



## Contents Sheet

Item No	Page No	App Number	Site Address	Proposal	Recommendation
1	1	19/1455	HILLS CONTRACTORS, WESTGATE, ALDRIDGE, WALSALL, WS9 8EX	CONCRETE BATCHING PLANT	Refuse
2	9	19/1608	LAND TO REAR OF 43 HIGH STREET AND 1-3 CHURCH ROAD, BROWNHILLS, WALSALL, WS8 6ED	ERECTION OF TWO-STOREY BUILDING TO ACCOMMODATE 8 X 1-BEDROOM FLATS	Delegate to the Interim Head of Planning & Building Control to Grant Planning Permission Subject to amendment and finalising of Conditions
3	25	19/1225	74, CANNOCK ROAD, WILLENHALL, WV12 5RZ	RETENTION OF CHANGE OF USE FROM CLASS B8 (STORAGE & DISTRIBUTION) TO EXTERNAL DISPLAY AND SALE OF MOTOR VEHICLES, INCLUDING PREPARATION (SUI GENERIS USE)	<p>Planning Committee resolve to Delegate to the Interim Head of Planning &amp; Building Control to Grant Planning Permission Subject to Conditions subject to</p> <ol style="list-style-type: none"><li>1. To secure the plans of the office and vehicle preparation area and to undertake a 14 day re-consultation</li><li>2. No new material considerations being received within the consultation period</li></ol>

					<p>3. The amendment and finalising of conditions;</p> <p>4. No further comments from a statutory consultee raising material planning considerations not previously addressed</p>
4	35	19/0566	14, NEWQUAY CLOSE, WALSALL, WS5 3EP	CHANGE OF USE FROM OPEN SPACE TO RESIDENTIAL GARDEN LAND AND THE ERECTION OF 2.1M HIGH BOUNDARY FENCE. (SITE AFFECTS THE SETTING OF THE PUBLIC RIGHTS OF WAY WAL105).	Refuse
5	49	19/1012	CHERRY ORCHARD, BOURNE VALE, ALDRIDGE, WALSALL, WS9 0SH	ERECTION OF SECURITY GATE WITH NUMBER PLATE RECOGNITION AND PEDESTRIAN GATE TO THE SIDE ACROSS BOURNE VALE AND REINSTATEMENT OF TIMBER 1.2M POST AND RAIL FENCE ALONG THE BOUNDARY OF CHERRY ORCHARDS.	Grant Planning Permission Subject to Conditions



# Walsall Council

Economy and Environment, Development Management

## Planning Committee

Report of Interim Head of Planning and Building Control on 05-Mar-2020

**Plans List Item Number: 1.**

**Reason for bringing to committee:** Called in by Cllr Wilson on the grounds that the application requires delicate judgement

**Location:** HILLS CONTRACTORS, WESTGATE, ALDRIDGE, WALSALL, WS9 8EX

**Proposal:** CONCRETE BATCHING PLANT

**Application Number:** 19/1455

**Applicant:** Mr P Hills

**Agent:** PAUL CLIFTON

**Application Type:** County Matters: Waste Application

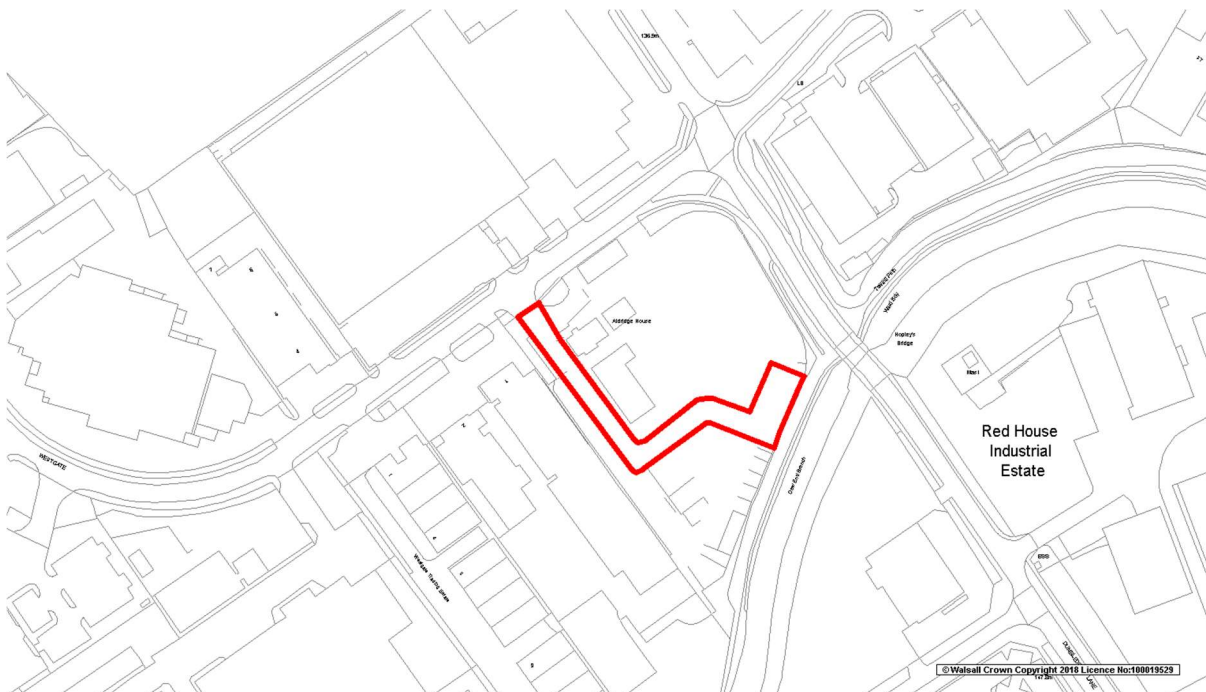
**Case Officer:** Devinder Matharu

**Ward:** Rushall-Shelfield

**Expired Date:** 09-Jan-2020

**Time Extension Expiry:** 28-Feb-2020

**Recommendation Summary:** Refuse



## Proposal

The installation of a concrete batching plant. The plant will be installed to the south eastern boundary of the site adjacent the boundary to the Daw End Branch canal.

The plant silos would be 10.9m high, the conveyor belt and mixing unit and plate platform 10.3m high and the aggregate hoppers 5.4m high.

A Design and Access Statement was submitted stating:

- Hills Contractors are a leading civil engineering contracting company operating nationwide from these head office.
- Hills specialise in utility civil engineering works and general ground works including sewerage, drainage, trenching, ducting, reinforced concrete, brickwork and canal improvements.
- The proposal seeks approval for the installation of plant to produce ready mix concrete for the construction industry.
- The installation of the plant would be in a part of the yard alongside the existing covered bunkers which contain aggregates
- The plant will comprise 3 cement silos, aggregate hoppers and a mixing unit
- The plant is computer assisted to produce a consistent product
- The batching plant produces concrete products with no waste and environmentally friendly with dust extracts units fitted
- The plant will be constructed out of galvanised material and finished in dark green

Details of the silo venting filters have been submitted.

A letter was sent to the planning agent on 31-12-19 advising:

- Concerns over the positioning of the proposed concrete batching plant up against the boundary of the site adjacent the canal.
- Objections from Inland Waterways and the Canal and River Trust regarding the visual impact of the proposed concrete batching plant.
- Recommend the proposed plant is relocated away from the boundary with some tree plant screening or elsewhere on the site.
- The red line needs to extend from the edge of the public highway to the application site.

In response, the following supporting information is provided:

- From an operational point of view the batching plant situated alongside the existing aggregate bunkers is the best possible location, the aggregate will be transported to the hoppers via tipper tractors, the shortest distance to reduce emissions and excess use of fuel
- The area is totally industrial
- The IWA and CRT fail to recognise the historic reasons for the canals, they were built for the industrial revolution
- The site was previously owned by Wernick's and the site was stacked with portable buildings 3 and 4 storeys high
- CRT cut back the hedgerow growing along the canal

- The cement silos are completely sealed and have a sophisticated dust filtration system.
- From its days as an oil refinery the site drainage is all taken to a settling tank and then through inceptors before going to the public sewers.
- The produce is likely to produce 15 to 20 jobs like management, plant operators and drivers.

## Site and Surroundings

The application site is located on the southern side of Westgate and the south western side of Dumblederry Lane.

To the south of the site is a 3m high wall with a further 2m high wire mesh fence and beyond this wall is the Daw End Branch canal. Beyond the canal is Red House Industrial Estate. To the west of the site is Westgate Trading Estate and on the opposite side of both Westgate and Dumblederry Lane are industrial units.

The site is within the Westgate core employment area.

## Relevant Planning History

None

## Relevant Policies

### National Planning Policy Framework (NPPF)

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

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

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

- **NPPF 2 – Achieving sustainable development**
- **NPPF 11 – Making effective use of land**
- **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

PAGE 3 OF 55

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.

### **Development Plan**

[www.go.walsall.gov.uk/planning\\_policy](http://www.go.walsall.gov.uk/planning_policy)

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

- 3.6 to 3.8 Environmental Improvement
- GP2: Environmental Protection
- ENV10: Pollution
- ENV11: Light Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV32: Design and Development Proposals
- ENV40: Conservation, Protection and use of water resources
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

### **Black Country Core Strategy**

- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV4: Canals
- ENV5: Flood risk, sustainable drainage systems and urban heat island
- ENV8 :Air Quality
- EMP2: Actual and Potential Strategic High Quality Employment Areas

### **Walsall Site Allocation Document 2019**

- IND2: Potential High Quality Industry
- EN4: Canals

### **Supplementary Planning Document Designing Walsall**

- DW3 Character

### **Air Quality SPD**

Outlines the objectives for measuring and reducing levels of pollutants that are linked to health impacts.

## **Consultation Replies**

Coal Authority – No objection

Inland Waterways – Objection on the grounds of visual intrusiveness upon the canal environment and detrimental to its current recreational and amenity usage.

Canal and River Trust- Objection on the grounds that the application does not address air quality, noise assessment, surface water drainage and protecting against pollution. The proposal would have a greater visual prominence from the canal.

Transportation – No objection subject to note for applicant regarding soil and debris on the highway.

Pollution Control – No objection subject to note for applicant regarding securing a variation to the Environmental Permit

## **Representations**

Called in by Cllr Wilson on the grounds that the application requires delicate judgement. No third party representations have been received.

## **Determining Issues**

- Principle of development
- Design and visual impact upon the canal
- Dust and Noise implications
- Access and parking

## **Assessment of the Proposal**

### **Principle of development**

The site is within the Westgate core employment area and defined as an actual and Potential Strategic High Quality Employment Areas under Policy EMP2 of the BCCS and a potential High Quality Industry under policy IN2 of the SAD. As such, the principle of industrial development on site is considered acceptable.

### **Design and visual impact upon the canal**

Policy ENV 4 of the BCCS and Policy EN4 of the SAD expect high quality design and enhancement of the visual amenity of the canal, as well as protection and enhancement of water quality.

Officers have sought amended plans to address the objections from both the Inland Waterways and Canal & River Trust. However, the position of the proposed concrete batching plant now extends for a greater length along the site boundary with the canal boundary.

The amended design of the proposed concrete batching plant is similar to a standard concrete style plant and as such, the design is considered acceptable for an industrial setting. However, the visual impact of the proposed location of the concrete batching plant adjacent the canal is considered below.

The application site is set at a lower level than the Daw End Branch canal and from Wetsgate views into the site are obtainable, as the road rises to the bridge over the canal. Whilst, there is a 3m high wall with a wire fence on top, the proposed structures located in close proximity to this boundary adjacent the canal will mean that the proposed concrete batching plant, where the silos would be 10.9m high, the mixing unit and plate form being 10.3m high and the aggregate hoppers being 5.4m high would be visually prominent when viewed from the Daw End Branch canal even above the existing boundary treatment considering the level difference between the site and the canal.

The Inland Waterways have maintained their objection to the amended plans on the grounds that the appearance of the three cement silos and the noise from the operation of the mixing machinery will be intrusive into the canal environment and detrimental to its current recreational and amenity usage.

The Canal and River Trust have maintained their objection on the grounds that the amended location of the proposed concrete batching plant along a greater length of the canal boundary will make the structure visually prominent from the canal. They also state the open nature of the boundary, meaning the existing wire mesh fence on top of the existing solid brick wall will enable the structure to be visible from the canal and as such making the site more visually sensitive and the proposed plant would be very imposing on the canal and its users.

The CRT also advise any surface water discharge to the waterway will require prior consent from the Canal & River Trust. The planning agent has advised the site drainage is all taken to a settling tank and then through inceptors before going to the public sewers. Should planning permission have been granted then a note for applicant can be attached regarding drainage.

### **Dust and Noise Implications**

Pollution Control have no objection to the proposal subject to a note for applicant advising then that they require an amendment to their Environmental Permit issued by the Environment Agency.

The CRT have objected to the proposal on the grounds that whilst the dust suppression information is welcomed and goes some way into addressing the CRT comments, the proposal does not provide sufficient details of dust suppression on the open conveyor belt and loading areas. Furthermore, they object to the proposal on the grounds of lack of air quality details, noise assessment details for the noise from the proposed concrete batching plant, surface water drainage and protection against water pollution remain outstanding.

### **Access and parking**

The Highway Officer has no objection to the proposal subject to a note for the applicant, should permission have been granted to prevent soil and debris on the highway.



## Conclusions and Reasons for Decision

The principle of development is considered acceptable.

The design of the concrete silos and position in close proximity to the canal will have a harmful overbearing impact on the canal environment due to its overbearing appearance to the detriment of the visual amenities of the area.

There are no highway issues with the proposal.

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

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

## Recommendation

Refuse

## Reasons for Refusal

1. The location of the proposed concrete batching plant, including the three silos, mixing unit and plate and aggregate hoppers located adjacent the site boundary together with the length of the proposed structure along the boundary would be visually prominent and visually intrusive when viewed from the adjacent Daw End Branch Canal and as such would impose on the canal environment and detrimental to the canals recreational and amenity usage. The proposal would be contrary to the NPPF, policies GP2 and ENV32 of the UDP, policies ENV2, ENV3 and ENV4 of the BCCS AND Policy EN4 of the SAD.
2. The proposal fails to provide details:
  - of dust suppression on the open conveyor belt and loading areas
  - air quality details
  - noise assessment details for the noise from the proposed concrete batching plant
  - surface water drainage and protection against water pollutionContrary to the NPPF, policies GP2, ENV32, ENV10 and ENV40 of the UDP, Policy ENV4 of the BCCS, Policy EN4 of the SAD and the AIR Quality SPD.





### Planning Committee

Report of Interim Head of Planning and Building Control on 05-Mar-2020

**Plans List Item Number: 2.**

**Reason for bringing to committee:** Significant Community Interest

**Location:** LAND TO REAR OF 43 HIGH STREET AND 1-3 CHURCH ROAD, BROWNHILLS, WALSALL, WS8 6ED

**Proposal:** ERECTION OF TWO-STOREY BUILDING TO ACCOMMODATE 8 X 1-BEDROOM FLATS

**Application Number:** 19/1608

**Applicant:** Leisure Automatics Properties

**Agent:** Robert Massey

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

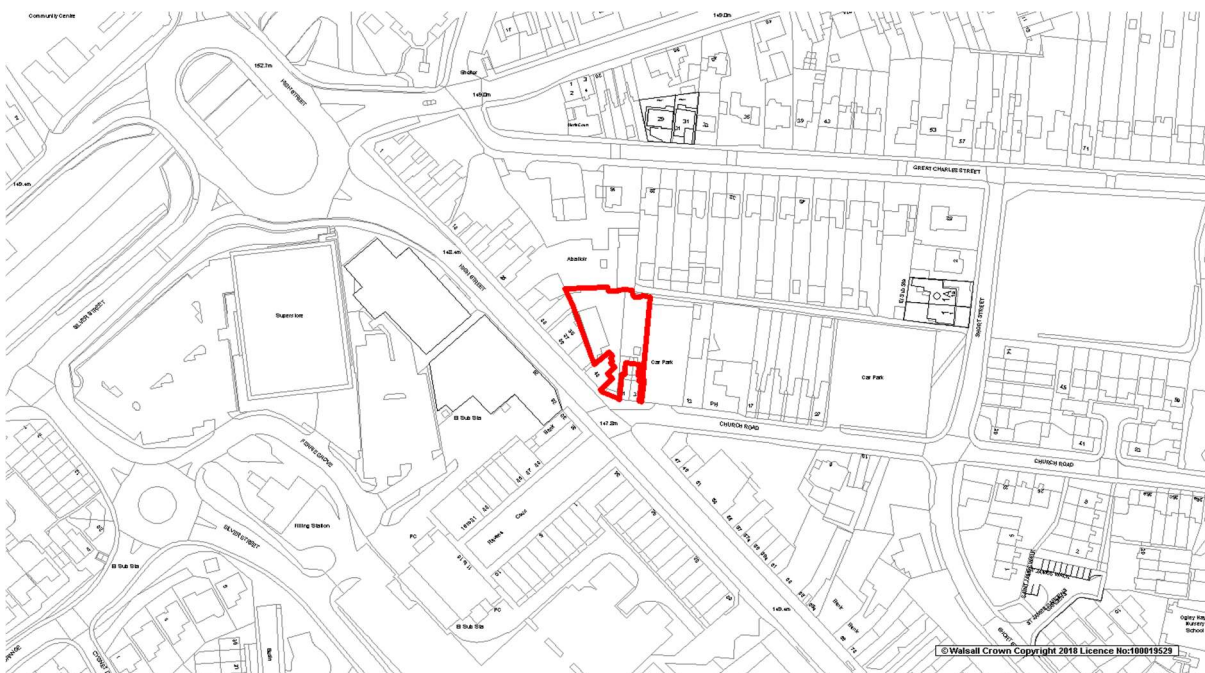
**Case Officer:** Gemma Meaton

**Ward:** Brownhills

**Expired Date:** 24-Feb-2020

**Time Extension Expiry:**

**Recommendation Summary:** Delegate to the Interim Head of Planning & Building Control to Grant Planning Permission Subject to amendment and finalising of Conditions



## Proposal

The application proposes a 2 storey building to provide 8 x 1 bedroom flats on a former Royal Mail sorting office and yard a use which has now ceased. The application follows a previous application for 8 units (16/0392) which became unviable for construction due to the proximity of the proposed building footprint to a public sewer.

The proposal entails the demolition of the existing building on site and the construction of a single structure along the length of the eastern boundary. The building would be a minimum of 2.7m and a maximum of 4m away from the eastern boundary of the property. The building would mimic the appearance of a short terrace of houses, with two storeys and a single dual-pitched gable ended roof. Two front projecting gables would break up the front elevation and provide for front porches to each of the flats.

Main windows to habitable rooms would be present on the front and rear elevations, and would be constructed using white framed uPVC frames. The building would be constructed in red/brown brick with dark blue/grey interlocking roof tiles. Doors would be black traditional style composite door sets with black gutters and downpipes. There would be black fascias to the main building and white fascias and barge boards to the entrance porches.

The building would be 25.08m long, a maximum of 8.88m deep and 7.7m high, with a total footprint of 202m<sup>2</sup>. Internally each of the flats would have a single bedroom and would have a total floor area of 33m<sup>2</sup>. Each flat would have a double bedroom to the rear, a bathroom with shower and a living/dining/kitchen space to the front of the building.

The west of the site would accommodate hard standing with parking available for 10 vehicles. This would provide parking for the proposed 8no flats as well as the existing 4no flats over 43 High Street and 1-3 Church Street. There would be a landscaped area in front of each access to provide a buffer between the parking area and the dwellings, and additional landscaping to the north of the site close to the north-western boundary. The main amenity space would be provided to the rear of the building and would total 120m<sup>2</sup>, including a drying area located in a small projection of property along the northern boundary of the site. It is proposed to fence the property on the eastern boundary and the dog-leg section to surrounding the drying area with close board fencing to 2.4m above floor level to provide improved privacy on this side. The remaining boundary treatment would not exceed 2.4 metres and would be a mix of chain link and fencing.

A turfed area to the rear of the building would be provided with a paved pathway adjacent to the property boundary. Cycle storage is provided within the layout to the north of the proposed dwellings in the form of 4no. 1.8m x 1.2m lockable sheds.

A storage area and rubbish store in the south western corner of the property is proposed behind a 1.8m fenced area, for use by the shop tenants at the front of the site.

The access to the development would be from High Street via the existing access gates. The access way would pass between the existing buildings at No. 43 High Street and No. 1 Church Street. The minimum width of the access way would be 3m. There is an existing access gate on the northern boundary that provides access to a separate access which

runs to the east and joins with Short Street, it is proposed that this be retained for pedestrian access only.

A Design and Access Statement has been provided which provides the following additional details of the scheme:

- Bins will be brought to the front of the site on bin collection day
- The gates to the front entrance will remain and be refurbished for access and security
- With the demolition of the former sorting office it is proposed to provide a storage/bin yard for use by shop tenants
- Positioning the building as shown will also mean that the gates giving access to the service road at the rear of Great Charles Street, can only be used by pedestrians, no vehicles can access the service road from the site.
- The properties are intended for low income single people.

## **Site and Surroundings**

The application site is located in the Brownhills District Centre. To the north west of the site there is an abattoir which is not currently being used as such. To the north and east are the rear gardens of the residential properties that front onto Great Charles Street. To the east is the boundary to a public car park.

The commercial buildings along Church Street to the south and High Street to the west are built close to the boundary with multiple double and single storey rear extensions. These buildings accommodate flats at first floor level, some of which overlook the site.

## **Relevant Planning History**

11/0969/OL - 1 Church Road, Brownhills, Walsall, WS8 6AA - Outline: Demolition of former Royal Mail sorting office and the erection of bar. Granted Subject to Conditions 14/10/16

16/0392 - Land to rear of 43 High Street and 1-3 Church Road, Brownhills, Walsall, WS8 6ED- 2.5 storey high residential block containing 6 nos. 1 bedroom flats and 2 bedsits and external amenities. Demolition of single storey timber building. Granted subject to conditions 10/08/2017

## **Relevant Policies**

### **National Planning Policy Framework (NPPF)**

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

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

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

- **NPPF 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 5 – Delivering a sufficient supply of homes**
- **NPPF 6 – Building a strong, competitive economy**
- **NPPF 7 – Ensuring the vitality of town centres**
- **NPPF 8 – Promoting healthy and safe communities**
- **NPPF 9 – Promoting sustainable transport**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**

On **planning conditions** the NPPF (para 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.

### **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.

### **Development Plan**

[www.go.walsall.gov.uk/planning\\_policy](http://www.go.walsall.gov.uk/planning_policy)

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

- 3.6 to 3.8 Environmental Improvement
- 3.9 Derelict Land Reclamation
- GP2: Environmental Protection
- GP5: Equal Opportunities
- ENV9: Environmental Improvement Initiatives
- ENV10: Pollution
- ENV11: Light Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV17: New Planting

- ENV23: Nature Conservation and New Development
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- S4: The Town and District Centres: General Principles
- S8: Housing in Town Centres
- H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings
- T4 - The Highway Network
- T7 - Car Parking
- T8 – Walking
- T9 – Cycling
- T13: Parking Provision for Cars, Cycles and Taxis
- BR1: Primary Shopping Area
- BR7: Environmental Enhancement
- BR9: Leisure, Service and Community Development Opportunities
- BR14: Cycle Access and Parking
- BR15: Car Parking Provision

### **Black Country Core Strategy**

- CSP4: Place Making
- DEL2: Managing the Balance Between Employment Land and Housing
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- HOU3: Delivering Affordable Housing
- CEN1: The Importance of the Black Country Centres for the Regeneration Strategy
- CEN2: Hierarchy of Centres
- CEN5: District and Local Centres
- CEN6: Meeting Local Needs for Shopping and Services
- CEN8: Car Parking in Centres
- TRAN4: Creating Coherent Networks for Cycling and for Walking
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

### **Walsall Site Allocation document**

- SLC1: Local Centres

### **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

## **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

## **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

## **Consultation Replies**

Natural England – **No objection**

Strategic Planning Policy – **No objection** - The site has existing permission for eight dwellings, there has been no material change in the proposal or relevant policy since the previous approval.

Archaeology – **No objection** - There are no archaeological implications for this application.

Transport – **No objection** – subject to conditions regarding the parking and access area, provision of cycle storage, access control, and construction method statement

Severn Trent Water – **No objection** – subject to conditions relating to drainage and information relating to construction on or near public sewers.

Pollution control – **No objection** – subject to conditions to mitigate the effects of noise, ground contamination, and the incorporation of electric charging points in the development. Conditions are also required to minimise environmental impact during the course of demolition and building works.



Environmental Health – **has not provided a comment to this application but recorded a no objection to the similar application approved in 2016.**

## **Representations**

Four objections were received from surrounding property owners, officer's comments are provided in *italics*. Objections related to the access and use of the lane along the rear of the properties, to which the subject site has access, specifically:

- The land running at the back of the properties in Great Charles Street is for the private use of the owners only
- Any increase in traffic will cause the lane to become churned up in bad weather
- Apartments will encroach on the privacy of home owners at the bottom of Great Charles Street and there is no telling if extra cars from tenants and their visitors will cause obstructions

*All matters relating to the ownership of the access to the rear of the application site are civil law matters between interested parties. The scheme proposes the use of the rear access for pedestrians only which would substantially mitigate the noise and disturbance issues raised above. Potential amenity impacts are considered at length in the remainder of the report.*

## **Determining Issues**

- Principle of development
- Design and character of the area
- Residential amenity
- Access and parking
- Bats
- Local Finance Considerations

## **Assessment of the Proposal**

### Principle of the development

The site is within Brownhills District Centre and is allocated for Leisure, Service and Community development opportunities under 'saved' UDP Policy BR9iii. In order for planning policy to be able to support an application that is contrary to the allocation we would need to be satisfied that there is no demand for alternative uses.

Given that officers have previously investigated the situation through the course of the application granted in August 2017, and concluded that the applicant's statement in this regard could be supported, and that Strategic Planning Policy has indicated support for the scheme it is considered that the principle of the development is acceptable subject to the determining issues considered below.

### Design and Character of the Area.

It would be unlikely that the proposed building would be visible from High Street due to its being screened by the existing commercial buildings along the road, although glimpses

would be possible through the access gate and accesses between No.43 and 41 and between No. 33 and 35 High Street. The development would be visible from the Church Road Public Car Park and to some extent from the rear of the dwellings along Great Charles Street.

The bulk scale and mass of the proposal would be in line with surrounding residential development. The view of the development from rear gardens of surrounding residential development would be partially obscured by the existing outbuildings along the rear access to the rear of the properties, and would be viewed in the context of the existing rear elevations of the commercial buildings further to the rear. The development would be visible from the rear facing windows of the flats above the surrounding commercial buildings but it is considered that the development would likely improve the outlook of the area when compared to the disused post office building and overgrown area that is currently in evidence.

The design reflects those of the neighbouring buildings and is considered acceptable and in line with the character of the area. The proposed gates and boundary treatment would be acceptable having little if any impact on the character of the area.

### Residential Amenity

The application site is within the district centre where the characteristic of accommodation here is high density flat development predominantly above shops with little if any amenity space. Notwithstanding this the application site does provide some amenity space around the building to include a planting area and clothes drying area. In addition, Brownhills common is half a mile away to the North and there are the benefits from being close to the centre of Brownhills. On balance the proposal is considered to reflect the existing level of amenity provision which would reasonably be expected for single bedroom apartments in Brownhills District Centre and is considered acceptable.

The application site is close to a busy road (High Street) and the dominant noise in the area is road traffic. This has the potential to have an impact on occupants of the proposed residential premises and it should be noted that High Street is identified as an important area under DEFRA's strategic noise mapping. It is therefore recommended by Pollution Control Officers that the applicant undertake a noise survey to determine whether the proposal is suitable for the proposed residential development and to identify any noise mitigation measures that may be required which can be conditioned.

In addition several hot food premises / takeaways are located in the vicinity of the proposed development site. Observations carried out in 2015 identified that some of these premises had exhaust stacks that did not meet the DEFRA guidance on noise and odour control. This includes an adjacent restaurant / take-away on the High Street whose exhaust stack was directed towards the development site. There are also several commercial activities located close to the proposed site, including an adjacent abattoir which was operated by A.E. Poxon & Sons, which could give rise to noise and odour emissions as although this premises is currently closed it could be re-opened and occupied.

Emissions from these sources could have a significant impact on the occupiers of the proposed residential premises however there are no objections raised by Environmental Health Officers for the previous similar application who are responsible for any complaints and it is considered that the impact to residents of the proposal would likely be no different to those experienced by existing residents in the vicinity.

With regard to land contamination the application contains no information for the proposed development site and Pollution Control does not have any information on historical uses of the land and whether or not the site has previously been investigated for contamination. It is therefore recommended that the applicant undertake a contaminated land survey to determine whether the site is suitable for the proposed residential development and to identify any mitigation measures that may be required. These measures can be required through the application of a suitable conditions.

Conditions to prevent or minimise environmental impact during the course of building works are also recommended by Pollution Control and also can be attached if permission is granted.

In relation to existing neighbouring occupiers and uses the scheme for residential development would reflect the existing mixed character of the area. The separation distances and density are considered unlikely to result in any increased impact on neighbouring amenity than currently exists.

Objections raised about potential noise and disturbance from the use of the rear access drive is noted. The access is over 30 metres from the houses along Great Charles Street. Rear gardens of Great Charles Street back onto the access but the main useable garden spaces of houses is that nearest to the rear elevation. There are several residential outbuildings at the end of these gardens that would provide a buffer between the access and rear amenity spaces of the dwellings. The applicant has indicated that they have legal rights to using the existing access and the proposal does not alter that situation. It is not considered likely that the single width access and untreated surface would be unlikely to attract significant use by residents or visitors of the proposed flats, and the restriction to pedestrian only access would minimise any noise and disturbance created. This can be secured by condition. On this basis any use of the rear access by residents is unlikely to cause significant impact on their amenity.

In order to protect surrounding residential amenity it is recommended that the luminance level of any security lighting does not exceed 2 vertical illuminance in Lux when measured flat on the glazing at the centre of any surrounding habitable room windows. This requirement would be in accordance with the advice of the institute of lighting professionals and applies to urban areas and is considered would safeguard the amenities of surrounding occupiers.

The redevelopment of this currently vacant site is considered to represent an improvement to the security of the area.

The flat building itself is orientated north/south such that the windows to the units face east and west. All the units would be dual-aspect meaning they would have access to morning and evening natural light through their windows. The orientation of the proposed building also means that the flats would not overlook the existing first floor flats at No. 1a and 3a

Church Street. The building would be separated by over 9m from the rear facing habitable windows of these flats meaning that there would be no significant negative impact on their light or outlook.

The habitable room windows of the proposed flats are over 15 metres from the nearest building, with the exception of flats 7 and 8 which are 4m away from the single storey extension to the rear of Number 43 High Street. Given the single storey nature of this structure and the relative angles of the buildings to each other it is considered that there would not be an unacceptable impact on light or outlook to these units.

The layout of the one-bedroom units is considered practical and in general the configuration of the units is considered to afford their potential occupants good access to light and outlook and a good level of residential amenity.

### Access & Parking

Parking for 10 cars is proposed utilising the existing access point, which is considered sufficient for the proposed development.

Whilst this access is positioned right on the radius of the High Street/Church Road junction and would not be acceptable under current highway design guidance and is considered sub-standard, it is nevertheless an existing established access which is a material consideration.

The secondary access to the rear of the site along a private 140m long single track provides garage access off Short Street with no passing places. Whilst this route is considered unsuitable for use as a vehicular access to a residential development it is to be retained as a pedestrian route only.

If the Sui Generis (Postal Sorting office) or similar were to come back into use, in particular the access for larger vans/delivery vehicles, the site regardless of the use will attract a large quantum of vehicle movements.

Taking this into account, the number vehicle movements that could potentially take place at the access, on balance, the Highway Authority considers that a highway objection would be difficult to defend at Appeal, and accepts the development proposal.

The 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 paragraph 109.

### Bats

In response to the design and access statement which makes recommendations regarding protected bat species a note for applicant can be attached making contractors aware of the potential for disturbing bats. As the application does not meet the locational criteria of the Natural Environment SPD for requirement to consider bat activity any recommended condition would not meet the 6 tests of the National Planning Policy Framework.

## Other Issues Raised Through Consultation

All matters relating to the ownership of the access to the rear of the application site are civil law matters between interested parties.

## 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 8 new homes.

The Government has indicated that, for 2019-20, 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. In 2019-20 the total payments, taking account of completions over the last 4 years, are expected to amount to £2,911,601.

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**

The application on balance is considered acceptable as assessed against the above determining issues. The recommended conditions meet the 6 tests of the national planning policy framework.

Taking into account the above factors it is considered that the application should be recommended for approval.

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

### **Approve**

Officers have confirmed to the applicant's agent that the submitted details are acceptable and no further changes have been requested.

## **Recommendation**

1. Delegate to the Interim Head of Planning & Building Control to Grant Planning Permission Subject to amendment and finalising of Conditions

## **Conditions and Reasons**

- 1 This development must be begun not later than 3 years after the date of this decision.

Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act, 1990, as amended.

2 The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans details and documents: -

Location Plan, received 30/12/19

Proposed East and West Elevations, received 30/12/19

Proposed Section and Side Elevations, received 30/12/19

Proposed Floor Plan, received 30/12/19

Reason: To ensure that the development undertaken under this permission shall not be otherwise than in accordance with the terms of the application on the basis of which planning permission is granted, (except in so far as other conditions may so require).

3a. A desk study and site reconnaissance shall be conducted to identify the potential for contaminants and/or ground gases likely to present a risk to proposed structures or future occupants of the development to be present on site. Results of the desk study and site reconnaissance shall be submitted to and agreed in writing prior to built development commencing.

3b. In the event that the desk study and site reconnaissance indicates the potential presence of contamination and/or ground gases on site. Prior to built development commencing a site investigation, ground contamination survey and assessment of ground gas, having regard to current best practice shall be undertaken.

3c. Prior to built development commencing a copy of the findings of the site investigation, ground contamination survey and ground gas assessment, together with an assessment of the hazards arising from any land contamination and/or ground gas shall be forwarded to the Local Planning Authority.

3d Prior to built development commencing a "Remediation Statement" setting out details of remedial measures to deal with the identified and potential hazards of any land contamination and/or ground gas present on the site and a timetable for their implementation shall be submitted to and agreed in writing by the Local Planning Authority.

3e The remedial measures as set out in the "Remediation Statement" required by part c) of this condition shall be implemented in accordance with the agreed timetable.

3f. If during the undertaking of remedial works or the construction of the approved development unexpected ground contamination not identified by the site investigation required by part ii) of this condition is encountered development shall cease until the "Remediation Statement" required by part iii) of this condition has been amended to address any additional remedial or mitigation works required and agreed in writing by the Local Planning Authority.

3g. A validation report confirming the details of the measures implemented together with substantiating information and justification of any changes from the agreed remedial arrangements shall be submitted to and accepted in writing by the Local Planning Authority prior to the development being brought into use.

Reason: To ensure safe development of the site, to protect human health, and the environment and to comply with UDP policy GP2 and ENV10

4a. A noise assessment shall be undertaken as agreed in writing with the Local Planning Authority. A report detailing the findings and any recommendations for mitigation measures shall be forwarded to the Local Planning Authority.

4b. Any mitigation measures shall be agreed in writing with the Local Planning Authority prior to built development.

4c. Properties shall not be occupied until any agreed mitigation measures have been implemented to the satisfaction of the Local Planning Authority.

Reason: To ensure safe development of the site, to protect human health, and the environment and to comply with UDP policy GP2 and ENV10

5a. Prior to the commencement of development hereby permitted drainage plans for the discharge of surface water and disposal of foul sewerage and all existing and proposed underground services and sewers shall be submitted in writing to and approved in writing by the Local Planning Authority.

5b. The development shall not be carried out otherwise than in accordance with the approved details and the approved drainage shall thereafter be retained as installed for the lifetime of the development.

5c. The development hereby permitted shall not be occupied until the approved drainage has been installed in accordance with the approved plans.

Reason: To ensure the development is provided with a satisfactory means of drainage and/or to reduce the risk of creating or exacerbating a flooding problem and/or to minimise the risk of pollution and/or to safeguard water quality from fuels, oils and other chemicals from the site in accordance with NPPF10, BCCS Policy ENV5 and saved Walsall's Unitary Development Plan policy GP2 and ENV40.

6a. Prior to occupation of the development hereby permitted a minimum of 10 parking spaces each measuring a minimum of 2.4m by 4.8m shall be provided on the drive within the curtilage of the application property. At least one parking bay shall be allocated for disabled users and marked out accordingly.

6b. The parking spaces shall be fully consolidated hard surfaced and drained to prevent surface water from the driveway running on to the public highway or into any highway drain.

6c. The development hereby permitted shall not be carried out otherwise than in accordance with the approved details and the parking spaces shall thereafter be retained for the purposes of parking vehicles and for no other purpose for the lifetime of the development.

Reason: In accordance with the requirements of saved Unitary Development Plan policies GP2, T7, T13 and ENV40 and in the interest of highway safety.

7a. Prior to the development first coming into use, full details of a cycle shelter for the use of residents and visitors and which shall be covered and illuminated, shall be submitted to and approved in writing by the Local Planning Authority and the facility shall be fully implemented in accordance with the approved details.

7b. The cycle shelter facility shall thereafter be retained and used for no other purpose.

Reason: To encourage sustainable modes of travel and in accordance with UDP policy T13 and Black Country Core Strategy TRAN4.

8a. Prior to the first occupation of the development hereby permitted, the operation of the vehicular access gates shall be controlled to prevent unauthorised use, full details of which shall be submitted to and approved in writing by the Local Planning Authority and,

8b. The method of control shall be fully implemented in accordance with the approved details and thereafter retained for the lifetime of the development.

Reason: To restrict and control the number of vehicle movements at the existing access point to residents and visitors of the development and adjacent premises in the interests of highway safety on account of the existing access point being located on a sensitive position on the radius of a busy high street junction, where there are relatively high levels of vehicle and in particular pedestrian movements.

9. Security lighting installed to serve the development shall not exceed 2 vertical illuminance in Lux when measured flat on the glazing at the centre of any surrounding habitable room windows

Reason: To safeguard the amenities of neighbours and to comply with UDP policy GP2.

10a. Prior to the commencement of development a Construction Environmental Management Statement shall be submitted in writing to and approved in writing by the Local Planning Authority. The Construction Environmental Management Statement shall include:

- i. Construction working hours
- ii. Parking and turning facilities for vehicles of site operatives and visitors
- iii. Loading and unloading of materials
- iv. Storage of plant and materials used in constructing the development
- v. A scheme for recycling/disposing of waste resulting from construction works
- vi. Temporary portacabins and welfare facilities for site operatives
- vii. Site security arrangements including hoardings
- viii. Wheel washing facilities and/or other measures to prevent mud or other material emanating from the application site reaching the highway
- ix. Measures to prevent flying debris
- x. Dust mitigation measures
- xi. Measures to prevent site drag-out (including need for wheel cleaning and use of a road-sweeper)
- xii. Noise and vibration mitigation measures



10b. The development hereby permitted shall not be carried out otherwise than in accordance with the approved Construction Environmental Management Statement and the approved Construction Environmental Management Statement shall be maintained throughout the construction period.

Reason: To ensure that no works commence on the site until a scheme is in place to safeguard the amenities of the area and the occupiers of the neighbouring properties and to control the environmental impacts of the development in accordance with saved policies GP2 and ENV32 of Walsall's Unitary Development Plan.

11 No boilers shall be installed in any of the units hereby permitted, save for

- Gas and liquefied petroleum gas (LPG) boilers with maximum NOx emissions no greater than 56 mg/kWh
- Oil-fired boilers with maximum NOx emissions no greater than 120 mg/kWh.

Reason: To conserve and enhance the natural environment in accordance with BCCS policies ENV8 and DEL1.

12a. Prior to first occupation of the development hereby permitted details of an electric vehicle charging point, to be provided for the development shall be submitted in writing to and agreed in writing by the Local Planning Authority.

12b. Prior to first occupation of the development the approved electric vehicle charging points shall be installed in accordance with the approved details and shall be retained and maintained for the lifetime of the development.

Reason: In the interests of creating a sustainable form of development and to encourage the use of ultra-low emission vehicles in accordance with Policies ENV8 and DEL1 of the Black Country Core Strategy

13. The access to the development off Short Street to the rear of the properties on Great Charles Street shall be restricted for the use of pedestrians only

Reason: To safeguard the amenities of neighbours and to comply with UDP policy GP2.

### **Notes for Applicant**

Bats – A method of working should be put in place with contractors to ensure that in the unlikely event of bats being found they will not be injured.





### Planning Committee

Report of Interim Head of Planning and Building Control on 05-Mar-2020

**Plans List Item Number: 3.**

**Reason for bringing to committee:** Called in by Cllr Shires on the grounds of the previous owners retaining an interest in the land, office used as accommodation, customers parking in school access opposite and the highway is being used to off load transported cars.

**Location:** 74, CANNOCK ROAD, WILLENHALL, WV12 5RZ

**Proposal:** RETENTION OF CHANGE OF USE FROM CLASS B8 (STORAGE & DISTRIBUTION) TO EXTERNAL DISPLAY AND SALE OF MOTOR VEHICLES, INCLUDING PREPARATION (SUI GENERIS USE)

**Application Number:** 19/1225

**Applicant:** Carcart Limited

**Agent:** Star Planning and Development

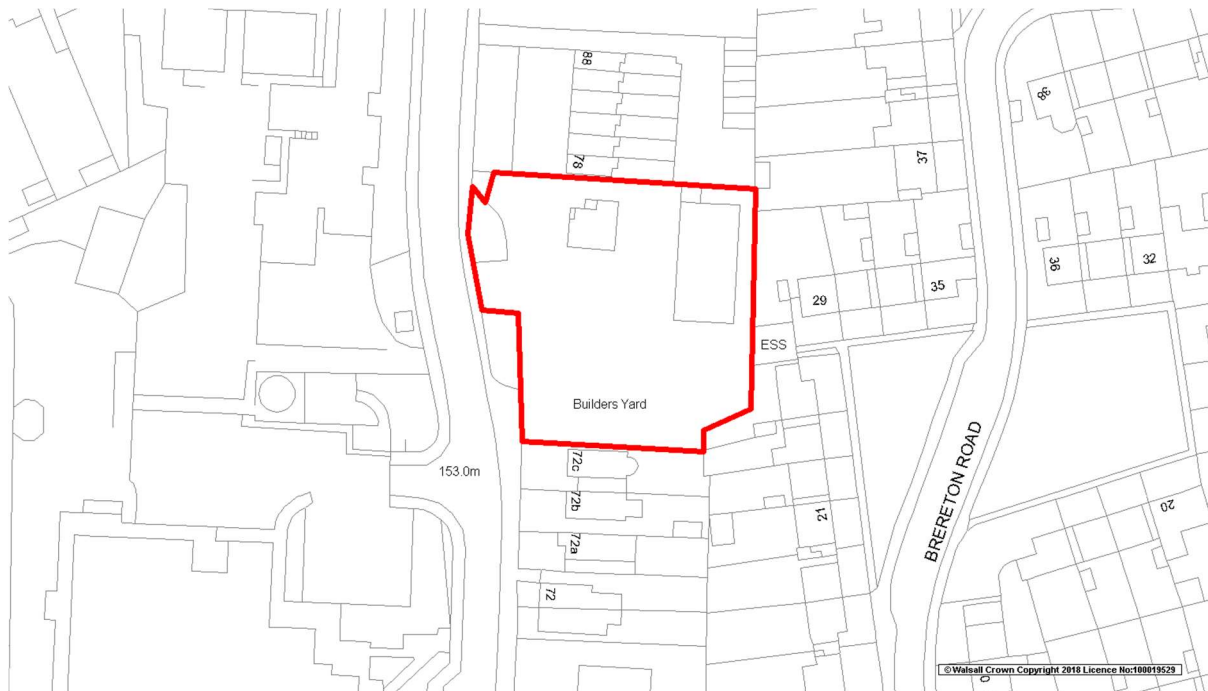
**Application Type:** Full Application: Change of Use

**Case Officer:** Devinder Matharu

**Ward:** Willenhall North

**Expired Date:** 18-Nov-2019

**Time Extension Expiry:** 12-Mar-2020



## Recommendation

Planning Committee resolve to Delegate to the Interim Head of Planning & Building Control to Grant Planning Permission Subject to Conditions subject to

1. To secure the plans of the office and vehicle preparation area and to undertake a 14 day re-consultation
2. No new material considerations being received within the consultation period
3. The amendment and finalising of conditions;
4. No further comments from a statutory consultee raising material planning considerations not previously addressed;

## Proposal

Retention of change of use from Class B8 (storage & distribution) to external display and sale of motor vehicles, including preparation (sui generis use).

The planning application form states that three full time staff will be employed.

The proposed hours of operation are as follows:

Monday to Friday 09:00 to 19:00

Saturdays 10:00 to 16:00

Sundays and public holidays 10:00 to 16:00

A total of 48 car parking spaces will be proposed.

A plan has been submitted showing vehicle manoeuvring around the site.

The submitted block plan shows customer and staff parking along the northern boundary of the site, the existing building to the north of the site to be used as an office, the building to the eastern part of the site to be a vehicle preparation area, the area to the south of the vehicle preparation and the southern part of the site to be dedicated to display vehicles. Three display vehicle spaces to the front of the site. In total, there will be 37 cars displayed for sale.

A disabled parking space will be provided on site.

A covering letter has been submitted which states the vehicle parathion area includes:

- Valeting the cars,
- Checking fluid levels including oil changes
- Replacement windscreens/windows
- New number plates
- Repairing minor repairs
- Externally parked cars will be washed in the open air

Parking and deliveries/Collections operation management plan has been submitted which states:

- The site has a long established use a sui generis as a builders yard and storage, cleaning and hiring of portable toilets.
- The toilets are externally stored and collected by a mix of heavy delivery vehicles

- The applicant, Car Craft operate primarily as an online business buying and selling cars.
- The property at Willenhall is the physical base for the business containing the offices, area for the storage of cars and the facility to prepare cars before they are collected by purchases
- Cars are purchased by Car Craft from other places and driven or delivered to the site.
- Deliveries are on the rear of flat bed vans
- All loading and unloading is to be undertaken on site

## Site and Surroundings

The application was formerly used for the storage of portable WC's.

The site is a large parcel of open space fenced off by 1.5m high railings and 2m high gates. The site has a two storey building adjacent number 78 and a single storey flat roof building located towards the rear of the site. The site boundary to the rear and to the south of the site is a 2m wall and 2m high gravel board fence.

There are white road markings on the highway outside the site. Opposite the site is a school and vehicular access to the school opposite number 72C.

## Relevant Planning History

None

## Relevant Policies

### **National Planning Policy Framework (NPPF)**

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

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

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

- **NPPF 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 6 – Building a strong, competitive economy**
- **NPPF 11 – Making effective use of land**
- **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.

### **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.

### **Development Plan**

[www.go.walsall.gov.uk/planning\\_policy](http://www.go.walsall.gov.uk/planning_policy)

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

- GP2: Environmental Protection
- ENV10: Pollution
- ENV11: Light Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV32: Design and Development Proposals
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

### **Black Country Core Strategy**

- EMP1: Providing for Economic Growth
- ENV3: Design Quality

### **Walsall Site Allocation Document 2019**

IND5: New Employment Opportunities

T4: The Highway Network

### **Supplementary Planning Document**

### **Designing Walsall**

- DW3 Character

## Consultation Replies

Strategic Policy – No objection

Pollution Control – No objection

Transportation – No objection subject to a planning condition limiting deliveries on site and ensuring customer parking is retained solely for customers.

## Representations

Three letters of objection have been received objecting to the proposal on the following grounds:

- Noise pollution cars being prepared late at night until 10.30pm
- Planning conditions: should restrict delivery times until 6pm Monday to Friday and 3pm Saturdays and Sundays
- Access and parking including: car transporter delivering vehicles, transporter parks opposite school whilst children coming out of school, car transporter causes traffic congestion, car loader parks on double yellow lines, customers and deliveries cause an obstruction, customers obstruct neighbouring driveways and school crossing with cars, , cars parked on site block vehicle visibility for neighbouring occupiers, volume of traffic during school times,
- Bin is left on public footpath 24/7 – *not a material planning consideration*

Called in by Cllr Shires on the grounds of:

- previous owners retaining an interest in the land *This is not a material planning consideration*
- office used as residential accommodation
- customers parking in school access opposite
- highway is being used to off load transported cars
- Deliveries do not match what is written in supporting statement
- Vehicles delivered in an articulated car transporter not the 7M rigid vehicle
- Articulated vehicles off loads vehicles onto Cannock Road causing obstruction
- Parking for staff and visitors
- Bins

## Determining Issues

- Principle of development
- Design and layout
- Impact upon neighbouring residential occupiers
- Access and parking

## Assessment of the Proposal

### Principle of development

This site has a long-established "sui generis" use, originally as a builders' yard and latterly as a portable WC hire business. Motor vehicle sales are also a sui generis use. The surrounding area is primarily residential and vehicle sales are more suitable for industrial areas, however the proposed use is similar to the previous uses in respect of its potential

PAGE 29 OF 55

to cause disturbance to neighbouring residents. The site is also on a busy main road so activity associated with the site will be relatively minor compared with traffic noise from the road. The application can therefore be supported on planning policy grounds.

Neighbouring occupiers have raised concerns that the two storey building on site was used as residential. A planning condition can be attached to ensure this building is only used commercially ancillary to the main use of the site.

### **Design and layout**

The layout of the site seeks to provide a displayed parking area to the southern and south eastern part of the site. The vehicle preparation area will be located to the eastern part of the site. The northern part of the site is to be allocated for staff and customer parking with an office and cycle area. Towards the front of the site, three display car parking spaces will be provided. The layout of the area appears to be acceptable.

There are no details provided of the proposed office and vehicle preparation area, as such these details will need to be submitted prior to the determination of the application in order to fully assess the proposal. As such, delegation to the Interim Head of Planning and Building Control is sought.

### **Impact upon neighbouring residential occupiers**

The proposed layout would not unduly harm the amenities of neighbouring occupiers, number 78 Cannock Road, as the area to the north of the site is allocated for staff and customer parking. The application form states the proposed opening hours would be 09:00 until 19:00 Mondays to Fridays, 10:00 until 16:00 on Saturdays, Sundays and bank and public holidays. It is considered the site will be operational during the day and still allow residents to have a satisfactory level of amenity and peace and quiet during the evening. With regards to weekend and bank and public holidays the site will open later and close earlier allowing residents to have some peace and quiet. Whilst, there are car parking spaces proposed close to the boundary with 78 Cannock Road, it is considered that the use of these spaces would not unduly harm the amenities of these neighbouring occupiers as it is likely staff will park in the morning and leave in the evening rather than multiple journeys. Customer parking would be located towards the front of the site and would be no different to comings and goings to the previous commercial use of the site.

The southern and south eastern part of the site would be used for the display of vehicles for sale. Whilst, these parking spaces are adjacent to neighbouring boundaries, once the vehicles have been parked, it is unlikely they will be moved on a regular basis.

To protect the amenities of neighbouring occupiers, a planning condition can be attached to control the hours of operation of the proposed use. Furthermore, a planning condition can be attached to ensure deliveries are only made during the day before 5pm on weekdays, to allow residents to have some peace and quiet on weekends and bank and public holidays.

A planning condition would also be attached to ensure that no lighting within the site in the form of lighting to building and floodlighting on columns shall be installed to protect the amenities of neighbouring residential occupiers.



Neighbouring occupiers have objected to the proposal on the grounds that vehicles are being prepared late at night. A planning condition can be attached to ensure vehicles are only prepared in line with the proposed opening hours to provide residents with some peace and quiet during the evening and early afternoon on weekends and bank and public holidays.

### **Access and parking**

The submitted plans show that a large flatbed type van can manoeuvre through the site. The Highway Officer has no objection to the submitted proposal subject to planning conditions to restrict delivery times and ensure the customer parking is retained as customer parking.

The Highway Officer has also advised the type of vehicles delivering to the site should be restricted by planning condition. Under section 55 of the NPPF, it would not be enforceable to condition the type of delivery vehicle to the site.

Neighbouring objectors have raised concerns over the car transporter causing an obstruction and traffic congestion being parked opposite school whilst children coming out of school. A photograph has been submitted by neighbouring occupiers showing a car transporter, which seems to be standing in traffic, as opposed to parking and unloading. Any issues about an obstruction on the highway or parking on double yellow lines is a matter for the Police and Civil Enforcement Officer to pursue under the Road Traffic Act. A planning condition has been attached to ensure deliveries are only undertaken during the day.

The submitted plan shows ample parking for customers, highways have no objection to this subject to a planning condition.

Neighbouring occupiers have raised objections on the grounds that an articulated lorry delivers vehicles to the site causing an obstruction on Cannock Road adjacent the school and the signalised crossing point outside the school is a matter for the Police to enforce. Any issues regarding parking on double yellow lines is a matter for civil enforcement officer to pursue.

A planning condition can control delivery of vehicles to the site to ensure deliveries are undertaken during the day.

The submitted plan shows that there are ample parking spaces on site for staff and customers. A planning condition can be attached to ensure these spaces are retained for staff and customers.

### **Conclusions and Reasons for Decision**

The principle of development is considered acceptable.

The layout of the site is considered acceptable.

The proposed use would not unduly harm the amenities of neighbouring occupiers and planning condition can be attached to safeguard neighbouring occupiers amenities.

The Highway Officer has no objection to the submitted proposal subject to planning conditions to restrict delivery times and ensure the customer parking is retained as customer parking.

Taking into account the above factors it is considered that the application should be recommended for approval.

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

#### **Approve**

Officers have confirmed to the applicant's agent that the submitted details are acceptable and no further changes have been requested.

### **Recommendation**

Planning Committee resolve to Delegate to the Interim Head of Planning & Building Control to Grant Planning Permission Subject to Conditions subject to

1. To secure the plans of the office and vehicle preparation area and to undertake a 14 day re-consultation
2. No new material considerations being received within the consultation period
3. The amendment and finalising of conditions;
4. No further comments from a statutory consultee raising material planning considerations not previously addressed;

### **Conditions and Reasons**

1. The development must be begun not later than 3 years after the date of this decision.

Reason: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans details and documents: -

Reason: To ensure that the development undertaken under this permission shall not be otherwise than in accordance with the terms of the application on the basis of which planning permission is granted, (except in so far as other conditions may so require).

- 3a. Prior to the commencement of development, full details of a cycle shelter for the benefit of staff and visitors and which shall be covered and illuminated, shall be submitted to and approved in writing by the Local Planning Authority.

- 3b. The development shall not be carried out otherwise than in accordance with the approved details and shall thereafter be retained for the lifetime of the development.

Reason: To encourage sustainable modes of travel and in accordance with UDP policy T13 and Black Country Core Strategy TRAN4.

- 4.. No external lighting shall be installed on any building/erected on floodlighting columns on the application site as identified on block plan drawing number 0242/002 submitted 23 September 2019.

Reason: To safeguard the amenities of neighbouring residential occupiers in accordance with Policies GP2, ENV10 and ENV32 of the UDP.

5. The shall not be used outside the hours of 16:00 hours Sundays to 09:00 hours Mondays, 19:00 hours Mondays to 09:00 hours Tuesday, 19:00 hours Tuesday to 09:00 hours Wednesday, 19:00 hours Wednesday to 09:00 hours Thursdays, 19:00 hours Thursdays to 09:00 hours Fridays, 19:00 hours Fridays to 10:00 hours Saturday, 16:00 hours Saturday to 10:00 hours Saturdays

Reason: To safeguard the amenities of neighbouring residential occupiers in accordance with Policies GP2, ENV10 and ENV32 of the UDP.

6. There shall be no deliveries outside the hours of 17:00 hours Fridays to 09:00 hours Mondays, 17:00 hours Mondays to 09:00 hours Tuesdays, 17:00 hours Tuesday to 09:00 Wednesday , to 17:00 hours Wednesday to 09:00 hours Thursday, 17:00 hours Thursday to 09:00 hours Friday. There shall be no deliveries on Saturdays, Sundays and public and bank holidays.

Reason: To safeguard the amenities of neighbouring residential occupiers in accordance with Policies GP2, ENV10 and ENV32 of the UDP.

7. There shall be no vehicle preparation on site outside the hours of 16:00 hours Sundays to 09:00 hours Mondays, 17:00 hours Mondays to 09:00 hours Tuesday, 17:00 hours Tuesday to 09:00 hours Wednesday, 17:00 hours Wednesday to 09:00 hours Thursdays, 17:00 hours Thursdays to 09:00 hours Fridays, 17:00 hours Fridays to 10:00 hours Saturday, 16:00 hours Saturday to 10:00 hours Saturdays

Reason: To safeguard the amenities of neighbouring residential occupiers in accordance with Policies GP2, ENV10 and ENV32 of the UDP.

8. The customer parking bays as shown on drawing number 0242/003 submitted 23-09-2019 shall not be used for anything other than customer parking.

Reason: To ensure adequate customer parking for the proposed use is available in accordance with UDP policy T13 and Black Country Core Strategy TRAN4.

9. Displayed motor vehicles for sale shall not be parked elsewhere on site other than the area shown on drawing number 0242/003 submitted 23-09-2019.

Reason: To safeguard the amenities of neighbouring residential occupiers in accordance with Policies GP2, ENV10 and ENV32 of the UDP and to ensure adequate parking for the proposed use is available in accordance with UDP policy T13 and Black Country Core Strategy TRAN4.

10. The proposed two storey building on site shall not be used otherwise than for commercial uses ancillary to the main use of the site.

Reason: To safeguard the amenities of neighbouring residential occupiers in accordance with Policies GP2, ENV10 and ENV32 of the UDP and to ensure the existing building is not used for residential purposes.

**Notes for the Applicant:**

1. The Applicant must ensure that no soil or other debris is washed or placed within the highway. Failure to prevent this incident could result in an offence and a notice being served on the Applicant under Section 151 of the Highways Act 1980.
2. The Applicant must ensure that no water is discharged onto the highway. Failure to prevent this discharge could result in an offence and a notice being served on the Applicant under Section 163 of the Highways Act 1980.



### Planning Committee

Report of Interim Head of Planning and Building Control on 05-Mar-2020

**Plans List Item Number: 4.**

**Reason for bringing to committee:** An appeal has been lodged for non-determination of the application and this report confirms the recommendation that would have been made on the application.

**Location:** 14, NEWQUAY CLOSE, WALSALL, WS5 3EP

**Proposal:** CHANGE OF USE FROM OPEN SPACE TO RESIDENTIAL GARDEN LAND AND THE ERECTION OF 2.1M HIGH BOUNDARY FENCE. (SITE AFFECTS THE SETTING OF THE PUBLIC RIGHTS OF WAY WAL105).

**Application Number:** 19/0566

**Applicant:** Mr Ravinder Samra

**Agent:**

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

**Case Officer:** Andrew Watson

**Ward:** Paddock

**Expired Date:** 09-Jul-2019

**Time Extension Expiry:** 12-Sep-2019

**Recommendation Summary:** Refuse



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## Proposal

Planning permission is sought for a change of use from open space to residential garden land and the erection of a 2.1m high boundary fence. The new boundary fence is to run along the western boundary on the line of the non-definitive right of way and will enclose the land within the existing curtilage to 14 Newquay Close.

The new fence is to consist of concrete posts which would be 2.1m above ground level with 0.3m high gravel boards and a 1.83m by 1.8m timber panel fence in between the concrete posts and on top of the gravel boards. The fence would be situated 1m inside the boundary with the surrounding footpath. The front section of the fence is to be built in line with the existing dwelling and will enclose the land to the rear.

The public footpaths and electricity sub-station would be outside the extended curtilage.

The land forms part of the open space for the surrounding housing development and is relatively flat.

## Site and Surroundings

The application property is a detached dwelling within a residential area. The property is set back from the road with a 7m long drive to the front of the property. The street consists of detached properties of a similar age and style.

The property is adjacent to the footpath and open land.

The neighbouring houses include:

### **9 Newquay Close**

No.9 sits to the north of the application site, has a separation distance of 22m and is located on the opposite side of Newquay Close.

### **12 Newquay Close**

No.12 is located to the west of the application site with a grass verge and public highway between No.12 and the application site.

### **16 Newquay Close**

No.16 is located to the east of the application site and consists of a 1m gap to the boundary. The proposed change of use and new fence would be located on the opposite side of the application address.

### **40 St Austell Road**

No.40 sits to the south of the application site and has a separation distance of 30m and is located directly behind the application address.

### **42 St Austell Road**

No.42 sits to the south-west of the application address and is situated a distance of 30m away from the application site.

Definitive Public Footpath 105 Walsall runs alongside the sites Southern boundary in an east to west direction and there is one other non-definitive footpaths that runs from north to south along the western boundary whilst the eastern boundary shares a common boundary with the application property.

There is an electric sub-station to the southern side of Public Footpath 105 Walsall.

## **Relevant Planning History**

Planning application, 19/0149, for a retrospective single storey extension and first floor pitched roof over existing flat roof two storey extension was granted planning permission on 26 April 2019.

## **Relevant Policies**

### **National Planning Policy Framework (NPPF)**

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

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

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

- **NPPF 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 11 – Making effective use of land**
- **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.

### **National Planning Policy Guidance**

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

## **Reducing Inequalities**

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

- age
- disability
- gender reassignment
- marriage or civil partnership (in employment only)
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Of these protected characteristics, disability and age are perhaps where planning and development have the most impact.

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

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

## **Development Plan**

[www.go.walsall.gov.uk/planning\\_policy](http://www.go.walsall.gov.uk/planning_policy)

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

- GP2: Environmental Protection
- ENV32: Design and Development Proposals
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis
- LC1: Urban Open Spaces



## **Black Country Core Strategy**

- CSP4: Place Making
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV6: Open Space, Sport and Recreation

## **Walsall Site Allocation Document 2019**

- OS1: Open Space and Recreation

## **Supplementary Planning Document**

### **Designing Walsall**

- DW3 Character

## **Consultation Replies**

**Highway Authority** – No objections

**Public Rights of Way** – No objections

**Natural England** – No objections

**Local Access Forum** - This appears to be an application to fence in some open land adjacent to a property in Newquay Close, which adjoins WAL 105, (Woodend Road to Skip Lane). This is designated a Leisure Path, Safer Route to School Route.

The proposal would put a fence line two Metres high one Metre from the path line running from the front of the property for three quarters of the path length that runs parallel to the property.

We believe this will make the path darker, more enclosed, increase the likelihood to anti-social behaviour (ASB) and leave areas of the path not visible from the road.

It will also take away public open land from the area which could then potentially be used for development in the future.

We don't believe this proposal is in any way of benefit to the local community and would in fact cause long term issues if allowed to proceed.

## **Representations**

Twenty two letters of representation, including an 82 signature petition, have been received making the following comments (*Officer comment is made in italics after each of the items*): -

- Concerned about access to the public alleys behind the houses for maintenance of fences and electricity station.
- Public land is exactly that, for public to use.
- The land is cut by the Council and is home to Oak, Maple and other trees for the public to enjoy. *(Whilst the Council has maintained the open space, this is not a planning issue)*
- The Neighbourhood Watch collect litter from this area. *(Not a planning consideration)*.
- It is used by wildlife. *(No evidence has been provided to substantiate this claim)*.
- The dwelling is already very large whereas green and public space are on the decline.
- The proposal should not be given the go ahead.
- The land has been empty for many years. *(Not a planning control matter)*.
- The land may have been encroached on by the property as the fencing has been done and putting up another fence will make it an eyesore.
- It is as though the land has been given to the occupier. *(The Council has no evidence of the land being given to the applicant- Land ownership is not a material consideration beyond ensuring the correct certificates being served)*
- They already have plenty of garden space available to them.
- The fence will close the public footpath and lead to more problems. *(There is no evidence to suggest the public footpath will close)*
- Strongly object to the change of use.
- The site has been open land since the estate was built.
- If a fence is erected there will be no access for vehicles or maintenance vehicles.
- The footpath is continually used by residents as passage to local shops and bus stops.
- School children use this pathway to go to and from school.
- If fenced off it would make it difficult to navigate, especially in the winter months.
- In Section 5 on the application form it states that litter and dog faeces have built up and is a hazard on the land. This is not the case and has never been a problem.
- It is now a building site with a skip and building materials.
- The land has been maintained by the Council. *(Whilst the Council has maintained the land, this is not a planning matter)*.
- The land is not used for parking due to limited access.
- The application form indicates that the use has not already started and this is error as the boundary fence has already been erected.
- The property has already been extended through application number 19/0149. *(This is not material to the determination of this planning application)*
- There should be a thorough review of this application. *(The assessment of the planning application is in accordance with the national planning legislation, national and local planning policies and guidance)*
- This green space has been here since the estate was built and has public footpaths crossing it, which are well used.
- Fencing would drastically reduce visibility and make the area feel less safe.
- Not seen a problem with dog faeces. *(Not a planning matter)*
- Litter has become a problem following the building work. *(Not a planning matter)*.
- Cars do not park on the grass.

- The applicant's family have never played there. *(This is not a material planning consideration)*
- The applicant has not yet moved into the property. *(This is not a material planning consideration)*
- The original plans did not include the land now being used to erect a fence on.
- Appalled to learn that the owner of 14 Newquay Close wants to erect a 2.1m high fence around the grassed area adjacent to the footpath.
- Before the fence was erected all of the trees and shrubs was removed from the garden. He is not a gardener. *(The trees and shrubs are not protected, this is a matter for the land owner and not a material planning consideration)*
- Many residents walk the paths.
- A van parked on the footpath has ruined it. *(This will be a matter for local highway authority to enforce)*
- Object to the fence and the changing of the public rights of way. *(No evidence to suggest the public rights of way is changing)*
- It will create an unsafe area.
- Personnel medical problems. *(Not a planning consideration)*
- It appears the Council have intimated that they would be happy to 'offload' responsibility of maintaining the parcel of land.
- Unhappy that the Council has not claimed ownership of the land from Crown Estates. *(This is a legal matter).*
- It would make access to the sub-station very difficult.
- The proposed fence would make it susceptible to anti-social behaviour.
- Notices have been taken down within 2 day of their appearance.
- What about the services?
- This is essentially a land grab. *(Not a planning consideration).*
- The property has only been part lived in for many year. *(Not a planning consideration)*
- The local authority should take over control of the land. *(This would be a matter for the Council and not the local planning authority)*
- The public right of way must remain as currently provided.
- The application has been duly made on land that is not owned by the applicant. This cannot be right. *(Subject to the correct notices being served, anyone can submit a planning application on any piece of land)*
- Against this application and the total disregard for the law.
- Hope the Council reject the application.
- Green open space are vital for the environment.

One letter having no objections makes the following comments:

- No objections but fraudulent use of name on petition
- The owner of the property does not own the land.

#### Councillor Martin raised the following concerns

Over 150 residents benefit from this amenity space overwhelming signed a petition against what they see as an unacceptable land grab.

WMBC have knowingly maintained this open space for over 50 years and have been aware for at least 20 years that this land is No Man's Land.

WMBC have knowingly adopted and taken responsibility for this land. *(Whilst there is evidence of the Council maintaining the land, this is not a material planning consideration)*  
Land has been used by all residents as a community amenity space  
Land serves as access for utility service access, no other access except over private land to substation.

WMBC has also maintained all the connecting pathways in this area access to schools, shops, public transport, parks. *(Paths and roadways have been adopted by the Council and maintained by the local highway authority)*

It seems blatantly obvious that WMBC have adopted the land and should endeavour to claim from Crown Estate as it has no monetary value, cannot be built on and quite clearly is a public amenity.

Why is this matter taking so long to process? *(Lack of resources to process the volume of planning application the Local Planning Authority currently has)*

Can you also explain why this resident has been allowed to build on part of this land? *(The resident chose to build without planning approval. This is a retrospective application)*

These paths are also used by community to walked to Park on Newquay Road Green space and play area.

this is an application to fence off open space that is adjacent to public right of way to Bude Road/St Austal to access other salient areas like Liskeard Shopping Precinct and bus route

Valerie Vaz MP raises the following questions:

- Who owns the green space?
- When did Walsall MBC last maintain the land? *(September 2019)*
- When was the Council aware that it did not own the land? *(Council's assets team suggest they have known for many years)*
- The applicant states it was owned by Crown Estates. Has the Council contacted the Crown Estates? *(Crown Estates were consulted as part of the planning application process)*
- Can the Council provide legal advice in relation to adverse possession? *(No. Third parties must seek their own legal advice)*
- What was the pre-application advice given by the Council regarding adverse possession? *(The Council has not provided pre-application advice. The application was submitted after an enforcement investigation)*
- Have residents been consulted on the application? *(Yes. In accordance with the national planning legislation requirements)*

## **Determining Issues**

- Planning/Legal Background to Crown Land
- Loss of Open Space
- Impact on Footpaths
- Design of fence and Character of Area
- Residential Amenity
- Highway Matters
- Other Issues

## **Assessment of the Proposal**

### **Planning/Legal Background to Crown Estate Land**

Whilst land ownership is not a material planning consideration, the applicant, objectors and the MP have raised it as part of the processing of the planning application. The Council does not own the land that forms this open space and the area subject of this planning application. The land in question is part of a larger parcel of land which may have now vested in the Crown. The applicant served Certificate B on The Crown Estate.

The application site forms part of larger Public Open Space within the surrounding estate. Therefore, regardless of the ownership of the land it is considered to form part of a larger piece of land used as Public Open Space.

It is an open piece of land that contains no formal boundaries has been landscape with grass and some trees. It is where the public has unfettered access and have done so over many years as they can freely roam over the land. It may have been used for playing ball games or walking and exercising pets. To that end, there is some evidence to suggest the Council has been maintaining the land for many years.

third party wishes to acquire any land that the Crown may have an interest in, whether that be via purchase or adverse possession, there is a formal legal process to follow, administered by solicitors for the Crown Estate. Where land has vested in the Crown and is subject to escheat, the Crown may decide to deal with the land provided it is kept as a single parcel. In this instance, the single parcel includes the open space, public footpaths and roadways in and around the estate. There is a 30 year period should a third party wish to pursue adverse possession.

### **Loss of Open Space**

The land, which is the subject of this application forms part of a wider group of informal public open space within the estate. The land includes public footpaths either definitive nor not cross the land or run adjacent to. The public footpaths intersect or cross the whole development in the locality.

The open space may have been used for playing ball games as well as exercising dogs, given that public comment as been raised about dog faeces which is not a planning matter. The proposed fence would enclose the open area on this part of the open space and thereby ensuring that it cannot be used for such activities again.

The enclosure of this land within the curtilage of 14 Newquay Close would also stop any body or groups of people from congregating in the locality, which may also have an issue with anti-social behaviour. However, enclosing the land by a 2.1m fence may also result in an increase in anti-social behaviour given that the erection of the fence could create an enclosed area that is not fully visible to the wider community.

Urban open spaces are important and valued because they can be used for a range of functions which enhance our quality of life. They can form focal points or links along popular pedestrian routes, and those which are busy and used for a variety of purposes are usually perceived to be safer and more comfortable places. Communities greatly value open spaces.

The provision of open space is an important factor towards achieving sustainable development, as required by the NPPF. Proposals affecting open space provision are also subject to the requirements of the NPPF, particularly paragraph 97, which applies to all existing open space regardless as to whether or not they have been designated as open space within the Local Plan.

Paragraph 97 of the NPPF states:

*Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:*

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*

Local Plan policies in the Walsall Unitary Development Plan (UDP), Black Country Core Strategy and Site Allocation Document (SAD) refer to the onus is on the prospective developer to demonstrate that there would be no adverse effect in terms of the loss an open space (Policy LC1 Walsall UDP), the Black Country Core Strategy states that development that would reduce the overall value of open space will be refused (Policy ENV6) and policy OS1 of the SAD states that development proposals that would result in the loss of, are within, or that might adversely affect the open pace will be assessed in accordance with the NPPD, BCCS ENV6 and UDP Policy LC1 will be applied to determine a proposals potential impact on open space.

The submitted proposal does not include any submission covering the loss of the open space nor any other compensatory measures. Without such a document it is difficult to fully work out the impact of the proposal nor the loss of the open space on the locality.

Comments received regarding the impact of the new boundary fence and the loss of the open space has on the fear of increase crime and disorder along with the fear of increased anti-social behaviour. The submitted proposal also lacks any detail covering the concerns or fear of crime as a result of the development, or even of how this matter is to be dealt with.

Due to the lack of any supporting statement the Local Planning Authority is unable to fulfil the requirements of the NPPF, Policy LC1 of the Walsall Unitary Development Plan, Policy ENV6 of the Black Country Core Strategy and Policy OS1 of the Site Allocation Document.

As the proposal is contrary Walsall Unitary Development Plan Policy LC1, Black Country Core Strategy Policy ENV6, Site Allocation Document Policy OS1 and NPPF paragraph 97 it is recommended that the application be refused.

### **Impact on Footpaths**

Public Right of Way Wal105 runs adjacent to the southern boundary of the site, in an east-west direction and is also outside the application site along with other non-definitive rights of way that circle the land.

The application seeks permission to erect a means of enclosure around the land and to include it within the domestic curtilage of 14 Newquay Close. The boundary fence would be erected approximately 1m away from the boundary of the footpaths.

The loss of some of the open space and surrounding it with a 21m high fence would not stop the footpaths from being used. It is accepted that the erection of a fence would change the appearance of the area. Whilst the open nature of the open space with the public footpaths running through it, with a series of street lights all help to reduce anti-social behaviour issues. Enclosing the footpath with a high fence and reducing the openness, it is considered this may reduce some of the safety of the location and potentially increase anti-social behaviour.

The proposal would not prevent the footpaths from being used for their legitimate purpose.

### **Design of Fence and Character of the Area**

The proposed boundary fence is utilitarian in design and is typically found on many similar housing estates across the country. It is considered that a timber fence such as the one proposed would not look too much out of place. Many of the surrounding properties have used similar fences to enclose the individual boundaries.

The design of the fence is considered to be acceptable and it would not be out keeping with the area given it is in the middle of a residential area where there are similar fences. Therefore a refusal on the fence design could not be sustained.

### **Residential Amenity**

The nearest properties are 12 Newquay Close, which is approximately 12m away to the west and 40 St Austell Road. Given that the proposal is only for a change of use and the erection of a new means of enclosure it is considered that no significantly adverse impacts would occur from the proposal in terms of overlooking, overbearing, overshadowing or loss of light.

### **Highways and transport matters**

The Local Highway Authority has no objections to the proposal. The existing property at 14 Newquay Close currently has an access from the public highway giving access to the parking area. According to the submitted drawings this is not to change either.

Comment has been made that vehicles parking on the public footpath has damaged the surface of it. The parking of vehicles blocking a public footpath is not a planning matter and a police matter if the vehicle is causing an obstruction. Damage to the footpath would be a matter for the local highway authority to pursue.

### **Other Issues**

The MP has raised a number of questions, which have already been answered directly to the MP and the following answers were given:

*Who owns the green space?*

It is for the applicant to serve the correct ownership certificate and relevant notices as the applicant has indicated they don't own the land. Land ownership is not a material consideration in the determination of a Planning Application.

*When did Walsall MBC last maintain the land?*

The Council's Greenspaces Team have confirmed the open space was last mowed week beginning 23 September 2019.

*When was the Council aware that it did not own the land?*

Notwithstanding the Council confirming it has been maintaining the open space, the Council's Assets Team has confirmed that the Council does not and has never owned the land subject of the current Planning Application.

*Has the Council contacted the Crown Estate?*

The Council has consulted Crown Estates as part of the Planning Application process.

*Can the Council provide legal advice in relation to adverse possession?*

The Council's legal advice is privileged for officers and councillors. Council's legal team cannot provide legal advice to third parties. Third parties must seek their own legal advice.

*What was the pre-application advice given by the Council regarding adverse possession when the application bought the property?*

The Council has not given pre-application advice relating to adverse possession. Adverse possession is a property law issue and members of the public must seek their own legal advice.

The Council's correspondence prior to the submission of the current application was part of an ongoing planning enforcement investigation for an unauthorised house extension, repositioned fence and encroachment into the green space. Below is an extract of the enforcement letter regarding the repositioned fence and encroachment:

*"the works undertaken ... constitute a change of use from open space to residential land ... whilst you do have an opportunity to submit a retrospective planning application to address this element ... the Council ... could not recommend this on the grounds of the new use conflicting with local and national policies which seek to protect open space... we therefore recommend ... the fencing position is amended to only encompass your residential curtilage."*

*Have residents been consulted on this application?*

Residents have been consulted on the current application in line with the national planning legislation requirements.

A number of comments have been made within the objections that are not planning matters or can be considered as part of the planning process. Therefore, within the comments above it is stated if they are not planning matters or not a planning consideration.



Specific comment has been raised about future access to the electrical sub-station, which is located to the south of the application site with access directly off of Public Right of Way Wal105. This is a matter for the utility company to resolve.

## **Conclusions and Reasons for Decision**

The proposed conversion of the open space to residential use would be considered in accordance with the Council's policies and considered to have a harmful impact as no evidence concerning the loss of the open space has been provided, which is also required under Local Plan policies.

As such the development is considered not to meet the aims and objectives of the National Planning Policy Framework (para 97), saved Policy LC1 of the Walsall UDP, Policy ENV6 of the Black Country Core Strategy and Policy OS1 of the Site Allocations Document all of which require some form of justification to be provided but is missing with this submission.

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

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

Officers have been considering the application, which has raised a considerable amount of public interest. Despite speaking to the applicant over the period since its submission in this instance it has not been possible to support the proposal. Furthermore the applicant has recently submitted an appeal to the Planning Inspectorate for non-determination, which at present is going through the validation checks at the Planning Inspectorate and an official start date for the appeal is still awaited. Therefore, this recommendation would have been made on the application if it was still being considered by the Local Planning Authority.

## **Recommendation**

If the Council was considering the application it is highly likely that planning permission would have been refused

## **Reasons for Refusal**

Planning permission would have been refused for the following reason:

1. The combination of the loss and change of use of the open space, with the erection of a boundary fence and lack of a planning statement considering the potential impact for the loss of open space and its enclosure, including safety and security of the location and impact on users of the open space and public footpaths, plus the impact on the wider amenity of the locality, is considered not to meet the aims and objectives of the National Planning Policy Framework (para 97), saved Walsall UDP Policy LC1, Black Country Core Strategy Policy ENV6 and Site Allocations Document Policy OS1.

**RE: LAND GRAB AND PLANNING APPLICATION NO 19/0566**  
**NEWQUAY CLOSE, PARK HALL, WALSALL. WSS 3EP**

WE, THE UNDERSIGNED, HAVE ASKED OUR PADDOCK WARD COUNCILLORS TO OBJECT TO THE 'LAND GRAB' OF THE PLOT OF LAND ADJOINING 14 NEWQUAY CLOSE, PARK HALL, WALSALL. WSS 3EP. THE LAND HAS BEEN OPEN LAND FOR THE LAST 50 YEARS AND HAS BEEN MAINTAINED BY WALSALL MBC. IT IS A BENEFIT TO THE COMMUNITY AND AS OPEN LAND PROVIDES A SAFE AND SECURE ENVIRONMENT.

WE REQUEST THAT THIS LAND IS ACQUIRED AS AN ASSET OF THE COMMUNITY AND THAT IT IS GIVEN VILLAGE GREEN STATUS.

NAME	ADDRESS	SIGNATURE
	7 Manchester Road, B38 9AG	
	1 New Quay Close WSS 3EP	
	1 NEWQUAY CLOSE WSS 3EP	
	1, NEWQUAY CLOSE, WSS 3EP	
	1 Newquay Close, WSS 3EP	
	1 Newquay Close, WSS 3EP	
	1 Newquay Close WSS 3EP	
	1 NEWQUAY CLOSE WSS 3EP	
	9 NEWQUAY CLOSE WSS 3EP	
	9 NEWQUAY CLOSE	
	12 NEWQUAY CLOSE	
	10 Newquay Close	
	10 Newquay Close WSS 3EP	
	8 NEWQUAY CLOSE WSS 3EP	
	8 NEWQUAY CLOSE WSS 3EP	
	2 NEWQUAY CLOSE WSS 3EP	
	5 Newquay Close WSS 3EP	
	36 Bude Road WSS 3EP	
	32 NEWQUAY RD WSS 3EW	
	34 NEWQUAY RD WSS 3EW	
	34 NEWQUAY RD WSS 3EW	
	36 NEWQUAY RD, WSS 3EW	
	36 Newquay Road WSS 3EW	
	40 NEWQUAY RD WSS 3EW	
	42 Newquay Rd WSS 3EW	
	53 NEWQUAY ROAD	
	51 NEWQUAY ROAD	
	10 NEWQUAY CLOSE	



## Planning Committee

Report of Interim Head of Planning and Building Control on 05-Mar-2020

**Plans List Item Number: 5.**

**Reason for bringing to committee:** Significant Community Interest

**Location:** CHERRY ORCHARD, BOURNE VALE, ALDRIDGE, WALSALL, WS9 0SH

**Proposal:** ERECTION OF SECURITY GATE WITH NUMBER PLATE RECOGNITION AND PEDESTRIAN GATE TO THE SIDE ACROSS BOURNE VALE AND REINSTATEMENT OF TIMBER 1.2M POST AND RAIL FENCE ALONG THE BOUNDARY OF CHERRY ORCHARDS.

**Application Number:** 19/1012

**Applicant:** Mr John Dyke

**Agent:** Miss Laura Polizzi

**Application Type:** Full Application:  
Householder

**Case Officer:** Gemma Meaton

**Ward:** Aldridge Central And South

**Expired Date:** 05-Mar-2020

**Time Extension Expiry:** 12-Mar-2020

**Recommendation Summary:** Grant Planning Permission Subject to Conditions



## Proposal

This application is for the erection of a security gate with number plate recognition and pedestrian gate across the private road at Bourne Vale and reinstatement of a timber 1.2m high post and rail fence along the boundary of Cherry Orchards.

The total construction along the road would be 9.14m wide while the opening of the gate itself would be 5m wide and would operate on a sensor system to open automatically on the approach of a vehicle. The gate would be 1.8m high and constructed using tube steel. The gate would be on rails allowing it to slide open to the west on the approach of a vehicle from either side along Bourne Vale.

Footage of vehicles would be captured by CCTV with number plate recognition and stored for a period of one week. The operation of the gate would be maintained by a management company and paid for by a group of residents under the Bourne Vale & Vale Avenue Residents Committee. The pedestrian gate would remain unlocked and be accessible to the public.

## Site and Surroundings

The application area is located in a residential area characterised by large houses with very large established landscaped gardens with a rural atmosphere.

The area is within the Green Belt and subject to an Article 4 Direction which indicates that “.....Development of the descriptions specified in the Schedule hereto cannot lawfully be carried out at Bourne Vale Little Hardwick Road Aldridge Walsall without the express grant of planning permission for that purpose: erection or construction of gates, fences, walls or other means of enclosure not exceeding one metre in height where abutting on a highway used by vehicular traffic of 2 metres in height in any other case, and the maintenance, improvement of other alteration of any gates, fences, walls or other means of enclosure: so long as such improvement or alteration does not increase the height above the height appropriate for a new means of enclosure”.

There are several protected trees in the vicinity of the site, including along the road at the application site.

## Relevant Planning History

None

## Relevant Policies

### **National Planning Policy Framework (NPPF)**

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

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

PAGE 50 OF 55

*development”.*

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

- **NPPF 8 – Promoting healthy and safe communities**
- **NPPF 12 – Achieving well-designed places**
- **NPPF 13 – Protecting Green Belt land**

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.

### **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.

### **Development Plan**

[www.go.walsall.gov.uk/planning\\_policy](http://www.go.walsall.gov.uk/planning_policy)

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

- 3.2 to 3.5 The Countryside and Green Belt
- GP2: Environmental Protection
- ENV7: Countryside Character
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV32: Design and Development Proposals
- T6 - Traffic Calming

### **Black Country Core Strategy**

- CSP4: Place Making
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness

## **Walsall Site Allocation Document 2019**

GB1: Green Belt Boundary and Control of Development in the Green Belt

### **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
- DW7 Diversity

### **Consultation Replies**

**West Midlands Police:** Support, appreciate the local community using this initiative to protect themselves.

**Fire Officer:** No Objection

**Pollution Control:** No objection

**Highways:** Support the proposals now that further information has been provided to confirm that in the event of a failure the gates they would have a default open position so as not to impact on the highway.

### **Representations**

The application was circulated to surrounding neighbours twice during the course of the application, as a result of an amendment to the proposed plans and change in the red-line boundary. During the course of these consultations thirteen letters were received from 7 different parties, three of these parties indicated their support for the proposal, while four raised concerns or objected to it.

The following objections have been raised:

- Restriction over the right of way
- Belief that it is inappropriate for one property to monitor security on behalf of others
- Potential for limitation of access for emergency vehicles
- Negative impact on the sporting and outdoor businesses that operate in the area as a result of restriction of access to customers / participants
- Uncertainty as to whether there would be restriction to access as a result of the proposed gates, either by key fobs, number plate recognition or other means and objection to this limitation of access
- Impact on traffic as a result of vehicles backing up on Hardwick Road while waiting for gates to open
- Inappropriate impact on the rural setting and the Green Belt

Supporting comments:

- Provide additional security to the residents in the area
- Provide peace of mind after some serious violent incidents that have impacted on the residents of the area
- Decrease unwanted entry for people in the area

The officer comments that any right of way issues relating to the area are a separate matter that is not a material planning consideration. It has been indicated that the monitoring of the security information would be carried out by a reputable professional company. The remainder of the comments are dealt with as part of the assessment provided below.

### **Determining Issues**

- Impact on the Green Belt
- Design and Impact on Character of Area
- Amenity of Nearby Residents
- Impact on Highway Safety and Traffic Flows

### **Assessment of the Proposal**

#### **Impact on Green Belt**

The National Planning Policy Framework, 2019, states that development inside a Green Belt is inappropriate and harmful unless the criteria for specific exceptions are met, as detailed in paragraph 145. Exception g) states that limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.

The land on which the gate is proposed can be regarded as previously developed land since it is within the curtilage of the residential property at Cherry Orchards. The proposal would not impact on the openness of the green belt as it would not create any new structures and would be in the area of an existing road flanked by trees and residential

PAGE 53 OF 55

development. It is therefore considered that the proposal would not constitute inappropriate development in the Green Belt as it is in line with exception g of paragraph 145 of the NPPF and therefore can be supported.

### **Design and Character of Area**

The proposed low level post-and-rail replacement fencing would be compatible with other boundary treatments in the surrounding area and would complement its rural character.

The proposed gates and access would be simple in design which would reflect the rural countryside feel of the green belt. The height of the gates would be sufficient to act as a deterrent to access but is considered not to be excessive such that it would be overbearing or oppressive. The black colouring of the railings would make the gates unobtrusive against the surrounding trees and vegetation. No trees would be impacted by the installation of the gates however.

### **Amenity of Nearby Residents**

The proposed gates would not impact on the amenity of surrounding residents. The gates would be well screened by the surrounding trees and bushes from the surrounding properties, meaning that they would not be prominently visible. The addition of gates would require vehicles to stop and pull off as the gates opened however it is considered that the additional noise created from the breaking and pulling off would not be significant against the existing traffic noise from Little Hardwick Road.

### **Impact on Highway Safety and Traffic Flows**

The gate would be positioned approximately 27m from the junction with Little Hardwick Road meaning that there would be no adverse impact on the junction arising from the installation of the gates.

Since the gates are intended as a deterrent and traffic calming measure that would allow the ANPR system to read number plates, the gates would not hinder access to residents or visitors and staff of sports and recreation clubs and businesses in the area.

The applicant's agent has confirmed that in the event of the failure of the gate the default position for the gate would be the open position meaning that the gate would never be fixed closed. The proposal would not create a tail back on the road as the gate would remain open when there would be multiple vehicles traveling on the road at any one time.

A pedestrian gate would be provided to allow people to walk along the road, which would remain unlocked at all times.

### **Conclusions and Reasons for Decision**

The design and dimensions gates are considered in keeping with the character of the area. The proposals now comply with exception g) of paragraph 145 of the NPPF and would not impact on openness and therefore would not have a harmful impact on the Green Belt.



Their position set back from Little Hardwick Road would not have an adverse impact on either the appearance of the area or highway safety. This would comply with saved policies GP2 and ENV32 of Walsall's UDP.

Taking into account the above factors it is considered that the application should be recommended for approval.

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

#### **Approve**

Officers have spoken with the applicant's agent and in response to concerns raised regarding the design and submitted red-line plan, amended plans have been submitted which enable full support to be given to the scheme.

### **Recommendation**

Grant Planning Permission Subject to Conditions

### **Conditions and Reasons**

1: The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Reason: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2: This development shall not be carried out otherwise than in conformity with the following approved plans: -

Location plan, drawing 71002 D01 (amended) deposited 13 January 2020  
Site Layout Plan, drawing 71002 D02 (amended) deposited 13 January 2020  
Proposed Gates, Drawing 71002 D03 Rev D deposited 13 January 2020

Reason: To ensure that the development undertaken under this permission shall not be otherwise than in accordance with the terms of the application on the basis of which planning permission is granted, (except in so far as other conditions may so require).