



## Planning Committee

Report of Head of Planning and Building Control on 09 March 2023

Plans List Item Number: 4

### Reason for bringing to committee

Petition received in support of the application.

### Application Details

**Location:** 32, HART STREET, WALSALL, WS1 3PE.

**Proposal:** TEMPORARY CHANGE OF USE OF RESIDENTIAL (C3) PROPERTY TO PLACE OF WORSHIP (F1) MOSQUE.

**Application Number:** 22/0729

**Case Officer:** Stephanie Hollands

**Applicant:** Shah Jalal Mosque

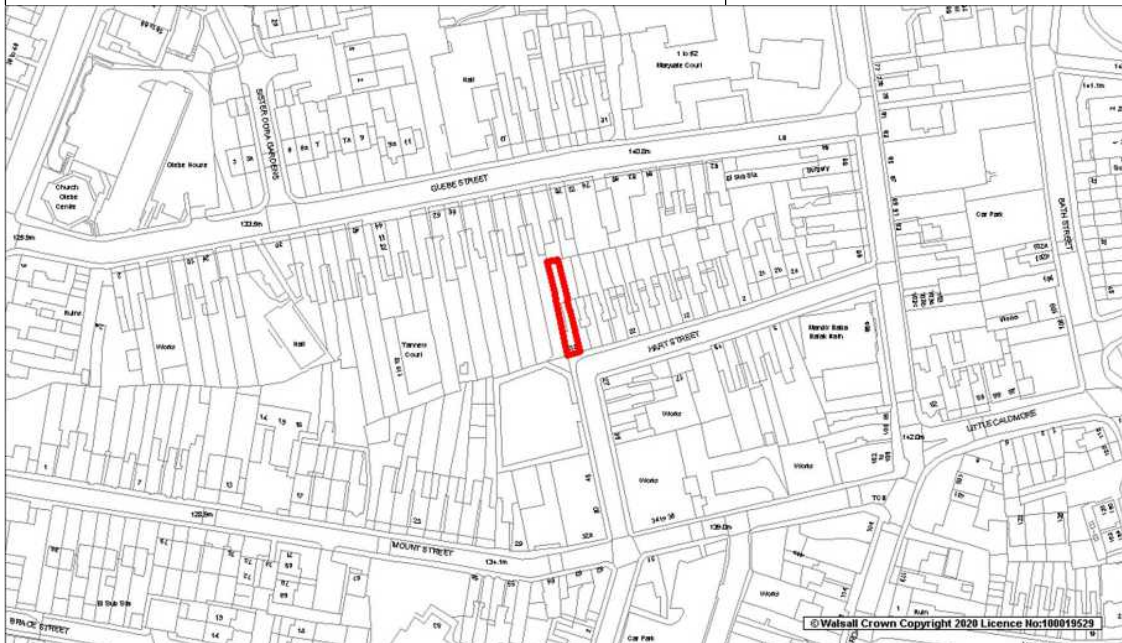
**Ward:** St Matthews

**Agent:**

**Expired Date:** 02-Sep-2022

**Application Type:** Full Application: Change of Use

**Time Extension Expiry:** 17-Mar-2023



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### Recommendation

Refuse

## Proposal

Temporary change of use of residential (C3) property to place of worship (F1) Mosque.

The proposed floor plans show there will be two prayer rooms, a kitchen and toilet on the ground floor with 3 overflow prayer rooms, wc and store on the first floor.

No external alterations or extensions are proposed.

No on-site parking provision is proposed.

The temporary length of time required has also not been specified.

A Planning Statement has been submitted in support of this application which states the following:

- The application site is to be used by the Shah Jalal Mosque as temporary accommodation whilst the current Mosque at 32-33 Mounts and 48 Hart St Walsall WS1 13PJ is being demolished and re-built. The site has been specifically chosen due to its close proximity to the old site which is approximately 30 metres distance.
- The site will be used to hold 5 times daily congregation prayers. Morning 6.00am, afternoon 1.30pm, late afternoon 6.30pm, dusk 7.45pm, evening 9.00pm. The times will change around the year as the daylight hours fluctuate. The congregational prayer durations are around 20 mins on average. The site will be managed by caretakers and the Priests who will open the site 15/20 mins before congregation prayer times and close shortly afterwards. It is estimated that 10-15 people will attend regular weekly prayers and 20/30 at the afternoon prayers on Friday.
- There will be no demand for additional parking as the old site users will use the temporary application site. As the old site is being demolished, therefore there will be no additional users. The numbers are expected to reduce during the rebuild process. Whilst most users are local and will walk to the site however some worshipers will use the public car parks on Mount Street and Hart Street as they are doing currently.

## Site and Surroundings

The application site is a three bedroom two-storey brick gable roof end terrace residential dwelling. There appears to be off street parking available for two cars to the side of the property, however this is not included in the application site boundary or detailed on the application form. Private amenity space is located to the rear of the property.

The surrounding area is primarily residential in nature consisting of terrace properties fronting directly on to the public footpaths with no onsite parking provision. On street parking is a common feature and in high demand within the street.

Residential dwellings adjoin the application site on all sides and opposite the application site is a public car park.

## Relevant Planning History

Land adjacent 32 Hart Street, Walsall, West Midlands:

APPLICATION No.	PROPOSAL	DECISION	DATE
05/1873/OL/W2	OUTLINE erection of one dwelling	Withdrawn	24/11/2005
06/1461/OL/W2	Erection of One New Dwelling	Refused	13/10/2006

## Relevant Policies

### National Planning Policy Framework (NPPF)

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

The NPPF sets out the Government's position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a "*presumption in favour of sustainable development*".

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

- **NPPF 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 6 – Building a strong, competitive economy**
- **NPPF 7 – Ensuring the vitality of town centres**
- **NPPF 8 – Promoting healthy and safe communities**
- **NPPF 9 – Promoting sustainable transport**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**

On **planning conditions**, the NPPF (para 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](http://www.go.walsall.gov.uk/planning_policy)

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

- GP2: Environmental Protection
- GP5: Equal Opportunities
- GP6: Disabled People
- ENV10: Pollution
- ENV11: Light Pollution
- ENV14: Development of Derelict and Previously Developed Sites
- ENV32: Design and Development Proposals
- ENV40: Conservation, Protection and Use of Water Resources
- S1: Definition of Town Centre Uses
- S2: The Hierarchy of Centres
- S3: Integration of Developments into Centres
- S4: The Town and District Centres: General Principles
- S5: The Local Centres
- S6: Meeting Local Needs
- S7: Out-of-Centre and Edge-of-Centre Developments
- T7: Car Parking
- T8: Walking
- T9: Cycling
- T10: Accessibility Standards – General
- T12: Access by Public Transport (Bus, Rail, Metro and Ring and Ride)
- T13: Parking Provision for Cars, Cycles and Taxis
- LC8: Local Community Facilities
- 8.7: Education, Health and Community Facilities

## **Black Country Core Strategy**

- CSP2: Development Outside the Growth Network
- CSP4: Place Making
- CSP5: Transport Strategy
- EMP1: Providing for Economic Growth
- CEN1: The Importance of the Black Country Centres for the Regeneration Strategy
- CEN2: Hierarchy of Centres
- CEN3: Growth in the Strategic Centres
- CEN4: Regeneration of Town Centres
- CEN5: District and Local Centres
- CEN6: Meeting Local Needs for Shopping and Services
- CEN7: Controlling Out-of-Centre Development
- TRAN1: Priorities for the Development of the Transport Network
- TRAN2: Managing Transport Impacts of New Development
- ENV3: Design Quality
- ENV8: Air Quality

## **Walsall Site Allocation Document 2019**

RC1: The Regeneration Corridors

## M1: Safeguarding of Mineral Resources

### Supplementary Planning Document

#### Designing Walsall

- DW3 Character
- DW4 Continuity
- DW5 Ease of Movement
- DW7 Diversity
- DW8 Adaptability

#### Air Quality SPD

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

### Consultation Replies

**Environmental Health:** No comments received.

**Environmental Protection:** Concerns raised.

**Local Highways Authority:** Concerns raised.

**Strategic Planning Policy:** Concerns raised.

**West Midlands Fire Service:** This proposal does not appear to have any detrimental impact on B5 Access & Facilities. No adverse comments. Comments on the internal layout will be made at the Building Regulation application stage.

**West Midlands Police:** No objection.

- Security and secured by design principles should be applied for both sites.
- A change of environment requires review of security and an opportunity for improvement.
- Any measures are more easily included during construction or alterations.

### Representations

The application was advertised by way of notification letters sent to 10 surrounding properties. The public consultation expired 27th September 2022. A petition received in support of the application with 30 signatures from residents in the Caldmore area, stating the use of this building is essential to the community.

## Determining Issues

- Principle of use
- Impact upon visual amenity
- Impact upon residential amenity
- Impact upon highway safety

## Assessment of the Proposal

### Principle of use

A place of worship is a main town centre use so should be directed to a centre in accordance with the NPPF. Provided the proposed use related to an existing place of worship nearby that is not in a centre, as in this case, the proposal could be justified. However, the use of a terraced house, even on a temporary basis, would give rise to disturbance to adjacent occupiers and cannot be supported.

The application site is located in an out of centre location. Policy CEN6 of the BCCS supports small scale local facilities up to 200 sqm provided they meet a specific day to day need, local investment could not be met by investment in a local centre, existing facilities that meet day to day needs are not undermined and access to facilities by means other than by car would be improved. CEN7 of the BCCS refers to out of centre development. If the principles of CEN6 cannot be met, then policy CEN7 would apply.

Policy S6 of the UDP refers to local facilities and states proposals that are for a local need where the need cannot be better met by investment in a nearby centre could be supported provided, they would have no adverse impact on the vitality and viability of any established centre, improve accessibility by means other than a car, reduce the need to travel and result in no significant loss of amenity for neighbouring homes. If the proposal cannot meet these requirements, then the tests of policy S7 would have to be addressed.

The applicant has submitted a planning statement that comments 'The application site is to be used by the Shah Jalal Mosque as temporary accommodation whilst the current Mosque at 32-33 Mounts and 48 Hart St Walsall WS1 13PJ is being demolished and re-built. The site has been specifically chosen due to its close proximity to the old site which is approximately 30 metres distance'. Despite these comments the applicant has failed to demonstrate where the demand has come from. Furthermore, there is no supporting evidence that there are no suitable alternative premises available within the nearest centre. The applicant has not provided any survey data from local residents who would utilise the place of worship.

The applicant has only provided a written statement choosing this property due to its close proximity to the current place of worship rather than demonstrated that there is a local need for the proposal under policy S6 of the UDP and CEN6 of the BCCS.

It is considered there is insufficient evidence to suggest this proposal is justified by a local need in an out of centre location that cannot be better met in an established centre location. It is considered that the proposed place of worship would have an adverse effect upon the vitality and viability of the nearest district and local centres.

Finally, the application for rebuilding the mosque (22/0519) has not yet been determined.

### **Impact upon visual amenity**

No external changes are proposed, therefore there would be no impact.

### **Impact upon residential amenity**

Environmental Protection raise concerns to the proposed development. The adjoining property is a residential premise. The proposal is likely to result in significant noise and disturbance to the premise next door and slightly less to other neighbouring residential premises from the use of the building, from persons socialising outside, and the general comings and goings of users.

Furthermore, is that it is unlikely that any noise generated will lead to it being considered a statutory nuisance/material planning consideration and therefore could be actionable under separate environmental legislation. While such noise may be considered an annoyance, it will only be actionable via communication with all parties involved and coming to a compromise i.e., it may not be legally enforceable under other legislation and hence unlikely to be able to control this type of noise issue.

### **Impact upon highway safety**

Due to a lack of information provided on the application the Local Highway Authority were unable to fully access the application. A better understanding of the proposed use is required to assess the potential impact in parking terms.

## **Conclusions and Reasons for Decision**

In weighing the key material considerations, consultee and neighbour responses against the national and local planning policies and guidance, it is considered that the proposed used would be contrary to the policies of the development plan in that the proposed use would unduly harm the amenities of neighbouring occupiers from persons socialising outside, and the general comings and goings of users.

There is insufficient provided on the application for the Local Highway Authority to fully access the potential impact in parking terms.

There is insufficient evidence to suggest this proposal is justified by a local need in an out of centre location that cannot be better met in an established centre location. It is considered that the proposed place of worship would affect upon the vitality and viability of the nearest district and local centres.

Taking into account the above factors it is considered that the application should be recommended for refusal. The development is considered to be contrary to the aims and objectives of the National Planning Policy Framework, policies CEN6, CEN7, ENV3, CEN7, TRAN1 and TRAN2 of the Black Country Core Strategy and saved policies GP2, ENV32, S6, S7, T7, T10 and T13 of the Walsall Unitary Development Plan.

Given that there are no material planning considerations in support of the proposals it is concluded that this application should be recommended for refusal.



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

Officers have spoken with the applicant's agent and in this instance are unable to support the proposal.

## **Recommendation**

Refuse

### Reasons for Refusal

1. The proposed place of worship would unduly harm the amenities of neighbouring occupiers from persons socialising outside, and the general comings and goings of users. Overall, the proposal would result in increased noise levels from the property over and above what would normally be expected of a residential dwelling. As such, the proposal would be contrary to the National Planning Policy Framework paragraphs 174 and 185, Policy ENV3 (Design Quality) of the Black Country Core Strategy and saved policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals) of the Walsall Unitary Development Plan.
2. The applicant has failed to provide sufficient information to demonstrate that the proposed place of worship would have no detrimental impact in parking terms. As such, the proposal would be contrary to the National Planning Policy Framework paragraphs 104, 107 and 108, policies CEN7 (Controlling Out-of-Centre Development), TRAN1 (Priorities for the Development of the Transport Network) and TRAN2 (Managing Transport Impacts of New Development ) of the Black Country Core Strategy and saved policies GP2 (Environmental Protection), S7 (Out-of-Centre and Edge-of-Centre Developments), T7 (Car Parking), T10 (Accessibility Standards – General) and T13 (Parking Provision for Cars, Cycles and Taxis) of the Walsall Unitary Development Plan.
3. The applicant has failed to provide sufficient evidence to demonstrate that the proposed place of worship serves a local need that could not be met within the nearest District or Local Centre. The proposed use as a result would impact upon the vitality and viability of the nearest District or Local Centre. As such, the proposal would be contrary to the National Planning Policy Framework paragraphs 86, 87, 90 and 91, Policies CEN6 (Meeting Local Needs for Shopping and Services) and CEN7 (Controlling Out-of-Centre Development) of the Black Country Core Strategy and saved policies S6 (Meeting Local Needs) and S7 (Out-of-Centre and Edge-of-Centre Developments) of the Walsall Unitary Development Plan.

## **Notes for Applicant**

### **West Midlands Police**

The applicant may consider the following:

Construction security.

[https://www.securedbydesign.com/images/CONSTRUCTION\\_SITE\\_SECURITY\\_GUIDE\\_A4\\_8pp.pdf](https://www.securedbydesign.com/images/CONSTRUCTION_SITE_SECURITY_GUIDE_A4_8pp.pdf)

Alarm and cctv installers should be approved by NSI, SSAIB or both please see <https://www.nsi.org.uk/> and <https://ssaib.org/>

A capture of all persons particularly entering and leaving.

I would recommend security using the principles of Secured By Design.

Below is a link to secured by design commercial, police approved crime reduction information guidance.

[https://www.securedbydesign.com/images/downloads/SBD\\_Commercial\\_2015\\_V2.pdf](https://www.securedbydesign.com/images/downloads/SBD_Commercial_2015_V2.pdf)

Secured By Design security standards are explained.

Please see: <https://www.securedbydesign.com/guidance/standards-explained>

External LED lights with daylight sensors to the external walls, by entrances and parking areas.

To provide security for staff and customers.

**END OF OFFICERS REPORT**