

## Economy, Environment and Communities, Development Management

### Planning Committee

Report of Head of Planning and Building Control on 06 October 2022

Plans List Item Number: 4

#### Reason for bringing to committee

Called in by Councillor Amo Hussain on the grounds of further discussion needed in relation to the deviation of the planning approval 20/0453.

#### Application Details

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

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

**Application Number:** 21/0804

**Case Officer:** Ann Scott

**Applicant:** Manjid Zeb

**Ward:** St Matthews

**Agent:** PAUL CLIFTON ASSOCIATES

**Expired Date:** 14-Oct-2021

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

**Time Extension Expiry:**



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#### Recommendation

Refuse

## Proposal

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

## Site and Surroundings

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

## Planning History

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

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

## Relevant Policies

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

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

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

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

- **NPPF 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 5 – Delivering a sufficient supply of homes**
- **NPPF 12 – Achieving well-designed places**

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

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

all parties involved. Conditions that are required to be discharged before development commences should be avoided unless there is a clear justification.

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

### **Reducing Inequalities**

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

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

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

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

Section 149(6) of the 2010 Act confirms that compliance with the duties may involve treating some people more favourably than others. The word favourably does not mean 'preferentially'. For example, where a difference in ground levels exists, it may be perfectly sensible to install some steps. However, this would discriminate against those unable to climb steps due to a protected characteristic. We therefore look upon those with a disability more favourably, in that we 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
- H1: Renewal of Existing Residential Areas
- T13: Parking Provision for Cars, Cycles and Taxis

### **Black Country Core Strategy**

- CSP4: Place Making
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- ENV3: Design Quality

### **Supplementary Planning Documents**

#### **Designing Walsall**

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

#### **Air Quality SPD**

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

#### **Conserving Walsall's Natural Environment**

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

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

Survey standards

- NE4 – Survey Standards

The natural environment and new development

- NE5 – Habitat Creation and Enhancement Measures

- NE6 – Compensatory Provision

Development with the potential to affect trees, woodlands and hedgerows

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

### **Consultee Comments**

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

West Midlands Fire Officer – comment on fire safety matters.

Severn Trent Water – no objections.

### **Neighbour and interested Parties Comments**

2 no. objections from third parties with regard to the following;

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

### **Determining Issues**

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

### **Assessment of the Proposal**

#### **Cannock Chase SAC and HRA**

Pursuant to the Habitats Directive (92/43/EEC), where a plan or project is not connected with the nature conservation management of a European designated site, the competent authority must determine whether the plan or project is likely to have a significant effect on the site, either alone or in combination with other plans or projects. This is reflected in national law in the Conservation of Habitats and Species Regulations 2017 (“Habitats Regulations”), which place a duty upon competent authorities to consider the potential for effects upon sites of European importance

prior to granting consent. This is referred to as a screening assessment. If likely significant effects are identified by the screening assessment, the competent authority must then undertake an Appropriate Assessment of the implications.

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

Walsall Council is not yet part of the SAC Partnership although Cabinet on 7th September 2022 agreed to join. However, due to the reference to a 15km zone of influence, Walsall Council is currently considering its position in relation to impacts on the Cannock Chase SAC and mitigation. It must ensure that planning decisions do not have any negative impact on the SAC and, if they do, it must either refuse permission or secure appropriate mitigation measures.

On 1st July 2022 the Head of Planning and Building Control wrote to all applicants and agents whose applications fall within 15km of the Cannock Chase SAC to indicate that whilst Walsall Council was considering its position, they may consider it appropriate to submit a Habitats Regulation Assessment for their proposed development in Walsall Borough as part of their proposed mitigation.

The applicant/agent did not submit any additional information. The Project has been screened to identify whether potential effect pathways between the Project and the SAC are present which are likely to result in significant effects upon the SAC. The screening exercise carried out on April 1st 2022 by the SAC Partnership authorities found likely significant effects on the SAC arising as a result of increased recreational activity from new residential development and related population growth that is likely to disturb the ground. A 21/12/12 Cannock Chase SAC Visitors Survey investigating visitor access patterns found that the majority (75%) of visitors originated from within a 15km distance of the SAC (also supported by 2018 visitor survey data) and The Cannock Chase SAC Planning Evidence Base Report Stage 2 (12/07/21) determined that within this 15km 'zone of influence', measures to reduce recreational pressure would be most effective.

Having regard to the location of the development site, its nature, proximity to the SAC and all other relevant information

**IF THERE IS A LIKELY SIGNIFICANT EFFECT:** As a likely significant effect on the SAC was identified, officers carried out an Appropriate Assessment to assess the likely significant effects on the integrity of the SAC and its conservation objectives and to identify ways to avoid or minimise those adverse effects. Officers consulted with a financial contribution towards mitigation of impacts upon the SAC,

Applying a precautionary approach, the Appropriate Assessment concluded that [the proposal fails the integrity test and an adverse effect on site integrity cannot be ruled out. As such, the proposal in its current form must be rejected and planning permission cannot be granted.

Mitigation measures are needed to avoid adverse effects on the SAC and these can be adequately secured by condition. As such the proposal passes the integrity test on the basis that there is no reasonable scientific doubt that the proposal will not have an adverse effect on the integrity of the SAC.

**IF THE PROPOSAL FAILS THE INTEGRITY TEST:** As the proposal failed the integrity test, officers have considered whether derogations apply which would enable the proposal to be allowed. To qualify for derogation, all three of the following legal tests must be met:

- (i) there are no feasible alternative solutions that would be less damaging or avoid damage to the SAC;
  - (ii) the proposal needs to be carried out for imperative reasons of overriding public interest; and
  - (iii) the necessary compensatory measures can be secured (to fully offset the damage which will or could be caused).
- Officers concluded that the derogations did not apply to this proposal and planning permission cannot be granted.

## **Principle of development**

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

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

Whilst in principle the development there has already been a permission granted. The site does involve a new replacement dwelling as the existing is not yet occupied. The site is caught within the 15 km zone of the Cannock Chase SAC. No information has been put forward in the submission in relation to mitigation measures or an appropriate assessment for the SAC.

## **Housing Need**

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

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

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

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

### **Residential amenities of existing and future occupiers**

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

### **Highway safety**

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

There are no other highway safety concerns and the proposal accords with The application is considered to accord with “saved policies” T7 - Car Parking T13: Parking Provision for Cars, Cycles and Taxis, and the Black Country Core Strategy Policy TRAN2: Managing Transport Impacts of New Development.

### **Flood Risk and Drainage**

The application site lies in Flood Zone 1 at the lowest risk of flooding as defined on the Environment Agency Flood Map for Planning and at low risk of surface water flooding. The development is considered subject to suitable conditions to secure

means of sustainable drainage not be likely to increase flood risk or surface water flood risk to adjacent sites.

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

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

### **Ecology/Trees**

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

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

### **Local Finance Considerations**

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

This application proposes 1 new homes.

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

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

## Conclusions and Reasons for Decision

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

## Positive and Proactive Working with the Applicant

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

## Recommendation

Refuse

## Conditions OR Reasons for Refusal

1. This application falls within the 15km zone of influence relating to the Cannock Chase Special Area of Conservation (SAC) and has failed to provide any information in relation to likely impacts on the SAC arising from the proposed addition of 2 dwellings and has failed to provide any potential necessary mitigation measures. This proposal is therefore contrary to the Conservation of Habitats and Species Regulations 2017, Black Country Core Strategy Policies CSP3 (Environmental Infrastructure), CSP4 (Place-Making) & ENV1 (Nature Conservation), UDP Saved Policy ENV23 (Nature Conservation), SAD Policy EN1 (Natural Environment Protection, Management and Enhancement) and the NPPF.
2. The proposed development is considered to adversely impact on the amenities of adjoining properties, by reasons of its cumulative bulk size and siting in proximity to the boundaries with 72 and 76 Mellish Road, and is detrimental to the existing amenities by reason of an overbearing impact and undue sense of dominance and enclosure. The proposed rear extension in particular runs along the boundary with number 76 Mellish Road whilst single storey, the rearward projection of the development infringes the 45-degree rule by approximately 3.2 metres to the rear ground floor window of 72 Mellish Road. The dwelling to be retained is less than 0.9 metres from the boundary with adjoining properties. Contrary to the Saved Unitary Development Plan Policy GP2 (Environmental Protection), and Policies DW1 (Sustainability), DW2 (Safe and Welcoming places) and DW6 (Legibility). Of the Designing Walsall SPD.

**END OF OFFICERS REPORT**