

Planning Committee

Report of Head of Planning and Building Control on 8 February 2024

Plans List Item Number: 4

Reason for bringing to committee

Called in by a Councillor Farhana Hassan on the grounds that the design of the proposal requires wider consideration

Application Details

Location: 10, DOWNHAM CLOSE, WALSALL, WS5 3BX

Proposal: PROPOSED 4 BEDROOM DETACHED DWELLING WITH ASSOCIATED OFF-STREET PARKING FOR 3NO. VEHICLES.

Application Number: 23/1162

Case Officer: Leah Wright

Applicant: A Ali

Ward: Pheasey Park Farm

Agent: PAUL CLIFTON ASSOCIATES

Expired Date: 14-Nov-2023

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

Time Extension Expiry: 01-Mar-2024



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Recommendation

Refuse Permission

Proposal

The application proposes the erection of a two-storey, 4no. bedroomed replacement dwelling with off-street car parking provision for 3no. vehicles.

Site and Surroundings

The application site comprises a prominent corner plot where both Downham Close and Elmstead Close intersect and is occupied by a late 1960's two-storey dwelling with single storey flat roofed accommodation to its side. The site has a generous rear garden area and off-street car parking provision.

The existing dwelling is of a simple design reflecting neighbouring dwellings in the immediate vicinity including the use of materials.

The site is located within a Coal Development Low Risk Area.

The site is not located within a flood risk zone as identified by the Environment Agency, nor a critical drainage area.

The site is not located near to any listed buildings or heritage assets. The site is not located within a conservation area.

Relevant Planning History

17/1410 - Construction of 2 x detached dwellings, creation of new vehicle accesses and extensions and alterations to the existing detached house (No.10) – Refused – 24/08/2018.

18/1328 - Construction of one 4 bedroom detached house on land adjacent to 10 Downham Close – Approved – 28/02/2019.

19/0725 - Construction of one 4 bedroom detached house on land adjacent to 10 Downham Close. Amendment to approval 18/1328 – Finally Disposed Of (Article 40 GDMPO) – 16/09/2021.

20/0273 - Two storey side extension with ground floor rear projection, single storey side garage extension and front porch – Approved – 08/06/2020.

23/0414 - Proposed 4 bedroom detached dwelling with associated off-street parking – Refused – 16/08/2023.

Reasons for refusal:

'1. The proposed works by virtue of the increases in footprint, width and depth will, when compared to the works approved under the lawful fallback position Ref: 20/0273, likely result in an unacceptable and somewhat unnecessary 21% increase in footprint and 81% increase in footprint when compared to the existing situation. In considering the limited site area and the proposed increases in footprint, width and depth, the works will likely result in an excessive amount of built form constituting overdevelopment by virtue of their overall bulk, scale and massing when compared against both the fallback position under Ref: 20/0273 and the existing situation on site. The development is therefore contrary to Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan and Policy ENV3 of the Black Country Core Strategy.

2. The proposed design changes including 3no. front gable additions / extensions and excessive amounts of glazing are not reflective of the main and dominant character and appearance of dwellings within the immediate vicinity and will likely detract from the streetscene. As such, the works are deemed to constitute a final incongruous design which detracts from the dominant character and appearance of dwellings within the immediate vicinity and wider street scene giving rise to significant, detrimental visual impacts at this highly prominent corner location. As such, the works fail to accord with Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan and Policy ENV3 of the Black Country Core Strategy.

3. In the absence of a suitable Bat Survey, the works, by virtue of their significant works / alterations to the existing building, will likely give rise to adverse impacts to bats and detriment to protected species. As such, the proposal fails to accord with Saved Policies GP2 and ENV23 of the Walsall Unitary Development Plan and Policy ENV1 of the Black Country Core Strategy.'

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 8 – Promoting healthy and safe communities

NPPF 9 – Promoting sustainable transport

NPPF 11 – Making effective use of land

NPPF 12 – Achieving well-designed places

NPPF 15 – Conserving and enhancing the natural environment.

On **planning conditions** the NPPF says:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved 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

- **3.6 to 3.8 Environmental Improvement**
- **GP2: Environmental Protection**
- **GP5: Equal Opportunities**

- **GP6: Disabled People**
- **ENV23: Nature Conservation and New Development**
- **ENV32: Design and Development Proposals**
- **T7 - Car Parking**
- **T13: Parking Provision for Cars, Cycles and Taxis.**

Black Country Core Strategy

- **Vision, Sustainability Principles and Spatial Objectives**
- **CSP2: Development Outside the Growth Network**
- **CSP4: Place Making**
- **HOU2: Housing Density, Type and Accessibility**
- **TRAN2: Managing Transport Impacts of New Development**
- **ENV1: Nature Conservation**
- **ENV3: Design Quality.**

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
- NE4 – Survey Standards
- NE5 – Habitat Creation and Enhancement Measures
- NE6 – Compensatory Provision
- 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.

Consultation Replies

Fire – No objections – *‘This proposal does not appear to have any detrimental impact on B5 Access & Facilities. No adverse comments, however consideration should be given to the functional requirements of the Approved Document and the impact that this proposal has’.*

Strategic Policy – No objections.

Highways – Support – see relevant section of this report.

Ecology – No objections – see relevant section of this report.

Severn Trent Water – No objections, subject to conditions concerning the submission of both foul and surface water drainage plans – see relevant section of this report.

Environmental Protection - Concerns raised - Environmental Protection have provided conditions for inclusion within any permission to address Construction and Demolition management.

Representations

No responses have been received following the public consultation exercise.

Determining Issues

- Has the revised application overcome the previous reasons for refusal as per Ref: 23/0414?
- Other material considerations / matters.

Assessment of the Proposal

Has the revised application overcome the previous reasons for refusal as per Ref: 23/0414?

This application is a resubmission of the recently refused planning application 23/0414 which was a replacement dwelling with 4no. bedrooms with off-street car parking provision.

The 23/0414 reasons for refusal state the following (in italics) and are each addressed in turn:

'Reason for Refusal 1: The proposed works by virtue of the increases in footprint, width and depth will, when compared to the works approved under the lawful fallback position Ref: 20/0273, likely result in an unacceptable and somewhat unnecessary 21% increase in footprint and 81% increase in footprint when compared to the existing situation. In considering the limited site area and the proposed increases in footprint, width and depth, the works will likely result in an excessive amount of built form constituting overdevelopment by virtue of their overall bulk, scale and massing when compared against both the fallback position under Ref: 20/0273 and the existing situation on site. The development is therefore contrary to Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan and Policy ENV3 of the Black Country Core Strategy'.

The planning history of an application site is a material consideration when assessing planning applications. In this instance, planning application 20/0273 permitted the erection of a 'Two storey side extension with ground floor rear projection, single storey side garage extension and front porch' on 8 June 2020 with three years to implement.

This current application was valid from the 19 September 2023 and as such, 20/0273 is not now deemed to constitute a lawful fallback position as the application has expired consequently, only limited weight is attached to this permission as part of this assessment.

The existing dwelling on-site measures the following dimensions:

Footprint – 99sqm;

Height – 7m;

Width – 14.1m;

Depth – 9.8m.

Ref: 20/0273 permitted a scheme measuring the following dimensions:

Footprint – 148sqm;

Height – 6.9m;

Width – 17.4m;

Depth – 10.4m.

This current proposal measures the following dimensions:

Footprint – 182sqm;

Height – 7.4m;

Width – 18.3m;

Depth – 12.8m.

In assessing the current proposed replacement dwelling and comparing with the drawing of the expired 20/0273 application, the council's policy framework is silent in requiring specific thresholds for increases in built form under such applications. As such, each application is assessed as a matter of fact and degree.

The 20/0273 application allowed a 50% increase in footprint when compared to the existing situation. When coupled with the design and use of materials, the 20/0273 application demonstrated a scheme with a design, bulk, scale and massing which is considered the constraints of the application site and the wider street-scene.

It is considered the approved and now expired planning application 20/0273 was a maximum allowable for this application site, taking into account the site and street constraints and any further increases would be incongruous in the locality.

The currently proposed application is an 84% increase in footprint when compared to the existing situation and a 23% increase in footprint upon the expired 20/0273 application.

Whilst some aspects of the proposed application are deemed acceptable (ridge and eaves level height), the combined effects of the proposed increases in width, depth and footprint at two-storey height, and in this prominent corner location, are deemed to constitute overdevelopment of the site, likely resulting in an incongruous development and consequent significant, detrimental visual impacts.

The agent's statement makes reference to neighbouring sites / properties and the coverage of sites with built form as a percentage ratio as a means to justify the proposed increase in footprint, bulk, scale and massing.

Such objective statements clearly fail to subjectively assess and consider the final design of the works and any likely visual impacts they may have when viewed collectively with other dwellings across the street scene.

The current proposal is a corner site, and therefore more visible within the street scene compared to the other sites referenced by the agent. Furthermore, members should be reminded that each site has its own unique constraints that must be considered and decisions on neighbouring sites cannot be used to overcome planning harm in this instance. As such, this approach is not deemed an effective test when assessing applications for replacement dwellings.

It may be the case that other dwellings within the immediate area have constrained sites however, it is noted that such dwellings are not of a size, scale, bulk and massing that departs so significantly from the dominant vernacular of the street scene so as to appear incongruous as is the case herein. The works clearly appear more visually intrusive than both the existing situation and the expired 20/0273 application and that, in essence, is the main concern.

Whilst the applicant's personal family needs are noted as requiring a dwelling of this size, the planning system does not consider personal requirements or needs are not material planning considerations and would not and cannot be used to outweigh the visual impacts the proposal has on the vicinity.

As such, the proposed works by virtue of the increases in footprint, width and depth will, when

compared to the previously approved now expired 20/0273, results in an unacceptable 23% increase in footprint and 84% increase in footprint when compared to the existing situation.

In considering the limited site area and the proposed increases in footprint, width and depth, the works will likely result in an excessive amount of built form by virtue of their overall bulk, scale and massing when compared against both the previously refused and expired 20/0273 and the existing situation on site.

This current revised application has not addressed the above concerns of reason for refusal 1 which are maintained.

'Reason for Refusal 2: The proposed design changes including 3no. front gable additions / extensions and excessive amounts of glazing are not reflective of the main and dominant character and appearance of dwellings within the immediate vicinity and will likely detract from the streetscene. As such, the works are deemed to constitute a final incongruous design which detracts from the dominant character and appearance of dwellings within the immediate vicinity and wider street scene giving rise to significant, detrimental visual impacts at this highly prominent corner location. As such, the works fail to accord with Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan and Policy ENV3 of the Black Country Core Strategy.'

This revised application has however, sought to address the concerns of the 3no. front gable additions yet this has only reduced the height of 1no. front gable feature with the remainder remaining as previously proposed in refused 23/0414.

Further, it is noted that as a result of this reduction, a new alteration to the rear roof plane is proposed in the form of two-storey gable projection. As such, whilst the efforts to reduce the number of gables along the front elevation are welcomed, the concerns previously raised via 23/0414 still remain. The proposed final design is not reflective of the main and dominant character and appearance of dwellings within the immediate vicinity and will likely detract from the street-scene.

As such, reason for refusal 2 remains relevant.

'Reason for refusal 3: In the absence of a suitable Bat Survey, the works, by virtue of their significant works / alterations to the existing building, will likely give rise adverse impacts to bats and detriment to protected species. As such, the proposal fails to accord with Saved Policies GP2 and ENV23 of the Walsall Unitary Development Plan and Policy ENV1 of the Black Country Core Strategy.'

A Bat Survey has been submitted and the council's ecologist makes the following observations:

'No objection to this application on ecological grounds. The planning conditions suggested below, should be incorporated into any permission granted to ensure that the mitigation stated within the Internal / External Bat Survey report dated September 2023 and general requirement under Unitary Development Plan ENV23 Nature Conservation and new development is undertaken.'

Recommended conditions:

1 If bat/s or evidence of bats are found during these operations Natural England or the ecologist for this project must be contacted.

a.) The bat/s should not be handled or touched and the vicinity of the roost shall be immediately reinstated.

b.) No further destructive works shall be carried out to the building until the need for Natural England licence has been established.

c.) Within one week of finding bats or evidence of bats, a written report by the ecologist shall be submitted for the approval in writing of the Local Planning Authority, recording what was found, and proposing appropriate mitigation measures, including a timetable for their implementation

d.) Work on the building shall only continue in accordance with the approved mitigation measures and on the approved timetable and/or in accordance with the terms of any Natural England licence issued

2. Lighting proposed for the development shall be minimised in accordance with the guidance available within Guidance Note 08/18 Bats and artificial lighting in the UK, bats and the Built Environment series, BCT, 2018.

3 In the event that the development hereby permitted has not commenced by September 2025, the bat surveys undertaken to support the application will be considered to have expired. In this case, and prior to the commencement of the development hereby permitted, a comprehensive bat survey shall be submitted in writing to and approved in writing by the Local Planning Authority. The requirements set out in the amended survey shall take precedence over any previously agreed measures and the development shall be implemented in accordance with the approved details.

Reason: To conserve local bat populations and to be in accordance with The Wildlife and Countryside Act 1981 (as amended) and the Conservation (Natural habitats, & c.) Regulations 1994 Saved UDP policy ENV23: Nature Conservation and New Development.

4a Prior to occupation of the development hereby permitted one brick bat box shall be incorporated into the proposed first floor side elevation, and one bird box shall be provided on site, and they shall thereafter be retained as such. The bat box shall be located at a point not lower than 2.5m from ground level and shall not be positioned directly above any doors or windows.

b The entrance to the brick bat box shall be kept clear from obstructions at all times.

Reason: To conserve local bat populations and to comply with NPPF11, BCCS Policy ENV1, saved UDP Policy ENV23 & policies NE1 to NE6 of the Natural Environment SPD'.

As such, if all other matters were agreed and subject to the ecologist's amended conditions to meet the 6 tests, reason for refusal 3 is now addressed.

Other material considerations / matters:

Flood Risk / Drainage:

Severn Trent Water makes the following observations:

'I can confirm that we have no objections to the proposals subject to the inclusion of the following condition:

-The development hereby permitted should not commence until drainage plans for the disposal of foul and surface water flows have been submitted to and approved by the Local Planning Authority, and

- The scheme shall be implemented in accordance with the approved details before the development is first brought into use. This is to ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution. [...]

As such if all other matters were acceptable, conditions would have been able to be included if the application were being recommended for approval.

Highways:

The council's highways engineers make the following observations:

'HIGHWAYS OVERVIEW:

The development seeks to replace the existing property into a 4no. bedroom detached dwelling with off-street car parking provision.

VEHICLE ACCESS:

As per the existing arrangement.

VEHICLE PARKING:

In line with Walsall UPD Policy T13 car parking standards, 3no. car parking spaces are located to the front of the dwelling.

Recommendation:

In light of the comments above, the Highway Authority supports the proposal, subject to the following recommended conditions;

1. a) The frontage parking area shall be fully consolidated, hard surfaced in tarmacadam or similar material and drained so that surface water run-off from the area does not discharge onto the highway or into any highway drain, full details of which shall be submitted to and approved in writing by the Local Planning Authority.

b) The access and parking areas shall thereafter be retained and used for no other purpose.

2. a) a 2.4m x 3.4m pedestrian visibility splay shall be always maintained at the new access point, within which no structure or planting exceeding 600mm in height above footway level will be permitted.

Reason: To ensure adequate pedestrian/vehicle inter-visibility is maintained at the access point in the interests of highway safety.

3. Notwithstanding any Permitted Development Rights, no alterations to the existing highway boundary treatment, including the installation of gates at the access point, shall be implemented at any time without full details firstly being submitted to the Local Planning Authority for written approval.

Reason: To ensure adequate inter-visibility is retained at the access point and adjoining access points in the interests of highway safety.

See Highway Authority – Notes to Applicant 1 below.

HIGHWAY AUTHORITY - NOTES TO APPLICANT:

1. The attention of the applicant is drawn to the need to keep the highway free from any mud or other material emanating from the application site or any works pertaining thereto.

2. The applicant will be required to obtain the necessary Road Opening

Permit from the Highway Authority for the construction of the dropped kerb footway crossing within the public highway as well as reinstated full height kerbs. For further information and application forms please visit the Council's webpage under

Transport and Streets - Parking Roads and Vehicles.

As such if all other matters were acceptable, amended conditions to meet the 6 tests would have been able to be included if the application were being recommended for approval.

Environmental protection have concerns about the redevelopment of the site due to asbestos, potential for dust, noise and debris. As such, if all other matters were acceptable, amended conditions to meet the 6 tests would have been included if the application were being recommended for approval. In addition, given the scale of the proposed dwelling, should it be considered the proposal is acceptable there would also be a need to impose other conditions, such as permitted development rights removal, protected species enhancements, drainage and surfacing and drainage of parking areas.

Conclusions and Reasons for Decision

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

Refuse

Given the previous concerns / reasons for refusal under Ref: 23/0414 have not fully been addressed, the works remain unacceptable for the reasons set out below.

Recommendation

Refuse

Reasons for Refusal:

1. *The proposed works by virtue of the increases in footprint, width and depth will, when compared to the works approved under the fallback position Ref: 20/0273, likely result in an unacceptable and somewhat unnecessary 23% increase in footprint and 84% increase in footprint when compared to the existing situation. In considering the limited site area and the proposed increases in footprint, width and depth, the works will likely result in an excessive amount of built form constituting overdevelopment by virtue of their overall bulk, scale and massing when compared against both the fallback position under Ref: 20/0273 and the existing situation on site. The development is therefore contrary to Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan and Policy ENV3 of the Black Country Core Strategy.*

2. *The proposed design changes including 3no. front gable additions / extensions and excessive amounts of glazing are not reflective of the main and dominant character and appearance of dwellings within the immediate vicinity and will likely detract from the streetscene. As such, the works are deemed to constitute a final incongruous design which detracts from the dominant character and appearance of dwellings within the immediate vicinity and wider street scene giving rise to significant, detrimental visual impacts at this highly prominent corner location. As such, the works fail to accord with Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan and Policy ENV3 of the Black Country Core Strategy.*

Notes for Applicant

N/A

END OF OFFICERS REPORT