



Walsall Council

Planning and Building Control

Planning Committee 28 November 2024

Report of Head of Planning and Building Control

Plans list item number

Item number: 2

Reason for reporting to the planning committee.

Called in by Councillor Cheema on the grounds that redevelopment offers an improvement to the character/amenities of the surrounding area to outweigh any potential harm and there would be no significant harm to the amenities of the surrounding area from parking/traffic/noise/disturbance/odour.

Application details

Application reference: 24/1087

Site location: 36-40, WALSALL ROAD, WILLENHALL, WV13 2EG

Application proposal: Retrospective full planning application for a change of use from a clothing distributor (Class B8) to a convenience store (Class E(a)).

Application type: Full Application: Change of Use

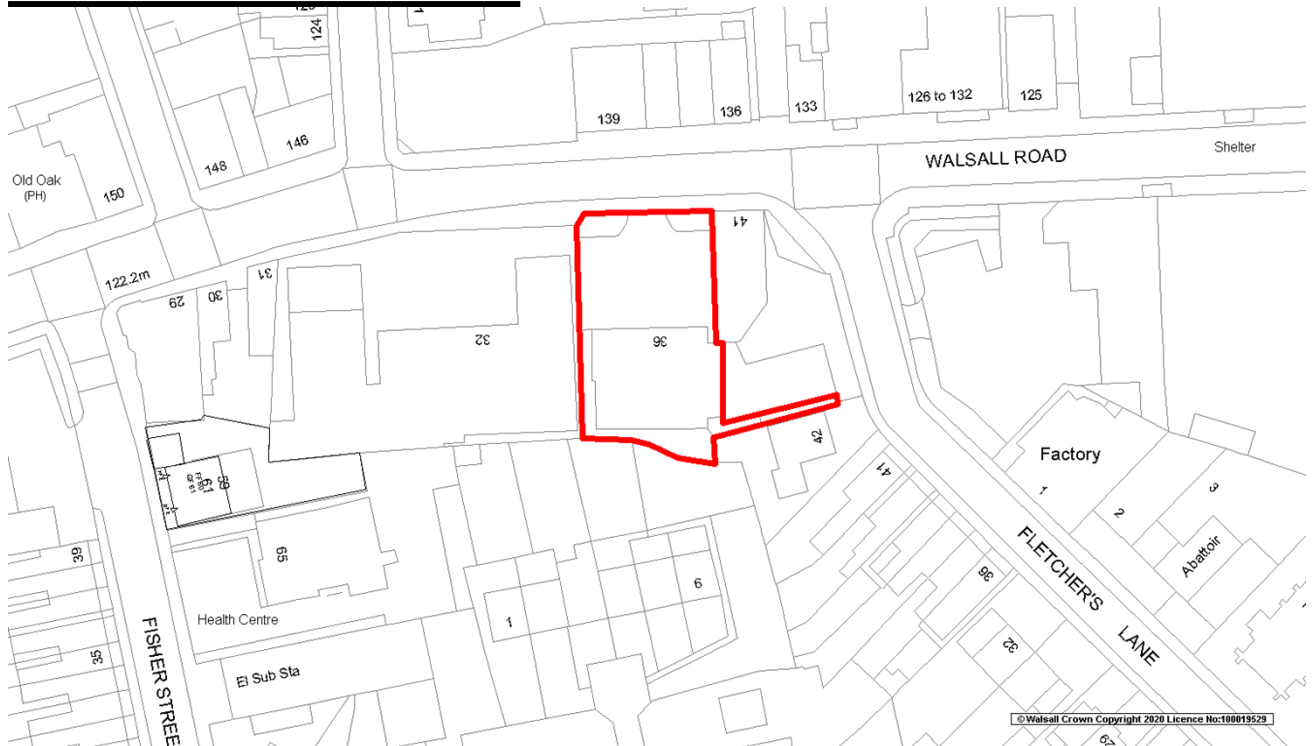
Link to application documents: <https://go.walsall.gov.uk/planningapps?id=24/1087>

Applicant: R Singh, GNG Stores Uk Ltd Daner Ltd, 36, Walsall Road, Willenhall, WV13 2EG

Planning agent: David Pattison, DPM (Design Project Management) Services DPM (Design Project Management) Services, 9 Marlborough Way, Ashby De La Zouch, LE65 2NN

Ward: Willenhall South

Red line location



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Recommendation

Refuse

Site and surroundings

The application site comprises a single storey unit originally of industrial appearance. The unit has an area of approximately 270m² and is set back by 16.7m from the highway, the B4464 Walsall Road, which is a district distributor with peak hour parking restrictions. It has a front parking area which is accessed via a dropped kerb footway crossing from the highway, which can accommodate up to 11 vehicles.

The extant planning use class of the building is B8 as a clothing warehouse and distributor. The use of the building as a supermarket and meat shop in planning use class E(a) has commenced and associated branding has been installed.

The site is 0.5km to the eastern side of the boundary with Willenhall District Centre. The main road in the vicinity of the application site has a number of retail units including convenience and food sales, take away food shops, a beauty store, and a barber shop, that are of neighbourhood level significance to the surrounding residential streets. There are also several light industrial uses in the vicinity.

The front part of the site lies within Flood Zone 2, and the site is in an area of High Coal Risk. It is not within the vicinity of any heritage assets.

Relevant planning history

At application site

24/0752	Retrospective planning application for a change of use from a clothing distributor (Class B8) to a retail store (Class E(a)) with front fenestration.	Withdrawn Full Valid Application	02/08/2024
22/0677	Demolition of an existing commercial unit and an erection of 6 no 2 bed houses	Withdrawn Full Valid Application	08/08/2023
BC31876P	Erection of 1.8m high railings and use of building for storage of clothing	Grant permission subject to conditions	12/04/1991

At 136-142 Walsall Road (on the opposite side of Walsall Road to the application site)

18/0864	Sub-division of an existing unit to form 3 retail units (planning use class A1) with external alterations to units 2 & 3 to include new shop window, door, perforated external shutter and shutter box and external 1:12 ramp and protective barrier	Grant Permission Subject to Conditions	01/10/2018
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Relevant policies

National Planning Policy Framework (NPPF)

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". The NPPF is a material consideration in the determination of a planning application.

Human rights and reducing inequalities

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

- Article 8 – Right to Respect for Private and Family Life
- THE FIRST PROTOCOL – Article 1: Protection of Property

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

Walsall Council Development Plan

Planning law requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Our Development Plan includes:

- Black Country Core Strategy (BCCS)
- Walsall Site Allocation Document (SAD)
- Saved policies of Walsall Unitary Development Plan (UDP)
- Walsall Town Centre Area Action Plan (AAP)

Planning guidance is published within a number of Supplementary Planning Documents. Those of relevance will be referenced in this assessment.

Public consultation has been carried out in accordance with the Development Management Procedure Order and the council's Statement of Community Involvement.

Consultee comments (planning officer's summary)

Environment Agency

Outside scope of development for comments.

Environmental Health

No response received.

Environmental Protection

No objection, no requirements.

Flood Risk Manager

This appears to be a non-major development, which lies outside our agreement for statutory consultation. Fee required for comments.

Local Highways Authority

Concerns raised on the grounds of insufficient parking provision which could lead to an overflow of on-street parking onto district distributor Walsall Road (B4464) The development must provide car parking provision to meet its own operational needs. There is no safe pedestrian crossing for customers accessing the proposed convenience store from the proposed overflow car park.

Strategic Planning Policy

Objection – This is a centre use in an out-of-centre location, no sequential test submitted.

Waste Management (Healthy Spaces)

No response received.

West Midlands Fire Service

Does not object to this proposal. However, this proposal for 36-40, WALSALL ROAD will need to meet all the functional requirements stated within B5: Access and facilities for the fire service of Approved Document B Volume 2: Building other than dwellings, 2019 edition incorporating 2020 and 2022 amendments – for use in England.

These sections deal with the following requirement from Part B of Schedule 1 to the Building Regulations 2010.

Note for applicant.

West Midlands Police

No response received.

Neighbour and interested parties' comments (planning officer's summary)

Objection(s)

0 comments received objecting to proposal.

Support

0 comments received in support of proposal.

Determining issues

1. Principle of development
2. Design, layout, and character
3. Amenity of neighbours and future occupiers
4. Highways
5. Flood risk / Drainage
6. Ground conditions and environment

Assessment of the proposal

Principle of development

The application seeks retrospective planning permission for a change of use from a clothing distributor (planning use class B8) to a retail store (planning use class E(a)).

This is a resubmission of application 24/0752 which was withdrawn following concerns raised with the applicant's agent regarding the principle of use and parking requirements. The current application appears to be identical apart from the inclusion of an overflow parking area on the opposite side of the road.

The proposed use as a convenience store is a Town Centre Use as defined by saved UDP policy S1 and 'Town Centre Use' is confirmed by the NPPF to include district centres and local centres but exclude smaller parades of shops of neighbourhood significance.

The application site is an out of centre location that is identified by Walsall's Site Allocation Document as 'consider for release' employment land, part of site reference IN221 listed under policy IND4: 'Local Industry Consider for Release'. This policy states that the sites are allocated and safeguarded as Local Quality Industry but will be considered for release to other uses under the provisions of BCCS policy DEL2: 'Managing the Balance Between Employment Land and Housing', and subject to the need to ensure that the stock does not fall below the minimum requirement set out in BCCS policy EMP3: 'Local Quality Employment Areas'. In these areas, redevelopment or re-use for Town Centre Uses as defined in the National Planning Policy Framework will not be permitted except where local need is demonstrated and

the sequential approach is applied in accordance with BCCS Policies CEN6: 'Meeting Local Needs for Shopping and Services' and CEN7: 'Controlling out-of-centre development', and UDP Saved Policies S6: 'Meeting Local Needs' and S7: 'Out of Centre and Edge of Centre Developments'.

BCCS policy CEN6 considers new small-scale local facilities outside defined centres of up to 200 square metres gross. Any larger scale proposals will have to meet the requirements of Policy CEN7. The application form confirms that the floorspace is 287m². The area measured from the site plan is 270m² but in either case, the floor area exceeds the threshold of BCCS policy CEN6 and must meet the requirements of policy CEN7.

BCCS policy CEN7 confirms that there is a presumption in favour of focusing development in centres and continues:

"Proposals for out-of-centre development will have to demonstrate that development cannot be provided in-centre or at edge-of-centre locations of existing Centres appropriate to the hierarchy.

Any out-of-centre proposal which is considered to fall within the catchment area of a relevant centre will be required to include that centre in any sequential test."

Planning Policy Officers have advised that there are a significant number of vacant units in nearby centres such as Willenhall that could accommodate the proposed use and this has not been considered in the details submitted with this application.

UDP saved policy S7 states:

"Proposals for the establishment or expansion of retailing or other town centre uses in out-of-centre or edge-of-centre locations (except where in accordance with Policy S6 or where existing commitments or proposals of the Plan) will only be permitted where it can be demonstrated that all of the following tests are fulfilled: -

I. There must be evidence to demonstrate the need for the facility. Depending on the nature of the proposal, this should be assessed not only in terms of the availability of consumer expenditure to support a commercial scheme (taking into account not only existing provision, but also committed developments, and also proposals - i.e. the proposals of this Plan, and of other up-to-date development plans and Supplementary Planning Guidance or Documents - in Walsall Borough and in surrounding areas), but also evidence of the adequacy of existing provision in the area (including its accessibility for people within the catchment area of the proposed development) and/or public support for an expression of community need.

II. The development must be shown to accord with the sequential approach (see paragraphs 5.4 - 5.7), there being no more centrally located sites, buildings or opportunities which could be used to serve the catchment area of the use proposed."

NPPF Paragraph 91 states that *"Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if*

suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.”

The development represents a town centre use in an out of centre location which has failed to be justified under the sequential test and no evidence has been provided to demonstrate the need for the proposed use, considering the existing local provision. The Design and Access statement acknowledges that the proposed use is contrary to local planning policy but does not offer justification of any significance.

Even if the size of the unit were reduced, it is unlikely that the proposal could be shown to improve access to meet local needs under BCCS policy CEN6, as there are two convenience stores on the opposite side of the highway within 100m of the application site, as well as an afro Caribbean food store in a unit opposite the current application premises.

Furthermore, the area on the opposite side of the road described as overflow parking serves the existing premises on that side of the road so should not be considered as additional parking.

The principle of the use is therefore contrary to BCCS CEN7, saved UDP policy S7 and NPPF paragraph 91.

Design, layout, and character

There are no proposed changes to the existing site layout. The introduction of a shop frontage to the site building would reflect the character of the locality where there are a number of retail units offering neighbourhood level provision. The proposed development would accord with BCCS policy ENV2 and saved UDP policies GP2 and ENV32.

Amenity of neighbours and amenity of future occupiers

Environmental Protection is of the opinion there are no significant industrial/commercial noise impacts that are material planning considerations for this application.

The areas to the southern and south-eastern sides of the application site are residential. It is considered that the proposed use would not cause significant additional harm to the amenity of these neighbouring occupants by way of noise or comings and goings, beyond that generated by the extant use of the building as a warehouse and existing uses in the locality which are a mix of light industrial and retail uses. The proposed use is considered to comply with the requirement of saved UDP policy GP2.

Highways

The site is accessed by a pedestrian / vehicle crossover via Walsall Road (B4464) on the north boundary of the site. Walsall Road is a district distributor road and is subject to a 30mph speed limit. There are parking restrictions on Walsall Road.

Walsall Saved UDP Policy T13 outlines the following car parking requirements for the existing and proposed use:

Planning Use Class	Policy Requirement	Required Parking Provision
B8	1 car park space per 50m ² of gross floorspace up to 250m ² ; then 1 space per 100m ² up to 2500m ² ; then 1 space for every 500m ² of gross floorspace	6no. spaces
Food and convenience goods shops (planning use class E(a))	1 car park space per 14m ² of gross floorspace	21no. spaces.

The development proposals include 11no. car parking spaces inclusive of 1no. Disability Discrimination Act compliant space. The Design and Access Statement calculates the parking requirement of the use for the trading floor area only. The Local Highway Authority have advised that this calculation is incorrect and should be calculated based on the floor area of the entire unit.

The Local Highway Authority have therefore raised concerns with the proposed car parking provision as the development would only provide 52% of the maximum required provision. There is concern that the insufficient parking provision could lead to an overspill of on-street parking on Walsall Road (B4464) which is a district distributor road with peak hour parking restrictions on the highway around the entrance to the site between the hours of 8.00am-8.30am and 4.00pm-6.30pm Mondays to Fridays with full parking restrictions around the nearby junctions.

The block plan submitted with the application refers to an overflow car park on the opposite side of Walsall Road to the site. This proposed overflow car parking area serves 3 retail units opposite the application site as permitted by application 18/0864. It was observed in the planning report for that application that to accord with saved UDP policy T13, the three units would require 27 parking spaces. Only 17 spaces could be provided, and the application was supported 'on balance' with a shortfall of 10 spaces. Therefore, given the existing shortfall of parking at the proposed overflow car park, any additional parking requirement from the proposed development could result in more vehicles being displaced onto the surrounding highway. In addition, there is no safe pedestrian crossing for customers accessing the proposed convenience store from the overflow car park.

The development fails to provide car parking provision to meet its own operational needs, contrary to the requirements of saved UDP policy T13, and saved UDP policy GP2. Displacement of vehicles onto the highway and lack of safe pedestrian crossing from use of the proposed overflow car park could impact on highway and pedestrian safety, contrary to the requirements of the NPPF paragraph 110b.

Flood Risk / Drainage

The front 10.5m of the application site falls within Flood Zone 2 with the limits of Flood Zone 2 being approximately 8m away from the front elevation of the retail unit building. No Flood Risk Assessment has been submitted which is contrary to the requirements of the NPPF paragraph 167 and Walsall's Site Allocation Document Policy EN3, which require a Flood Risk Assessment for all developments in Flood Zones 2 and 3.

Ground conditions and environment

Environmental Protection is of the opinion there are no concerns regarding contaminated land or air quality that are material planning considerations for this application.

Conclusion and reasons for decision

This application has failed to provide sufficient information regarding the provision of a town centre use in an out of centre location by way of a sequential test or demonstrating a local need for the use. Furthermore, the development fails to provide sufficient on-site parking provision to meet its own needs.

No Flood Risk Assessment has been submitted which is contrary to the requirements of the NPPF paragraph 167 and Walsall's Site Allocation Document Policy EN3, which require a Flood Risk Assessment for all developments in Flood Zones 2 and 3.

On balance, this application is considered does not accord with local and national planning policies and guidance as set out in this report. As the use is already operational, and it is not clear how the applicant could demonstrate a need for the proposed use, and there is no further space to provide additional parking on site, it was not considered relevant to seek amendments to the application or additional details in this instance.

The material planning considerations weigh against the proposal such that it is recommended for refusal.

Recommendation

Refuse

Reasons for refusal

1. The application fails to provide a sequential test to justify the proposed development, which is a town centre use in an out of centre location. The application also fails to demonstrate the need for the proposed facility, taking into account the existing provision in the locality and evidencing the adequacy of existing provision in the area. It is therefore contrary to the requirements of

paragraph 91 of the NPPF, Black Country Core Strategy policy CEN7, and saved Unitary Development Plan policy S7.

2. The development fails to provide sufficient on-site car parking provision to meet its own operational needs, contrary to the requirements of saved UDP policy T13, and saved UDP policy GP2. Displacement of vehicles onto the highway and lack of safe pedestrian crossing from the proposed overflow car park could impact on highway and pedestrian safety, contrary to the requirements of the NPPF paragraph 110b.
3. The front 10.5m of the application site falls within Flood Zone 2. The application fails to provide a Flood Risk Assessment, which is contrary to the requirements of the NPPF paragraph 167 and Walsall's Site Allocation Document Policy EN3, which both set out the requirement for a Flood Risk Assessment for all developments in Flood Zones 2 and 3.

End of report