

Planning Committee

Report of Head of Planning and Building Control on 31 October 2022

Plans List Item Number: 3

Reason for bringing to committee

Called in by Councillor Amo Hussain on the grounds of further discussion needed in relation to the deviation of the planning approval 20/0453. The application was deferred from the planning committee meeting of the 6th October 2022 at the applicant's request as their agent was unable to attend. The applicant's agent has also made some further comments which are addressed in the report below which is updated.

Application Details

Location: 74, Mellish Road, Walsall, WS4 2EB

Proposal: RE-SUBMISSION APPLICATION OF 20/0453: REPLACEMENT 6 BEDROOM DWELLINGHOUSE. AMENDMENTS INCLUDE INCREASED ROOF HEIGHT AND ALTERATION TO ROOF DESIGN, ADDITION OF REAR BOX DORMER, RE-DESIGNED SINGLE STOREY REAR EXTENSION, REMOVAL OF SIDE FACING WINDOWS, ADDITIONAL TWO STOREY FRONT EXTENSION AND CHANGE TO WINDOW DESIGN ON FRONT ELEVATION.

Application Number: 21/0804

Case Officer: Ann Scott

Applicant: Manjid Zeb

Ward: St Matthews

Agent: PAUL CLIFTON ASSOCIATES

Expired Date: 14-Oct-2021

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

Time Extension Expiry:



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Recommendation

Refuse permission

Proposal

Re-submission application of 20/0453: for the retention of a Replacement 6-bedroom dwelling house. Amendments include increased roof height and alteration to roof design, addition of rear box dormer, re-designed single storey rear extension, removal of side facing windows, additional two storey front extension and change to window design on front elevation.

Site and Surroundings

The application site is a detached dwelling on the south side of Mellish Road and is situated in a row of existing detached and semi-detached dwellings fronting the highway. The site is situated in flood zone 1 at the lowest risk of flooding as defined on the Environment Agency Flood Map for Planning.

Planning History

19/0762 - Replacement four-bedroom detached house – GSC on 02/04/2020

20/0453 – Replacement 6-bedroom house over 2 and a half storeys to include the loft.
– Granted 13-07-2020.

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 12 – Achieving well-designed places**

On **planning conditions** the NPPF (para 55) says:

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

On **decision-making** the NPPF sets out the view that local planning authorities should approach decisions in a positive and creative way. They should use the full range of planning tools available and work proactively with applications to secure

developments that will improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

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 consider their circumstances more than those of a person without such a protected characteristic and we think about a ramp instead. They are not treated preferentially, because the ramp does not give them an advantage; it merely puts them on a level playing field with someone without the protected characteristic. As such the decision makers should consider the needs of those with protected characteristics in each circumstance in order to ensure they are not disadvantaged by a scheme or proposal.

Development Plan

www.go.walsall.gov.uk/planning_policy

Saved Policies of Walsall Unitary Development Plan

- GP2: Environmental Protection
- ENV32: Design and Development Proposals
- H1: Renewal of Existing Residential Areas
- T13: Parking Provision for Cars, Cycles and Taxis

Black Country Core Strategy

- CSP4: Place Making
- HOU1: Delivering Sustainable Housing Growth

- HOU2: Housing Density, Type and Accessibility
- ENV3: Design Quality

Supplementary Planning Documents

Designing Walsall

- DW1 Sustainability
- DW3 Character
- DW9 High Quality Public Realm
- DW10 Well Designed Sustainable Buildings

Air Quality SPD

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

Conserving Walsall's Natural Environment

Development with the potential to affect species, habitats or earth heritage features

- NE1 – Impact Assessment
- NE2 – Protected and Important Species
- NE3 – Long Term Management of Mitigation and Compensatory Measures

Survey standards

- NE4 – Survey Standards

The natural environment and new development

- NE5 – Habitat Creation and Enhancement Measures
- NE6 – Compensatory Provision

Development with the potential to affect trees, woodlands and hedgerows

- NE7 - Impact Assessment
- NE8 – Retained Trees, Woodlands or Hedgerows
- NE9 – Replacement Planting
- NE10 – Tree Preservation Order

Consultee Comments

Highway Authority – no objections suggest condition in relation to parking being retained.

West Midlands Fire Officer – comment on fire safety matters.

Severn Trent Water – no objections.

Neighbour and interested Parties Comments

2 no. objections from third parties regarding the following;

- Overlooking
- Dominance
- Size of dwelling
- Antisocial behaviour
- Noise and disturbance
- Loss of amenity

Determining Issues

- Cannock Chase SAC and HRA
- Principle of development
- Residential amenities of existing and future occupiers
- Highway safety
- Flood risk and drainage
- Ecology/Trees
- Any other issues
- Local finance considerations

Assessment of the Proposal

Cannock Chase SAC and HRA

Whilst the application is within the 15 km zone of influence for the Cannock Chase SAC the application is for a replacement dwelling so there is no net increase in the number of dwellings and therefore the SAC does not apply to this application.

Pursuant to the Habitats Directive (92/43/EEC), where a plan or project is not connected with the nature conservation management of a European designated site, the competent authority must determine whether the plan or project is likely to have a significant effect on the site, either alone or in combination with other plans or projects. This is reflected in national law in the Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations"), which place a duty upon competent authorities to consider the potential for effects upon sites of European importance prior to granting consent. This is referred to as a screening assessment. If likely significant effects are identified by the screening assessment, the competent authority must then undertake an Appropriate Assessment of the implications.

Approximately 20% of Cannock Chase falls within the Cannock Chase Special Area of Conservation ("SAC"), allocated primarily for its dry heathland. Council areas in the vicinity of the SAC have formed a Partnership and commissioned reports to assess impacts upon the SAC and how they arise. The evidence indicates that development which would increase visitors within 15km of the SAC may have a significant impact.

Walsall Council joined the Cannock Chase SAC Partnership on 17th October 2022 and has implemented Black Country Core Strategy Policy EQ2 which enables the collection of payments to mitigate against impacts arising from new relevant development falling within the 15km Zone of Influence of the Cannock Chase SAC. The mitigation payment of £290.58 per each net new dwelling is non-negotiable. Permission must be refused where appropriate mitigation is not provided pursuant to the Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations").

The applicant/agent did not submit any additional information. The Project has been screened to identify whether potential effect pathways between the Project and the

SAC are present which are likely to result in significant effects upon the SAC. The screening exercise carried out on April 1st 2022 by the SAC Partnership authorities found likely significant effects on the SAC arising as a result of increased recreational activity from new residential development and related population growth that is likely to disturb the ground. A 21/12/12 Cannock Chase SAC Visitors Survey investigating visitor access patterns found that the majority (75%) of visitors originated from within a 15km distance of the SAC (also supported by 2018 visitor survey data) and The Cannock Chase SAC Planning Evidence Base Report Stage 2 (12/07/21) determined that within this 15km 'zone of influence', measures to reduce recreational pressure would be most effective.

The Habitat Regulation Assessment Stage 1: Screening Assessment has been undertaken using the available information associated with this planning application. The screening assessment is designed to check if an application is likely to have a significant effect on Cannock Chase SAC's conservation objectives, based on available evidence. Should it be determined that no significant affects are likely, no further assessment in respect to the SAC is required. Please note as per guidance and CJEU ruling (case C323/17), mitigation measures cannot be taken into account at the screening stage of the HRA assessment.

The proposed application is situated within the 15km zone from the Cannock Chase SAC and proposes a net increase of 0 dwellings. This development would not therefore result in an increase in recreational disturbance resulting in significant harm of the SAC. As such there is no need to progress directly to Stage 2 the undertaking of an Appropriate Assessment in this case.

While Walsall Council, as the Competent Authority, will normally carry out HRA Stage 2: Appropriate Assessment, which will include the consultation of key stakeholders including Natural England, it will be the responsibility of the applicant to provide and secure suitable mitigation on which to base the Appropriate Assessment. Suitable mitigation should be in the form of the necessary mitigation payment of £290.58 per each net new dwelling which can be secured by a Unilateral Undertaking, or within a Section 106 Agreement when other obligations are required. This is however not required in the case of this application as there is no net increase in the number of dwellings.

Principle of development

The application is revised following grant of permission for a replacement dwelling approved under reference 20/0453. This application seeks to retain a dwelling which has not been built in accord with the previous approved plans.

The alterations provide for the increase in the height of the roof to enable the rear box dormer and alterations to its design, adding a large rear dormer, and large single storey rear extension, removal of side facing fenestration and a two storey front extension, and alterations to fenestration details on the front elevation.

Whilst in principle the development already has a permission granted this proposal seeks to provide a new replacement dwelling as the existing dwelling is not yet occupied. The site is within the 15 km zone of the Cannock Chase SAC but as there is no net increase in dwellings there is no requirement to provide mitigation.

Housing Need

Chapter 5 of the NPPF relates to delivering a sufficient supply of homes. Paragraph 60 seeks to ensure the governments' objective of significantly boosting the supply of homes. Paragraph 61 relates to strategic housing supply policies and should be informed by local housing need. The council has an emerging housing supply shortfall and has recently failed the Housing Delivery Test because of low housing delivery over the last three years. Paragraph 73b of the NPPF seeks to ensure that the supply of new homes should be well located and designed and supported by the necessary infrastructure and facilities including a choice of transport modes. Walsall is connected by bus and rail services to the wider area and provides a sustainable location for the proposed development. The application site is closely located to the Walsall Town Centre.

Paragraph 74 relates to maintaining supply and delivery of housing sites over the development plan period. Local Planning Authorities should update annually a supply of deliverable sites against their housing requirement set out in adopted strategic policies.

The Black Country Core Strategy Policy HOU1 Delivering Sustainable Housing Growth seeks to create a network of cohesive, healthy and prosperous communities and for the provision of sufficient land to provide for sustainable housing growth.

The present Housing Delivery Test indicates that Walsall only achieved around 70% of its housing delivery over the period 2018-2021. Where applications involving the provision of housing, situations where the Local Planning Authority cannot demonstrate a 5 year supply of deliverable housing sites, with the buffer set out in paragraph 74, or where the Housing Delivery Test was below 75% of the housing requirement over the previous three years the presumption is in favour of granting permission as indicated in Paragraph 11d. The application does not result in an increase in the delivery of an additional dwelling to count towards housing needs of the district as it is a replacement dwelling.

Residential amenities of existing and future occupiers

The proposed development is considered to adversely impact on the amenities of adjoining properties by reason of the height, which is approximately 8.7 metres high to the ridge and in terms of its cumulative bulk size and siting of the proximity to the boundaries with 72 and 76 Mellish Road. The proposed rear extension runs along the boundary with number 76 Mellish Road whilst single storey the rearward projection of the development infringes the 45-degree rule by approximately 3.2 metres to the rear ground floor window of 72 Mellish Road. The dwelling to be retained is less than 0.9 metres from the boundary with adjoining properties. Contrary to the Saved Unitary Development Plan Policy GP2 (Environmental Protection), and Policies DW1 (Sustainability), DW2 (Safe and Welcoming places) and DW6 (Legibility). Of the Designing Walsall SPD.

Highway safety

The Local Highways Authority supports the application subject to conditions in relation to parking being retained.

There are no other highway safety concerns and the proposal accords with the application is considered to accord with "saved policies" T7 - Car Parking

Flood Risk and Drainage

The application site lies in Flood Zone 1 at the lowest risk of flooding as defined on the Environment Agency Flood Map for Planning and at low risk of surface water flooding. The development is considered subject to suitable conditions to secure means of sustainable drainage is not likely to increase flood risk or surface water flood risk to adjacent sites.

Paragraph 154 of the National Planning Policy Framework requires that new development should be planned for in ways that avoid increased vulnerability from flood risk to the range of impacts arising from climate change, and care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure. Whilst most of the built development is not proposed within the flood risk areas, flood risk is an issue that should be considered carefully as the development would result in a “more vulnerable” use of the site. Details of surface water, flood risk and drainage can be secured by appropriate conditions.

The proposal subject to conditions in respect of the above is considered to accord with Black Country Core Strategy ENV5: Flood Risk, Sustainable Drainage Systems, Urban Heat Island and NPPF Paragraph 14.

Ecology/Trees

The application forms advise that one seeded birch tree has been removed to facilitate the development. The tree was not protected by a preservation order.

Previous comments regarding the potential for bats was raised in the earlier approval. However, as the existing dwelling was demolished to make way for the current dwelling which has resulted in this revised application. This matter is not considered to be an issue for the current proposal.

Any other issues

The application was deferred from the meeting of the 6th October at the applicants request to enable the agent to speak at the committee meeting in support of the proposal. Further comments have been received from the agent to advise they were not advised that the application was included in the 15 km zone of influence for the Cannock Chase SAC. Where possible the LPA did advise applicants by letter of this information and this information was not communicated in this instance. However, the agent considers that the application would have avoided the SAC legislation if the decision had been made earlier. Nevertheless, as this proposal is for a replacement dwelling and does not result in a net increase in dwellings on the site there is no requirement for mitigation. There have been a number of issues that have resulted in a delay to the decision however, the application is under consideration due to the deviation of the built development from the previously approved plans which have resulted in the need for this current application. The previous reason for refusal on the impact on the SAC is therefore not included in this instance. as there is no net increase in dwellings despite the proposal being within the SAC zone of influence.

The agent advises that they consider the report focus on amenities of adjoining properties advising that the current proposal demonstrates very little change from the previous approval under 20/0453. The proposed retrospective dwelling to be retained does differ from the original approval in relation to the size and siting of the single storey rear extension and rear dormer which increases the level of impact on the amenities of adjoining occupiers and does raise policy concerns in relation to the impact of the development as it goes against the criteria in the Council's own adopted Designing Walsall SPD.

Local Finance Considerations

Section 143 of the Localism Act requires the local planning authority to have regard to 'local finance considerations' when determining planning applications. In Walsall at the present time this means there is need to take account of New Homes Bonus monies that might be received as a result of the construction of new housing.

This application proposes 1 new home but is a replacement dwelling so there is no net increase in the number of dwellings.

The Government has indicated that, for 2020-21, it will award approximately £1,000 per dwelling per year, plus a further £350 for each affordable dwelling, for each net additional dwelling provided. The payment is made each year for a period of 4 years from completion of the dwelling.

The weight that should be given to this, including in relation to other issues, is a matter for the decision-maker.

Conclusions and Reasons for Decision

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

Negotiations have taken place, but the scheme is not acceptable. Officers have spoken with the applicant's agent and in this instance are unable to support the proposal.

Decision Recommendation

Refuse Permission

Reasons for Refusal

1. The proposed development is considered to adversely impact on the amenities of adjoining properties, by reasons of its cumulative bulk size and siting in proximity to the boundaries with 72 and 76 Mellish Road, and is detrimental to the existing amenities by reason of an overbearing impact and undue sense of dominance and enclosure. The proposed rear extension runs along the boundary with number 76 Mellish Road whilst single storey, the rearward projection of the development infringes the 45-degree rule by approximately 3.2 metres to the rear ground floor window of 72 Mellish Road. The dwelling to be retained is less than 0.9 metres from the boundary with adjoining properties. Contrary to the Saved Unitary Development Plan Policy GP2 (Environmental

Protection), and Policies DW1 (Sustainability), DW2 (Safe and Welcoming places) and DW6 (Legibility). Of the Designing Walsall SPD.

END OF OFFICERS REPORT