



Planning Committee

Report of Head of Planning and Building Control on 01 December 2022

Plans List Item Number: 5

Reason for bringing to committee

Major Application

Application Details

Location: MALI JENKINS HOUSE, THE CRESCENT, WALSALL, WS1 2DE
Proposal: ERECTION OF 18 NO. AFFORDABLE ONE AND TWO BEDROOM APARTMENTS OVER THREE FLOORS WITH ASSOCIATED PARKING AND LANDSCAPING.

Application Number: 22/0925

Case Officer: Helen Smith

Applicant: Habinteg Housing Association

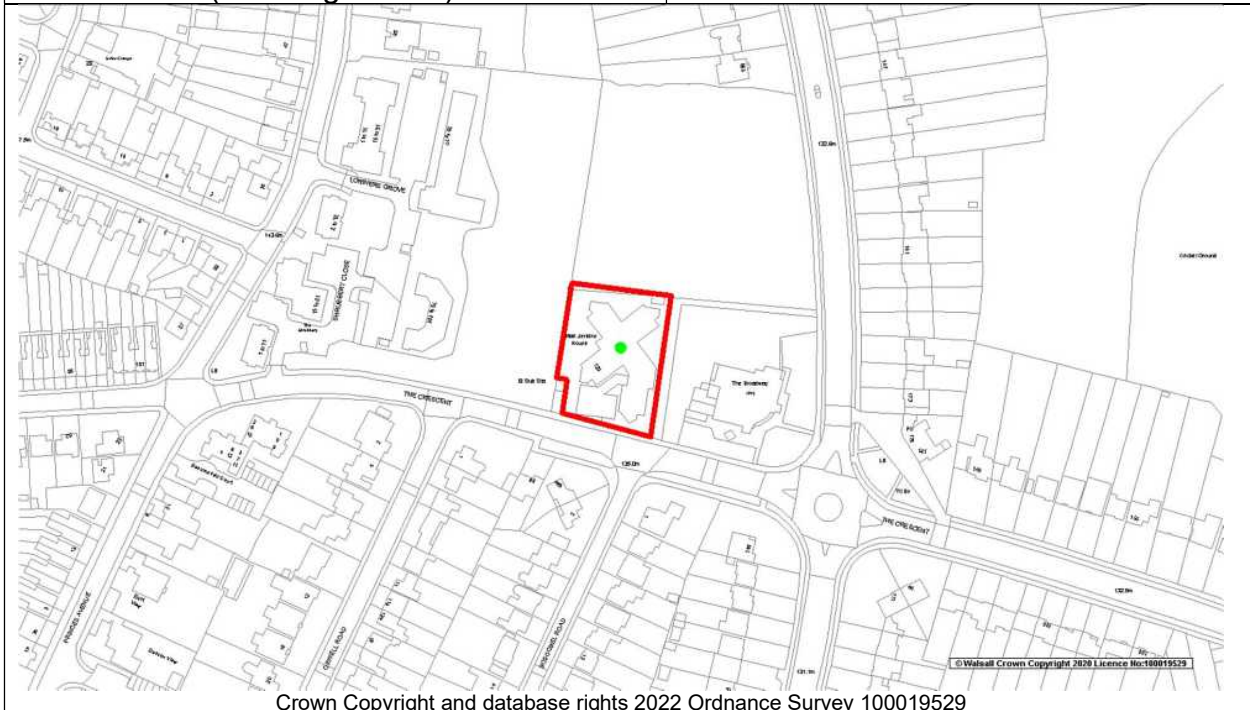
Ward: Paddock

Agent: WSM Architects

Expired Date: 04-Oct-2022

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

Time Extension Expiry:



Recommendation

Refuse

Proposal

The previous proposal reference no. 21/1240 for a similar proposal was refused planning permission on 10 March 2022 by Planning Committee contrary to officer recommendation. The previous application is currently subject to a planning appeal and a decision is awaited. Any new application is required to address the previous reasons for refusals nor create any new issues. The planning agent has advised that the proposed scheme has a large allocation of grant funding from Homes England and the re-submission is in an effort to gain planning permission and secure funding.

This proposal is a revised resubmission for the erection of 18 no. affordable one and two bedroom apartments over three floors with associated parking and landscaping. The design of the proposal has been revised to incorporate amended front and rear elevations.

The Planning Agent has advised that the proposed design of the building has been changed to a more traditional aesthetic and a boundary wall has also been introduced along The Crescent to maintain the existing street scene and help screen the car park.

The Design and Access Statement states that the ground floor apartments would be wheelchair accessible and the upper floor apartments accessible aimed at persons with less mobility. The proposal includes a communal garden and off street parking. The submission states that the proposed development is intended to be for older people and physically less able residents and would comprise 100% affordable housing.

The existing site access and dropped kerb would be utilised for the proposed new development.

The proposed apartment development would measure 10.6 metres high (0.6 metres lower than the previous refused proposal).

The footprint of the proposal would measure 32.9 metres wide and 18.5 metres deep. The development would be built in a mixture of red and buff colour facing brickwork with a dual pitched concrete tiled roof, coloured dark grey, with three gabled bay extensions to the front and rear elevations.

Doors would be a powder coated aluminium, coloured anthracite RAL 7016 (grey) with UPVC windows and glazed floor system all coloured anthracite RAL 7016. The proposed balconies would have a stainless steel baluster and handrail with a toughened glass panel infill.

The front and rear elevations are characterised by doors at ground floor, windows at ground, first and second floor of a similar style and balconies at first and second floor. Larger windows are proposed for the six three storey gable features. To the west and east elevation there are 2 no side facing windows serving the internal hallways on the upper two floors.

There would be a glazed main entrance and lobby area with a lift from the front elevation and a second rear access to an internal staircase.

The apartment block is set back from the highway by approximately 26 metres and there are 27 no. unallocated parking spaces (equivalent to 1.5 spaces per dwelling) to the front of the building which includes 6 designated disabled parking spaces.

There is a general and recyclable refuse store sited adjacent to the parking area to and a metal resident and visitor cycle illuminated enclosure to the front of the building (6 no. cycles).

The proposed site plan shows an area for maintenance access surrounding the site and defensive planting within the building recesses to the eastern and western elevations. To the rear of the site there is an area of shared and enclosed amenity space with an area of approximately 615 sq. metres which equates to 34 sq. metres per apartment.

The site is surrounded by paving which will be concrete flags and paths which will be gravel with weed suppressant membrane.

The site will be enclosed by a 2 metres high close boarded timber fencing with lockable timber gates to the side and rear and 1 metre high close boarded timber fencing towards the front of the site along the east and west boundaries. There would be 1.1m high galvanised mild steel railings with powder coated finish (colour black) to the front elevation of the building.

The front boundary of the site adjacent to the footpath would include 1.8 metres high brick piers with 1.2 metres high dwarf brick wall and topped with 0.6 metres high railings with a black colour powder coated finish.

Internally the schedule of accommodation includes

Ground Floor

2 no. 1 bedroom, 2 person, 52 square metres floor area apartments

4 no. 2 bedroom, 3 person, 70.5 sq. metres floor area apartments

1st and 2nd Floors

4 no. 1 bedroom, 2 person, 51 square metres floor area apartments

8 no. 2 bedroom, 3 person, 63 sq. metres floor area apartments

Total = 18 apartments

The approximate density of the site is 78.2 units per hectare.

A sustainable energy strategy is proposed to include heat pumps, PV panels on south facing roof slopes and the incorporation of thermal insulation.

The following documents and information have been submitted in support of the proposal;

- Geoenvironmental appraisal
- Noise Impact Assessment
- Addendum Note to Financial Viability Assessment

- Arboricultural Report
- Topographical Survey
- Preliminary Ecological Appraisal
- Design and Access Statement
- Bat Emergence Survey
- Drainage Strategy Report with drainage layout plan
- Flood Exceedance routing plan
- Impermeable area plan
- Proposed Accommodation Light Assessment
- Gas membrane Data Sheet
- Surface Water Management Plan

Site and Surroundings

The existing site was formerly occupied by the Mali Jenkins residential care home (C2 use) which has been demolished under prior approval application no. 21/0917.

The site is relatively level with the western and northern boundaries the ground rising between 0.5-1.5m up to the boundary.

The surrounding area is characterised by predominately two and three storey brick/render houses and apartments.

To the east of the site is a Toby Carvery restaurant which comprises two storey buildings of painted brick and a large steep roof.

Beyond Broadway North there is a small convenience store and post office.

To the north of the site a residential development has been approved for 14 dwellings and is currently nearing completion (application 21/0006).

The Crescent lies to the south and residential properties opposite, and to the west is a small woodland area containing mature trees with a three storey apartment development beyond.

The site is not within a Conservation Area, nor does it comprise a listed building. There is a belt of trees to the west of the application site which are subject to a group Tree Preservation Order (TPO reference no. 3/2002).

The application site sits outside the Cannock Chase Special Area of Conservation 15km Zone of Influence. The site falls within a Coal Development Low Risk Area.

Relevant Planning History

BC54803P- Extension to provide new entrance to Mental Health Wing- GSC- 22/06/1998

19/1340- Prior Notification for demolition of Broadway North Resource Centre- prior approval not required- 19/11/2019

21/0006- Erection of 14 no. dwellings, alterations to existing access and associated works- GSC 21.07.2021

21/0917- Prior Approval: Demolition of Mali Jenkins building(s) and site to be cleared and left with a secure fence and bund- Prior approval granted- 04/08/2021

21/1240 – Erection of 3 storey 18 no. affordable one and two bedroom apartments with associated parking and landscaping refused permission on 14/4/22 by Planning Committee on the following grounds;

1. The proposed mass, bulk and scale of the building in addition to the large amount of hardstanding to the front of the site introduces an incongruous form of development which is out of character to the properties in the surrounding area and street scene and is considered to be an overdevelopment of the site. The proposal would therefore result in significant detrimental harm to the character of the area and to visual amenity and would be poorly related to its surroundings

2. A lack of windows serving habitable kitchen areas within the development is considered would result in an unacceptable level of amenity to intended future occupiers

Relevant Policies

National Planning Policy Framework (NPPF)

www.gov.uk/guidance/national-planning-policy-framework

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

Key provisions of the NPPF relevant in this case:

- **NPPF 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 5 – Delivering a sufficient supply of homes**
- **NPPF 9 – Promoting sustainable transport**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**
- **NPPF 14 – Meeting the challenge of climate change, flooding and coastal change**
- **NPPF 15 – Conserving and enhancing the natural environment**
- **NPPF 16 – Conserving and enhancing the historic environment**

On **planning conditions** the NPPF (para 56) says:

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

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

National Planning Policy Guidance

On **material planning consideration** the NPPG confirms- planning is concerned with land use in the public interest, so that the protection of purely private interests... could not be material considerations

Reducing Inequalities

The Equality Act 2010 (the '2010 Act') sets out 9 protected characteristics which should be taken into account in all decision making.

In addition, the 2010 Act imposes a Public Sector Equality Duty "PSED" on public bodies to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality and to foster good relations. This includes removing or minimising disadvantages, taking steps to meet needs and encouraging participation in public life.

Section 149(6) of the 2010 Act confirms that compliance with the duties may involve treating some people more favourably than others. The word favourably does not mean 'preferentially'. For example, where a difference in ground levels exists, it may be perfectly sensible to install some steps. However, this would discriminate against those unable to climb steps due to a protected characteristic. We therefore look upon those with a disability more favourably, in that we take into account their circumstances more than those of a person without such a protected characteristic and we think about a ramp instead. They are not treated preferentially, because the ramp does not give them an advantage; it merely puts them on a level playing field with someone without the protected characteristic. As such the decision makers should consider the needs of those with protected characteristics in each circumstance in order to ensure they are not disadvantaged by a scheme or proposal.

Development Plan

www.go.walsall.gov.uk/planning_policy

Saved Policies of Walsall Unitary Development Plan

- GP2: Environmental Protection
- GP3: Planning Obligations
- GP5: Equal Opportunities
- GP6: Disabled People
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV17: New Planting
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV32: Design and Development Proposals
- ENV40: Conservation, Protection and Use of Water Resources
- H1: Renewal of Existing Residential Areas
- T7: Car Parking

- T8: Walking
- T9: Cycling
- T10: Accessibility Standards – General
- T13: Parking Provision for Cars, Cycles and Taxis

Black Country Core Strategy

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

Walsall Site Allocation Document 2019

HC3: Affordable Housing and Housing for People with Special Needs
 OS1: Open Space, Sport and Recreation
 EN1: Natural Environment Protection, Management and Enhancement
 EN3: Flood Risk
 T4: The Highway Network

Supplementary Planning Document

Conserving Walsall's Natural Environment

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

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

Survey standards

- NE4 – Survey Standards

The natural environment and new development

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

Development with the potential to affect trees, woodlands and hedgerows

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

Designing Walsall

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character

- DW4 Continuity
- DW5 Ease of Movement
- DW6 Legibility
- DW7 Diversity
- DW8 Adaptability
- DW9 High Quality Public Realm
- DW9(a) Planning Obligations and Qualifying development
- DW10 Well Designed Sustainable Buildings

Open space, sport and recreation

- OS1: Qualifying Development
- OS2: Planning Obligations
- OS3: Scale of Contribution
- OS4: Local Standards for New Homes
- OS5: Use of Contributions
- OS6: Quality and Value
- OS7: Minimum Specifications
- OS8: Phasing of On-site Provision for Children and Young People

Affordable Housing

- AH1: Quality of Affordable Housing
- AH2: Tenure Type and Size
- AH3: Abnormal Development Costs
- AH4: Provision Location
- AH5: Off Site Provision

Air Quality SPD

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

Consultation Replies

Coal Authority – No objections subject to the inclusion of their standing advice if approved.

Conservation Officer – No objections on built conservation grounds

Ecology – No objections

Environment Agency – No comments

Environmental Protection – No objections subject to the inclusion of planning conditions in respect of ground gas testing, remediation and validation, acoustic glazing and ventilation, the submission of a Construction Environmental Management Plan and the provision of an Air Quality Low Emission Scheme.

Fire Officer – No objections subject to compliance with Approved Document B, Volume 1, Dwellings, 2019 edition incorporating 2020 amendments – for use in England. This requirement can be included as an informative note if approved.

Lead Local Flood Authority - objects and consider that insufficient information has been provided on the drainage method, hydraulic calculations, water quality, management and maintenance and exceedance. A surface water management plan has been provided and further comments from the LLFA are awaited and this will be updated at planning committee.

Housing Strategy - need to seek 25% affordable on site in accordance with BCCS Policy HOU3, equating to 4 units. This would be 3 social rent and 1 shared ownership, however all 4 units as social rent would be acceptable (as 1 shared ownership unit on a scheme is not likely to be practical).

Local Highway Authority – No objections subject to the inclusion of planning conditions in respect of hard-surfacing and drainage for the proposed parking area, details of the cycle shelter and the submission of a Construction Environmental Management Plan. A note for the applicant to ensure the highway is free of mud and debris if approved would also be required.

Police – No objections and recommend the principles of Secured by Design

Public Health – No comments

Severn Trent Water – No objections subject to the inclusion of a drainage plans condition in respect of the disposal of foul water and surface water flows if approved.

Strategic Planning Policy – No objections and a contribution to off-site open space will be required.

Tree Officer - No comments received however the previous requirements that the recommendations and guidelines detailed in the Arboricultural Impact Report should be implemented and adhered to along with the submission of tree protection fencing details and a landscaping scheme.

Representations

(Local Planning Authority comments in italics)

Councillor Sohal has objected to the proposal on the grounds that he considers that the current proposal offers minimal changes to the previously refused proposal.

Objections from 23 households have been received on the following grounds;

- Noise (*A construction management plan will be a condition of any approval to mitigate against noise and disturbance during construction*)

- Traffic, congestion and parking (*no objections from the Local Highway Authority*)
- Access for emergency services (*no objections from WMFS or highway authority*)
- Out of character with the area, overdevelopment, too high and with an ultra-modern look
- Same as the previous refused proposal
- Concerns about the type of residents to be housed (*not a material planning consideration in this instance. The Local Planning Authority is required to assess the proposed Planning Use Class C3 – dwellinghouses, rather than the individuals that will occupy apartments*)
- Increased crime and anti-social behaviour, clientele of the pub will change
- Residents may be a risk to children and vulnerable residents in the area (*no evidence has been provided to support this statement*)
- Impact on property values (*not a material planning consideration*)
- Management of tenants and the buildings (*not a material planning consideration in this instance*)
- Drainage impacts (*the provision of a drainage plan would be required by planning condition*)
- Loss of privacy in respect of residents on Boscobel Road
- Lack of amenities for potential residents in this location and difficulties of vulnerable residents crossing busy roads
- Ecological impacts
- Why is information not readily available to the public? (*the full submission is published on the Council's website for residents to view*)
- Concerns about social housing in this affluent and desirable area which will not raise standards of living *not a material planning consideration*)
- Disappointed a second application has been made and accepted (*the Local Planning Authority is required to determine planning applications put before them*)
- No need for more flats in Walsall
- Insufficient new planting space
- Local aspirations appear irrelevant (*the Local Planning Authority must determine the planning application before them*)
- Few local shops and schools available
- Worsen air quality with increase traffic
- Council is deluded and has sneaked this planning application in under the radar (*this proposal has not been made by the Council and the Local Planning Authority is required to determine submitted planning applications. The requisite publicity has been made and the application documents are available to view on the Council's website*).

Determining Issues

Whether the application has addressed the reasons for refusal of the previous application or raises any new issues in respect of the following:

- Whether the previous refusal reasons have been overcome
- Principle of Development
- Design, Layout and Character
- Amenity of Neighbours and Amenity of Future Occupiers

- Highways
- Protected Species
- Flood Risk / Drainage
- Protected Trees
- Ground Conditions
- Air Quality
- Planning Obligations
- Local Finance Considerations
- Any Other Matters

Assessment of the Proposal

Whether the previous refusal reasons been overcome

Refusal Reason no. 1.

1. The proposed mass, bulk and scale of the building in addition to the large amount of hardstanding to the front of the site introduces an incongruous form of development which is out of character to the properties in the surrounding area and street scene and is considered to be an overdevelopment of the site. The proposal would therefore result in significant detrimental harm to the character of the area and to visual amenity and would be poorly related to its surroundings

Members of the Planning Committee considered the proposal to be inappropriate based on the proposed mass bulk and scale of the building and the proposed extent of hardstanding introducing an incongruous form of development to the surrounding area and street scene.

Consequently, minor changes have been made to the design of the proposed development by introducing 3 no. three storey gable features to both the front and rear elevations to break up the mass of the proposal and the height of the proposed apartment building reduced by 0.6 metres. The minimal reduction in height of the proposal is considered fails to satisfactorily overcome the concerns of planning committee as the overall bulk of the proposal is considered to offer an insufficient improvement and would continue to have a significant detrimental harm on the character of the area and to visual amenity and would continue to be poorly related to its surroundings.

The proposed layout of the development is unchanged from the first planning application and Planning Committee considered that this layout represented overdevelopment of the site. This aspect of the amended proposal is considered fails to address the concerns of Planning Committee.

The proposed area of hardstanding to the front of the development is unchanged from the previous proposal and is proposed to be utilised for off street parking to serve this development. The Site Layout plan indicates that this area would be of tarmac with concrete kerbs. The proposed addition of a new front boundary wall fronting The Crescent and adjacent to the footpath with 1.8 metres high brick piers and a 1.2 metres high dwarf brick wall topped with 0.6 metres high railings is considered would provide a degree of screening of the hardstanding.

The planning agents advised that the submitted site layout could be amended to reduce parking levels from 1.5 parking spaces per dwelling (27 no. overall), given the location of the development and links to public transport, to 1 per dwelling (18No. overall) with the aim to reduce the level of hard standing and increasing the proposed landscaped area. This has been discussed with the Local Highway Authority who have advised that if there is no scope to reduce the number of apartments then the initial parking ratio of 1.5 parking spaces per dwelling should remain. The Local Highway Authority have advised that car ownership levels are likely to be higher in this area and the present scheme meets the full T13 parking policy requirement which is what they are looking for the development to deliver.

Consequently, on balance, it is considered that concerns of planning committee and refusal reason no. 1 has not been satisfactorily overcome.

Refusal Reason no. 2.

2. A lack of windows serving habitable kitchen areas within the development is considered would result in an unacceptable level of amenity to intended future occupiers.

The amended proposal has made minor changes to the style of windows to those proposed by the original planning application however habitable kitchen areas have retained the same size and number of openings as previously proposed for these open plan areas. The proposed layout is unchanged and kitchen areas are not provided with any additional windows as the proposal has a single aspect design.

The amended application is supported with a proposed accommodation light assessment prepared by CPMC Chartered Surveying (RICS) which aims to address concerns related to the potential lack of natural light within the open plan kitchen / living areas raised by Planning Committee.

This report advises that all rooms within the proposed development achieve Average Daylight Factor values above the BRE Guidelines and all rooms exceed the 2% target, and there is no need to consider the lower 1.5% (living/dining room) target. Furthermore, the report advises that in accordance with procedures in the BRE Guide where rooms are c. 3.3 metres wide, they are unlikely to pass at a full test depth of c7.6 metres. However, the report states that all rooms pass at a test depth of 7.3 metres, which is considered to be a relatively small reduction in the test depth and is considered to be acceptable for a project of this nature.

The applicants' have demonstrated that the proposal would not result in an unacceptable level of amenity to intended future occupiers in response to light available from the proposed windows despite there being no additional windows being installed on the amended proposal.

Based on the aforementioned it is considered that Planning Committee's previous concerns are likely to have been satisfactorily addressed in respect of refusal reason no. 2.

Principle of Development

The principle of development was considered acceptable and appropriate when previously assessed as follows;

The National Planning Policy Framework sets out a clear presumption in favour of sustainable development. It notes that, for decision takers, this means approving development proposals that accord with the development plan. Walsall's Unitary Development Plan reconfirms the guidance as contained in the National Planning Policy Framework on sustainable development.

The site has no allocation in the development plan; however the site was formerly in residential use (albeit as a C2 use rather than C3) so redevelopment for this use is strongly supported on planning policy grounds. Further, it is located in a predominantly residential location and in a sustainable location with good links to public transport and access to services and facilities.

BCCS Policy HOU2 states that all developments will aim to achieve a minimum net density of 35 dwellings per hectare, except where higher densities would prejudice historic character and local distinctiveness as defined in Policy ENV2. The approximate density of the site is 78.2 units per hectare and is considered to be very high. The BCCS states that this is only appropriate within a strategic centre or town centre. The site is located approximately 1 mile from Walsall Town Centre and is in a sustainable location with links to public transport and is accessible to employment areas, health, fresh food and education. It's noted that the housing is not for a family and the indicative proportion of flats is 50% plus in accordance with Table 8 of policy HOU2. As such the density is considered to be acceptable.

The latest available figures show that the Council does not currently have a 5 year housing land supply, and, in addition, the Council failed the Housing Delivery Test published in January 2022 based on low levels of delivery over the last 3 years. This means that the presumption in favour of sustainable development as described in the NPPF paragraph 11d) is in effect.

The proposal would also bring previously developed land back into a positive use which is encouraged by local and national planning policies and guidance.

Design, Layout and Character

Walsall's Unitary Development Plan states that development should be of a high quality design that respects local distinctiveness, enhancing the character and appearance of the area. It states that within settlement limits proposals will be supported where they do not have a negative impact on the character and appearance of the surrounding locality. Walsall's Unitary Development Plan states all proposals should maintain or enhance the character of the surrounding area and should respect the scale and density of surrounding development.

Planning Committee were of the opinion that the proposed mass, bulk and scale of the building in addition to the large amount of hardstanding to the front of the site would introduce an incongruous form of development which would be out of character with the properties in the surrounding area and street scene. Planning Committee also considered that the proposal was an overdevelopment of the application site.

Consequently, the previous proposal was considered would result in significant detrimental harm to the character of the area and to visual amenity and would be poorly related to its surroundings.

The current proposal is considered to have made only minor changes to the design and the proposed mass, bulk and scale with a minimal reduction in height of 0.6 metres.

The minimal reduction in height of the proposal is considered fails to satisfactorily overcome the concerns of planning committee as the overall bulk of the proposal is considered to offer an insufficient improvement and would continue to have a significant detrimental harm on the character of the area and to visual amenity and would continue to be poorly related to its surroundings.

The proposed layout of the development is unchanged from the first planning application and Planning Committee considered that this layout represented overdevelopment of the site. This aspect of the amended proposal is considered fails to address the concerns of Planning Committee.

The proposed large area of hardstanding to the front of the development remains as previously proposed and was considered to be unacceptable by Planning Committee as this would introduce an incongruous form of development out of character to the properties in the surrounding area.

Amenity of Neighbours and Amenity of Future Occupiers

The proposed impact on existing neighbours was assessed by the previous officer's report to planning committee and the impacts on neighbours' amenity were considered to be acceptable as detailed below.

To the rear of the building is the newly approved housing development by Cameron Homes (application 21/0006). There are balconies and rear habitable windows proposed to the rear of this proposal which would face onto this development at a distance of 13.06 metres.

Although the proposal would look onto this development, it should be noted that it would be looking onto the side elevation of one of the approved dwellings where there is only a small window opening at first floor serving a bathroom (a non-habitable room) and two openings at ground floor serving a dining room (habitable room) and a door to access the utility (non-habitable room). The minimum recommended separation distances referred to in Appendix D of Designing Walsall SPD state that there should be 24 metres between facing habitable room windows in two storeys and above and 13 metres separation distance between facing habitable room windows and blank walls exceeding 3 metres in height.

In this instance it was considered that the development would be acceptable in terms of amenity impacts on neighbours in the new development given that the proposed development would face onto a first floor bathroom window which is not habitable and the only habitable room is at ground floor and as such the distances would not apply. Where the development would face onto a blank wall there would be a sufficient distance of 13 metres to also meet this standard. As such it is considered that there

would be a limited impact on privacy in respect of the new housing development to the north.

The nearest residential property to the south of the site is 88a The Crescent which is sited at a distance of 53.8 metres, to the west is the apartment block at a distance of 55 metres and to the east are properties sited along Broadway North at a distance of 105 metres. As such it is considered that the proposal would not be a detriment in terms of overlooking to nearby neighbours.

The building is situated in a large plot and well contained within the site. There are no residential properties immediately adjacent to the site and as above the proposal meets the separation distances. As such it is considered the building would not be overbearing nor would it lead to a loss of light.

With regards to future occupiers of the development Planning Committee was concerned that a lack of windows serving habitable kitchen areas within the development would result in an unacceptable level of amenity for intended future occupiers. Whilst no additional window provision has been included on the amended plans the application is supported with a proposed accommodation light assessment prepared by CPMC Chartered Surveying (RICS) as outlined above.

It is considered that the applicants' have demonstrated that the proposal would not result in an unacceptable level of amenity to intended future occupiers in response to light available from the proposed windows despite no additional windows being installed on the amended proposal. Based on the aforementioned it is considered that Planning Committee's previous concerns are likely to have been satisfactorily addressed.

Highways

The Local Highway Authority considers the development will not have an unacceptable impact on road safety or have severe cumulative impacts on the operation of the road network and is acceptable in accordance with the NPPF 2021 paragraph 111.

The Highway Authority therefore support the application subject to conditions related to the implementation of the car park hard-standing with sustainable drainage, details of the proposed cycle shelter and the submission of a construction environmental methodology statement.

Protected Species

The Council's Ecologist has no objections to the proposal.

Flood Risk / Drainage

As shown on the Environment Agency's published flood risk map, the application site is located within Flood Zone 1, the lowest area of potential flooding from sea and rivers.

Severn Trent Water have expressed their support for the scheme subject to a condition regarding the submission of drainage plans for the disposal of foul and surface water flows.

The Lead Local Flood Authority have objected to the current proposal and have requested the provision of additional information in respect of drainage methods, hydraulic calculations, water quality, management and maintenance and exceedance. The planning agent has provided a Surface Water Management Plan which has been forwarded to the Lead Local Flood Authority for their comments and this will be updated at planning committee.

Protected Trees

The same Arboricultural Report prepared by AWA Tree Consultants dated July 2021 has been submitted for the current proposal and the Officer comments remain unchanged as detailed below.

12 trees would need to be removed to facilitate the proposed development of the site. However, they are category 'C' trees (using BS 5837 categorisation) which are trees of low arboricultural quality. Category 'C' trees would not normally be a constraint to development and their removal could be mitigated for with a landscape scheme for the site which includes replacement tree planting for which there appears to be adequate space.

In addition, the proposal would necessitate the pruning of 2 trees on the east boundary. The pruning works are minor and if done in accordance with best practice as detailed in BS 3998: 2010 should have little or no long term detrimental effect on the 2 trees. There is a woodland outside of and adjacent the west boundary (within Shrubbery Close and Loriners Grove). This woodland is protected by a woodland classification TPO title no. 3/2002. The proposal is likely to encroach into the root protection area (RPA) of 4 of these TPO trees labelled T24 to T28 on the tree survey. However, the incursion is relatively minor and provided care is undertaken then little or no lasting detrimental impact should occur to these trees. In addition, the proposal extends into the RPA of trees on the east boundary, however, the area is already existing hard standing and there is unlikely to be any significant root development in this area.

If consent is given to the application and in order to ensure the protection of the retained trees, a condition is recommended requiring an 'Arboricultural Method Statement' be submitted prior to the commencement of development on site detailing location and specification of tree protective fencing and any construction methodology to be implemented within the RPAs of the retained trees. It would also be desirable to condition a Landscape Plan including details of replacement tree planting in mitigation for the ones lost to accommodate the development.

Ground Conditions

The applicant has submitted the same technical reports that were submitted for planning application 21/1240, therefore the previous comments received from the Council's Environmental Protection Team submitted for planning application reference 21/1240 remain relevant. These are included below.

The Applicant has undertaken a noise survey, which has identified that acoustic glazing and ventilation is required for habitable rooms with facades towards The Crescent and the Public House, with glazing that has a reduced acoustic specification on other facades. This requirement can be addressed via planning conditions, requiring the Applicant to firstly confirm the specification of glazing and ventilation before installation with the Local Planning Authority and then installing the agreed glazing/ventilation and subsequently demonstrating that the agreed glazing/ventilation has been installed.

The contaminated land investigation has not identified any significant contamination within sample boreholes that were within accessible areas and the consultant has risked the potential for ground gas concerns away. The consultant is recommending that further testing of inaccessible areas e.g. underneath the building is undertaken following demolition and stockpiling. Pollution Control agree that the additional testing will confirm whether the inaccessible areas have a similar ground chemistry to the other parts of the site i.e., of no significant concern.

Although, Pollution Control accept the reported chemical testing findings and have no significant concerns, the neighbouring site, which is also in the process of being re-developed, have encountered ground gas that has resulted in the site being upgraded to CS2. Therefore, during the additional testing regime, Pollution Control require that the Applicant/Consultant to undertake ground gas testing. Planning conditions for the additional testing have been provided.

Given the size of the proposed development, the Applicant needs to control local environmental impacts (noise, dust, debris, site drag-out) during the construction phase.

Air Quality

The Applicant has indicated that there will be 27 unallocated car parking spaces. Section 5.6 of the Black Country Air Quality SPD requires for at least 1 electric vehicle charging point per 10 spaces. Therefore, the applicant will need to provide an Air Quality Low Emission Scheme in writing for agreement to include the installation of at least 3 charging points, in accordance with the Air Quality SPD and this requirement would be conditioned, if approved.

Planning Obligations

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the 3 following statutory tests to make the development acceptable in planning terms:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

These tests are set out in The Community Infrastructure Levy Regulations 2010 (as amended) Regulation 122 and National Planning Policy Framework paragraph 56.

Black Country Core Strategy policy HOU3 states that 25% of the units should be affordable, although this requirement would be offset by vacant building credit through deducting the floor space of the existing building from that of the proposal. In addition, based on the proposed development and the Council's ready reckoner, the urban open space contribution required is £29,010.00. The nearest Urban Open Space is Walsall Arboretum Park.

A full financial viability assessment was provided to support the application in respect of the first planning application and was independently assessed by Lambert Smith Hampton. Whilst viability stated that contributions for affordable housing and public open space cannot be provided it was considered that there was nothing preventing the applicant entering into a S106 to secure 25% policy compliant affordable homes with affordable rent tenure.

The current application included an addendum note dated August 2022 in relation to the original Financial Viability Assessment dated December 2021 which again concluded that it was not financially viable to provide any S106 financial contributions. The planning agent advises that the assessment has been updated to reflect current market. The original assessment was independently reviewed by Lambert Smith Hampton back in February and it was agreed it was not financially viable to provide S106 contributions. The viability deficit was originally £396,217 and the planning agent confirms that this is now £675,517 with building cost inflation. Current market conditions are considered to have worsened since the initial review.

Notwithstanding the above, the Local Planning Authority considers that there remains nothing to prevent the applicant entering into a S106 to secure 25% policy compliant affordable homes with affordable rent tenure. Should the application be approved, Members are asked to delegate back to the Head of Planning and Building Control to negotiate a Section 106 Agreement to secure 25% affordable housing in the form of 1 x First Home, 1 x Shared Ownership dwelling and 2 x social rent dwellings OR a commuted sum of £175,219 (less any vacant building credit to be deducted).

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 18 new homes.

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

The money is worked out based on performance in previous years (18 months in arrears), so the payment in 2022-23 will be based on the number of homes completed between October 2020 and October 2021.

Any Other Matters

There have been a number of objections from neighbouring residents. Many of these objections are non-material or if they are material it has been discussed in the report why the proposal is acceptable otherwise.

The Lead Local Flood Agency have requested additional flood information to be provided and their response will be updated at planning committee.

Conclusions and Reasons for Decision

It is considered that the previous concerns raised by planning committee have not been satisfactorily addressed and it is concluded that this amended application should be recommended for refusal.

In addition to the above it should be noted that the latest available figures show that the Council does not currently have a 5 year housing land supply and, in addition, the Council failed the Housing Delivery Test published in January 2022 based on low levels of delivery over the last 3 years. This means that the presumption in favour of sustainable development as described in the NPPF paragraph 11d) is in effect which adds weight to the proposal when considering the planning balance.

Positive and Proactive Working with the Applicant

The proposal has failed to fully overcome the concerns of planning committee.

Recommendation

Refuse

Reasons

1. The proposed mass, bulk and scale of the building in addition to the large amount of hardstanding to the front of the site introduces an incongruous form of development which is out of character to the properties in the surrounding area and street scene and is considered to be an overdevelopment of the site. The proposal would therefore result in significant detrimental harm to the character of the area and to visual amenity and would be poorly related to its surroundings, thus being contrary to saved policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals) of the Walsall Unitary Development Plan, policies CSP4 (Place Making), ENV2 (Historic Character and Local Distinctiveness), ENV3 (Design Quality) and HOU2 (Housing Density, Type and Accessibility) of the Black Country Core Strategy, SAD Policy HC2 (Development of Other Land for Housing), DW3 (Character), DW4 (continuity) and DW6 (Legibility) of the Designing Walsall Supplementary Planning Document and section 12 of the National Planning Policy Framework (Achieving well-designed places).

2. The proposal fails to include sufficient information to demonstrate acceptable drainage methods, hydraulic calculations, water quality, management and maintenance and exceedance contrary to saved policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals) of the Walsall Unitary Development Plan, ENV40 (Conservation, Protection and Use of Water Resources), BCCS Policy ENV5 (Flood Risk, Sustainable Drainage Systems and Urban Heat Island) and Walsall SAD policy EN3 (Flood Risk).

END OF OFFICERS REPORT