the space to 30 would suitably control this aspect and protect residential amenity. Should the application be approved, this restriction should be added to the decision notice, it is considered that the previous reason for refusal is overcome through the use of appropriate planning conditions. The proposal would now satisfy saved policy GP2.

Highways

Policy T13 of the Walsall Unitary Development Plan states that sets the necessary car parking and cycle storage space for a range of developments, and policy T7 states that all development should satisfy the car parking standards set out in Policy T13 and that this will involve providing an adequate level of car parking to meet operational needs whilst not exceeding any maximum parking standards that are specified.

UDP policy GP2 requires accessibility by a choice of means of transport; traffic impact including the adequacy of access and the adequacy of parking provision.

BCCS policy TRAN2 states that planning permission will not be granted for development proposals that are likely to have significant transport implications unless applications are accompanied by proposals to provide an acceptable level of accessibility and safety by all modes of transport to and from all parts of a development including, in particular, access by walking, cycling, public transport and car sharing. These proposals should be in accordance with an agreed Transport Assessment, where required, and include implementation of measures to promote and improve such sustainable transport facilities through agreed Travel Plans and similar measures.

Paragraph 116 of the NPPF which states development should be prevented or refused on highways grounds if there would be an “unacceptable impact on highway safety”.

As part of this latest application, the agent has introduced a new pedestrian island to serve the new access. This existing splitter island North of the junction currently provides passive traffic management and some shielding for right-turning vehicles. The proposed pedestrian refuge island, around 16m further North, aligns with the ramped entrance but introduces two islands in very close proximity. This may:

- Confuse users due to duplicated features.
- Encourage informal pedestrian crossing near the junction.
- Reduce protection for vehicles waiting to turn right into Ellsmore Meadow.

The applicant considers their layout is acceptable and supported by their own Safety Audit, and no changes are proposed other than the imposition of a condition to secure the pedestrian island. The Local Planning Authority does not consider this to be an appropriate or sufficient means of addressing the highway concerns to render the scheme acceptable. In paragraph 3.6 of Traffic Note 03 provided by the applicant as part of the planning application, they refer to confusion in the Council's comments. For clarity, during the Council's consultation process, differing views were expressed by officers on how the applicant could make the proposal acceptable from a Highway perspective rather than there being any confusion or disagreement over the acceptability of the proposals. These were shared with the applicant to assist in the preparation of any revised drawings.

Notwithstanding this, the applicant's transport consultants have not incorporated any of the suggestions or comments provided to explore alternative design options, which has resulted in unnecessary delays in addressing this aspect of the application.

In light of the non-determination appeal, the LPA must provide the Planning Inspectorate with what the Council's decision would have been in the absence of an appeal. This assessment is therefore based on the information provided as part of this application submission. To this regard, the Local Highway Authority objects to the current proposal due to the introduction of a second splitter island in close proximity to an existing one which has the potential to create unnecessary confusion and is therefore detrimental to highway and pedestrian safety contrary to Policies GP2, T7 and T13 of the Walsall Unitary Development Plan, Policy TRAN2 of the Black Country Core Strategy, and paragraph 116 of the National Planning Policy Framework.

Travel Plan

Paragraph 111 of the National Planning Policy Framework sets out that all developments which generate significant amounts of transport movement should be required to provide a Travel Plan.

The Council are of the view that the Travel Plan incorporated within the Transport Assessment is inadequate and only provides generic comments. It has no site-specific information in any of its six pages as to how the Travel Plan will work, promote and deliver site specific sustainable options, modal shift and health benefits. The Council requires that the Travel Plan be prepared in accordance with the guidance set out in its *Guidance for Legal Obligations*, and that it be secured through a Section 106 agreement.

As part of the previous appeal, the inspector stated (paragraph19):

It is also the case that a Travel Plan could be secured in the interests of promoting sustainable travel options .... ***the future behaviour of staff, and to a lesser extent parents, would be fairly anticipated to be influenceable by initiatives (including sustainable travel events and car sharing/electric vehicle usage schemes)*** ***if robustly implemented****. Although it is the Council's preference for a legal agreement to be utilised for the purposes of securing a Travel Plan, I am content that a planning condition, which could suitably incorporate monitoring/review measures, would constitute an appropriate mechanism in the circumstances before me.*

As part of this application, the applicant relies on the Inspector's conclusion that a Travel Plan need not be secured by a Section 106 agreement, while disregarding the Inspector's qualifying statement that this would be acceptable *'if robustly implemented'.* It is the Council's contention that in order for a Travel Plan to be monitored robustly this would require being secured via a S106 agreement.

In paragraph 3.11 of TN03, it is stated that the Travel Plan could be secured via an *"appropriately worded condition*." The Council does not agree with this approach. It is the Council's view that a condition alone would not facilitate the level of collaborative engagement necessary to develop what is intended to be a dynamic and evolving document. Nor would it sufficiently support key objectives such as promoting active travel, encouraging sustainable development, achieving modal shift, or improving health and wellbeing.

The Council's established practice is to secure Travel Plans via a Section 106 agreement. This approach is supported by local planning guidance and has been successfully implemented in other developments across Walsall without issue.

The current process, based on a legal undertaking through Section 106, ensures that Travel Plans are supported by robust monitoring, including travel surveys and the submission of performance reports. These reports are reviewed collaboratively with Council officers and provide a structured mechanism for refining and improving the Travel Plan throughout its implementation. This ensures the document remains both effective and responsive over time.

To disregard this established and effective approach would not only reduce opportunities for proactive engagement but could also compromise the long-term sustainability

credentials of the development. The Council considers this approach to be necessary, relevant to planning, directly related to the development, enforceable, precise, and reasonable in all other respects, in line with the statutory tests for planning obligations.

Highway Conclusion

The pedestrian island is not considered acceptable in this instance, and a Travel Plan would need to be secured via a S106 agreement, therefore the development is contrary to Policies GP2, T7 and T13 of the Walsall Unitary Development Plan, Policy TRAN2 of the Black Country Core Strategy, the Council's Planning Obligations SPD.

Ecology

Policy ENV23: Nature Conservation and New Development (a) The layout of all new development must take account of:-

I. The potential for enhancement of the natural environment through habitat creation or the exposure of geological formations.
II. II. The nature conservation opportunities provided by buildings by designing in features which provide roosting / nesting places for bats / birds and other species.

Policy ENV1: Development within the Black Country will safeguard nature conservation, inside and outside its boundaries by ensuring that:

• Development is not permitted where it would harm internationally (Special Areas of Conservation), nationally (Sites of Special Scientific Interest and National Nature Reserves) or regionally (Local Nature Reserve and Sites of Importance for Nature Conservation) designated nature conservation sites;

• Locally designated nature conservation sites (Sites of Local Importance for Nature Conservation), important habitats and geological features are protected from development proposals which could negatively impact upon them;

• The movement of wildlife within the Black Country and its adjoining areas, through both linear habitats (e.g. wildlife corridors) and the wider urban matrix (e.g. stepping stone sites) is not impeded by development;

• Species which are legally protected, in decline, are rare within the Black Country or which are covered by national, regional or local Biodiversity Action Plans will not be harmed by development.

The previous application was not subject to Biodiversity Net Gain due to the date it was submitted. As part of this application, the agent has indicated on the application form that BNG would be required and has submitted the appropriate metric and assessment. This confirms that the proposal would achieve 10.09% gain in habitat units and a 10.86% gain in hedgerow units.

The Ecology officer raises no concerns with the supplied information but has confirmed that to secure 30 years of habitat management as outlined within the BNG assessment and LEMP, a s106 legal agreement will be required. This would need to be arranged prior to determination and would include monitoring fees to cover the time spent by the ecology officer over the 30 year period.

Flood Risk / Drainage

Policy ENV5 of the BCCS states: Proposals for development must demonstrate that the level of flood risk associated with the site is acceptable in terms of the Black Country Strategic Flood Risk Assessment and its planning and development management recommendations as well as PPS25 depending on which flood zone the site falls into and the type of development that is proposed.

The application site is within Flood Zone 1, thus the proposal is considered unlikely to impact the risk of flooding and a FRA is not required in this instance and the proposal is considered to safeguard from flooding in accordance with saved UDP policy ENV40.

Trees / Protected trees

Policy ENV18 of the UDP further highlights that The Council will ensure the protection, positive management and enhancement of existing woodlands, trees and hedgerows Development will not be permitted if it would damage or destroy trees or woodlands protected by Tree Preservation Order, in a Conservation Area or identified as Ancient Woodland, or hedgerows of significant landscape, ecological or historical value unless it would be in the arboricultural interest of the area, or the desirability of the proposed development significantly outweighs the ecological or amenity value of the trees/woodland. Where developments are permitted which involve the loss of trees or hedgerows

developers will be required to minimise the loss and to provide appropriate planting of commensurate value; wherever possible, this should involve native species of local provenance.

NE7 of Conserving Walsall's Natural Environment states that; all planning applications with the potential to damage to destroy trees, woodlands, or hedgerows, should be supported by an arboricultural impact assessment to a national accepted standard. Planning applications which are not supported by an adequate arboricultural impact assessment are likely to be refused.

As part of the previous application, the final reason for refusal was focussed on harm to protected trees. This stated (paragraphs 31-38 of the decision notice):

The proposed site layout will have a detrimental impact upon the long term health of high value protected trees (T44 Sycamore), (T6 Sycamore) and (T42 Yew) due to the proposed access path adjacent to the existing driveway, the proposed extension of the hard standing towards the southwest corner of the building and the proposed the creation of retaining structures and steps on the pedestrian access from Chester Road. The proposal is contrary to Saved Polices ENV18 (Existing Woodlands, Trees and Hedgerows), NE8 (Retained Trees, Woodlands or Hedgerows) of the Walsall Unitary Development Plan.

In considering the above reason for refusal, the inspector made the following assessment:

The Council's fourth reason for refusal alleges a detrimental impact upon the long-term health of three trees that are the subject of a Tree Preservation Order4 - two Sycamores (T6 and T44, referenced as surveyed) and one Yew (T42). All three are mature specimens that contribute positively to the arboreal character and general amenity of the area. This is especially so regarding T42, which occupies a prominent position adjacent to Chester Road and exhibits a large and verdant crown.

The newly proposed on-site footpath providing a direct connection to Chester Road would run very close to the main stem of T42. It is important to note that a distinct levels difference is at play in this location, whereby the land level on-site is noticeably higher than the ground level of the adjacent off-site grass verge. As depicted upon plans before me for determination, this levels difference would be negotiated via stretches of retaining wall and a set of onsite steps situated approximately two metres in from the site's eastern boundary. On this basis, it is inevitable that a considerable extent of ground excavation would be necessitated at or close to the heart of T42's root protection area. This work would be

highly likely to have a detrimental effect upon the root system and thus the health and value of T42.

A possible alternative approach to providing pedestrian access into the site at the same location across a level threshold was discussed at the Hearing. Such a solution would involve the utilisation of no-dig construction techniques on-site in association with the delivery of a ramped footway off-site. However, notwithstanding a stated intention to implement a piled method of construction, there is insufficient detail before me to allow a proper assessment of the potential implications of a ramped structure inside the calculated root protection area of T42. It is also highly doubtful that such an approach could be supportable from a highway safety standpoint, especially given the highspeed nature of Chester Road and the proximity that would avail between the closest junction and an above-ground structure upon the highway verge. Moreover, given the absence of clarity in these respects, no prospect of highway works being delivered off-site in the alternative manner suggested has been satisfactorily demonstrated. As such, this possible alternative approach cannot be reasonably or appropriately conditioned.

Turning to T6, it was accepted by the Council on site that the finer details of a no-dig solution could be conditioned with respect to the intended reconfiguration of hardstanding areas close to the tree. In the absence of any abrupt levels change in this part of the site and given the intention to retain a fair degree of separation from the tree's trunk, I have no reason to disagree.

However, as regards T44, a new on-site pathway is proposed to run immediately alongside it. Even if to be installed with no-dig construction methods and to a mere 1.2 metre width adjacent to the tree, direct conflict with the main stem and associated buttress roots could not be ruled out. This was readily apparent upon close inspection. Whilst there may exist the potential to realign said path, this could have implications for the useability of the immediately adjacent vehicular access route. Accordingly, it is unclear whether required changes would materially evolve the scheme as depicted upon the plans now before me for determination. In this context, even should an Arboricultural Method Statement and full details of on-site groundworks be secured via condition, there would likely be material adverse implications for the long-term health of T44.

I acknowledge that a lawful development certificate has recently been granted by the Council for the same arrangement of enclosures that are now proposed. However, as

legislation relating to tree protection overrides permitted development rights, this matter is of little relevance to my considerations here.

For the above reasons, the proposal would be likely to have an adverse impact upon the long-term health of protected trees T42 and T44 which would result in significant harm being caused to the verdant character and general amenity of the area. The scheme conflicts with saved Policies ENV18 and GP2 of the UDP in so far as these policies set out that development will not be permitted if it would damage or destroy trees or woodlands protected by Tree Preservation Order.

As this was the only matter that the inspector dismissed the previous appeal on, the applicant has attempted to overcome this reason for refusal under this new application.

The amendments to the proposed site plan aim to address the Council's concerns regarding the impact on protected trees, which were a significant factor in the Planning Inspector's decision to dismiss the previous appeal.

a. The proposed extension to the parking area adjacent T6 Sycamore has been removed.
b. The proposed footway adjacent to T44 Sycamore has been removed.
c. The proposed pedestrian access adjacent to T42 Yew has been removed.

The amended layout of internal paths and the pedestrian access from Chester Road are located outside the root protection areas (RPAs) of the existing trees and the impact from such will be negligible. The application has been accompanied by a Tree Protection Plan (TPP) which also doubles as an Arboricultural Method Statement (AMS). The details contained within it are wholly acceptable and this drawing should be referenced as an ‘approved plan’.

As a result, it is considered that the previous reason for refusal has been fully overcome in accordance with saved UDP policy ENV18 and NE8 of the Conserving Walsall’s Natural Environment SPD.

Planning obligations

The proposal would not result in any typical triggers such as Affordable Housing or Open Space. However, as part of the submission, BNG is required and a 10% net gain has been achieved on site. As this is required to be monitored over a 30-year period, the Local

Planning Authority would require financial contributions to secure the monitoring fees to cover the Ecologist's time over this period which would have to be secured through a S106.

Due to the non-determination nature of the appeal, no planning obligations have been secured and a reason for refusal has been added for the lack of this. However, it is acknowledged that this may be agreed within the impending Statement of Common Ground which is likely to be agreed after this report has been written. Should it be agreed that a Section 106 agreement would secure these obligations, it is acknowledged that any reason for refusal on this basis would no longer be applicable to the determination of the application.

Conclusion and reasons for decision

It is acknowledged that the majority of the previous reasons for refusal cited in the earlier appeal have now been addressed and are no longer applicable, as a result of the inspector's findings. However, under this application, the agent has introduced new elements not addressed by the previous appeal and in the absence of any further information, the Local Planning Authority would have refused the application due to Highway and pedestrian safety, insufficient information to secure a robust Travel Plan and the lack of a planning obligation to secure both a Travel Plan and BNG monitoring fees. Therefore, the great weight that Highway and pedestrian safety carries and the lack of legal obligation is considered contrary to the policies set out in this report when taken as a whole.

The material planning considerations weigh against the proposal such that it is recommended for refusal.

Recommendation

Refuse Permission

Reasons for refusal

1. The proposed development, by virtue of the introduction of a second splitter/pedestrian refuge island in close proximity to the existing island, would result in unnecessary duplication of highway features and result in potential confusion for both drivers and pedestrians, thereby reducing protection for vehicles waiting to turn right into Ellsmore Meadow and encouraging informal pedestrian crossing near the junction. The proposal is therefore considered to have an unacceptable impact on

highway and pedestrian safety, contrary to Policies GP2, T7 and T13 of the Walsall Unitary Development Plan, Policy TRAN2 of the Black Country Core Strategy, and paragraph 116 of the National Planning Policy Framework.

2. The proposed development fails to provide a robust, site-specific Travel Plan demonstrating how sustainable travel measures will be promoted, implemented, and monitored in accordance with Walsall Council's current Travel Plan Guidance. The submitted Travel Plan is generic, lacks detail on delivery and performance monitoring, and is not secured through a Section 106 legal agreement as required to ensure effective and robust long-term management and accountability. Reliance on a planning condition alone would not allow for adequate control, review, or enforcement, and therefore the proposal is considered unworkable in its current form. The development is consequently contrary to Policies GP2, GP3, T7 and T13 of the Walsall Unitary Development Plan, Policy TRAN2 of the Black Country Core Strategy, the Council's Customer Guide to Completing Planning Obligations.

3. In the absence of a completed Section 106 legal agreement to secure the required monitoring fees for the 30-year management of biodiversity enhancements, the Local Planning Authority cannot be satisfied that the Biodiversity Net Gain would be effectively monitored and maintained. The proposal is therefore contrary to Policies ENV1 of the Black Country Core Strategy and GP3 and ENV23 of Walsall Unitary Development Plan.

End of report