



Walsall Council

Planning Committee

Thursday 7 March 2024 at 5:30pm

Meeting Venue: Council Chamber at the Council House, Lichfield Street, Walsall

[Livestream Link](#)

Membership:

Councillor M. Bird (Chair)
Councillor M. Statham (Vice-Chair)
Councillor B. Bains
Councillor H. Bashir
Councillor P. Bott
Councillor M. Follows
Councillor N. Gandham
Councillor A. Garcha
Councillor A. Harris
Councillor C. Horton
Councillor A. Hussain
Councillor I. Hussain
Councillor K. Hussain
Councillor R. Larden
Councillor R. Martin
Councillor J. Murray
Councillor A. Nawaz
Councillor S. Samra
Councillor A. Underhill
Councillor V. Waters

Quorum:

Seven Members

Democratic Services, The Council House, Walsall, WS1 1TW
Contact name: Edward Cook Telephone: 01922 653204 Email: edward.cook@walsall.gov.uk
[Walsall Council Website](#)

**If you are disabled and require help to and from the meeting room,
please contact the person above**

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

Specified pecuniary interests

The pecuniary interests which are specified for the purposes of Chapter 7 of Part 1 of the Localism Act 2011 are the interests specified in the second column of the following:

| Subject | Prescribed description |
|---|---|
| Employment, office, trade, profession or vocation | Any employment, office, trade, profession or vocation carried on for profit or gain. |
| Sponsorship | <p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by a member in carrying out duties as a member, or towards the election expenses of a member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Regulations (Consolidation) Act 1992.</p> |
| Contracts | <p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p> |
| Land | Any beneficial interest in land which is within the area of the relevant authority. |
| Licences | Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer. |
| Corporate tenancies | <p>Any tenancy where (to a member's knowledge):</p> <p>(a) the landlord is the relevant authority;</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p> |
| Securities | <p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to a member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either:</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one</p> |

| | |
|--|--|
| | hundredth of the total issued share capital of that class. |
|--|--|

Schedule 12A to the Local Government Act, 1972 (as amended)

Access to information: Exempt information

Part 1

Descriptions of exempt information: England

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:
 - (a) to give any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
8. Information being disclosed during a meeting of a Scrutiny and Performance Panel when considering flood risk management functions which:
 - (a) Constitutes a trades secret;
 - (b) Its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the risk management authority);
 - (c) It was obtained by a risk management authority from any other person and its disclosure to the public by the risk management authority would constitute a breach of confidence actionable by that other person.

Part 1 – Public Session

1. Apologies

2. Declarations of Interest

3. Deputations and Petitions

4. Minutes of the Previous Meeting

To approve and sign the minutes of the meeting held on 8 February 2024.

Copy enclosed (pp.6-10)

5. Local Government (Access to Information) Act, 1985 (as amended):

To agree that the public be excluded from the private session during consideration of the agenda items indicated for the reasons shown on the agenda.

6. Response to local plan consultations – Cannock Chase and City of Wolverhampton Councils

Copy enclosed (pp.11-17)

7. Application list for permission to develop:

- a) Items subject to public speaking;
- b) Items 'called-in' by members
- c) Items not subject to 'call-in'

Copy enclosed (pp.18-59)

8. Date of next meeting

The date of the next meeting will be Thursday 25 April 2024.

Minutes of the Planning Committee held in The Council Chamber, Walsall Council House

Thursday 8 February 2024 at 5:30pm

Committee Members present:

Councillor M. Bird (Chair)
Councillor M. Statham (Vice-Chair)
Councillor P. Bott
Councillor N. Gandham
Councillor A. Harris
Councillor A. Hussain
Councillor I. Hussain
Councillor K. Hussain
Councillor R. Larden
Councillor R. Martin
Councillor J. Murray
Councillor A. Nawaz
Councillor S. Samra

Officers Present:

| | |
|-------------|--|
| P. Venables | Director – Regeneration and Economy |
| A. Ives | Head of Planning and Building Control |
| M. Brereton | Group Manager – Planning |
| M. Crowton | Group Manager – Transportation and Strategy |
| K. Gannon | Development Control and Public Rights of Way Manager |
| C. Dean | Senior Environmental Protection Officer |
| S. Hollands | Principal Planning Officer |
| K. Knight | Senior Transport Planner |
| A. Scott | Senior Planning Officer |
| A. White | Team Leader Development Management |
| L. Wright | Senior Planning Officer |
| N. Picken | Principal Democratic Services Officer |
| E. Cook | Democratic Services Officer |
| L. Cook | Assistant Democratic Services Officer |

Councillor Statham in the Chair.

81 Apologies

Apologies were received from Councillors Bains, Bashir, Follows and Garcha.

82 Declarations of Interest and Party Whip

There were no declarations of interest.

83 **Deputations and Petitions**

There were no deputations or petitions submitted.

84 **Minutes**

A copy of the Minutes of the meeting held on the 15 January 2024 was submitted.

[annexed]

Resolved

That the minutes of the meeting held on 15 January 2024, a copy having previously been circulated to each member of the Committee, be approved and signed by the Chair as a correct record.

85 **Local Government (Access to Information) Act 1985 (as amended)**

Exclusion of the Public

Resolved

There were no items for consideration in the private session.

86 **Application List for Permission to Develop**

The application list for permission to develop (the plans list) was submitted, together with a supplementary report which provided additional information on items already on the plans list.

(annexed)

The Committee agreed to deal with the items on the agenda where members of the public had previously indicated that they wished to address the Committee first. The Chair, at the beginning of each item for which there were speakers, confirmed they had been advised of the procedure whereby each speaker would have two minutes to speak.

The Chair advised the Committee that Plans List Item 2 Green Lane Motor Salvage had been withdrawn by the applicant.

The Chair advised that the Committee had been requested to defer Plans List Item 3 - 25 and 27 Little Aston Road. Councillor Statham **moved** that the order of proceedings be changed to consider Plans List Item 3 as the first item of business, to which the Committee **consented**.

87 **Plans List 3 – 23/0613 – 25 and 27 Little Aston Road**

The Chair advised that the Committee had been requested to defer Plans List Item 3 - 25 and 27 Little Aston Road.

A Member raised concerns that the applicant had had significant time to overcome objections to the application, that there was significant interest in the item and that under the Council's policy applicants ordinarily only had one opportunity to amend an application. These points were noted by the Chair.

It was **moved** by Councillor Statham and **seconded** by Councillor Bott and upon being put to the vote it was;

Resolved (Unanimously)

That application 234/0613 be deferred to a future meeting to allow further time for all parties to consider and respond to concerns raised by the local highway authority.

Councillor Bird entered the meeting and took the Chair.

88 **Plans List 1 – 22/1548 – Bescot Triangle, Bescot Road**

The Principal Planning Officer introduced the report of the Head of Planning and Building Control, including information contained in the supplementary paper.

(annexed)

There was one speaker in support of the application, Mr Crossen, who explained that the applicant had worked closely with officers and that there were few similar sites available for development.

Responding to questions Mr Crossen expressed the opinion that it was unlikely there would be issues regarding access arrangements with the landowner and that these would be reserved matters. The site and surrounding area experienced significant traffic but the proposed development would have minimal impact as, though a large site, the area being developed was relatively small.

Responding to questions to officers, the Group Manager (Planning) explained that the application was recommended for approval despite being contrary to the development plan, as at the time of the designation there were no potential developers. It was thus determined to keep the area as a green 'buffer'. Under the proposal much of the previously undeveloped land would remain and so on a balanced view it was deemed acceptable. Conditions regarding the public right of way had been included and could be developed at the reserved matters stage.

Debating the application, several Members expressed support for the proposal and stressed that the principle of access was well established.

It was **moved** by Councillor Nawaz and **seconded** by Councillor Bott and upon being put to the vote it was;

Resolved (unanimously)

That Planning Committee delegate to the Head of Planning & Building Control to grant planning permission for application 22/1548 subject to conditions and subject to:

- **The amendment and finalising of conditions;**
- **No further comments from a statutory consultee raising material planning considerations not previously addressed.**

89 **Plans List 4 – 23/1162 – 10 Downham Close**

The Senior Planning Officer introduced the report of the Head of Planning and Building Control, outlining the planning history of the site and the recommended reasons for refusal.

(annexed)

There was one speaker in support of the application, Mr Clifton, who expressed the opinion that the 'fallback' position (Ref: 20/0273) was inappropriate as that application had been made by a previous applicant and the additional increase in footprint relative to the 'fallback' was not 'unnecessary' as stated in the officer's report. He added that in his opinion the glazing and gabling was not excessive, that amendments had been made to reduce glazing and that 8 Downham Close had a similar three-gabled feature and so the proposal was not incongruous.

Responding to questions Mr Clifton described gable ends as the principal feature of Downham Close. Elmstead Close also had prominent gable ends. The land adjacent to the property, mentioned in previous Application 19/0725, had been built upon by the previous owner who had later sold 10 Downham Close separately. Amendments included removal of a two-storey glazed feature and though the footprint increase was significant, the existing property did sprawl, with several outbuildings. The remaining amenity space would be large as the current garden was approximately 250sq.m. Regarding the surrounding area Mr Clifton stated that there were similar properties but they were all different. There were significant extensions at Numbers 8 and 9 Downham Close and numerous extensions along the street.

Responding to questions to officers, the Senior Planning Officer explained that the considerations of the street scene and surrounding area were focussed on the immediate area and Downham Close, rather than the wider neighbourhood. There had been amendments, but the design was in essence still very similar to the previous application and the bulk and height of the proposal would be incongruous. Number 8 Downham Close did have three gables however two were clearly subservient to the main gabling and the plot at Number 10 was a prominent corner plot. As such, Number 8 did not

represent a completely similar design. Whilst significant amenity space would remain, from the street perspective the proposal filled most of the plot and would be unacceptable.

Debating the application Members discussed the subjective nature of the recommended reasons for refusal and debated whether the application would be out of place in the neighbourhood.

It was **moved** by Councillor Nawaz and **seconded** by Councillor K. Hussain and upon being put to the vote it was;

Resolved (10 in favour, 0 against)

That Planning Committee delegate to the Head of Planning and Building Control to grant planning permission for application 23/1162 and to include all necessary planning conditions, contrary to the officer's recommendations, for the following reasons:

- **The application represents a quality design in keeping with the built environment in the immediate locality;**
- **The application reflects nearby development and building lines, with multiple large properties of similar size in the area;**
- **The scale of development can be accommodated within the plot and complies with all Council policies;**
- **The support from the Highways authority subject to the proposed conditions indicated in the officer's report; and**
- **Conditions from the previously granted application can be incorporated where applicable.**

90 **Date of next meeting**

The date of the next meeting would be 7 March 2024.

There being no further business, the meeting terminated at 6:30pm.

Signed:

Date:



Walsall Council

PLANNING COMMITTEE

7 March 2024

REPORT OF HEAD OF PLANNING & BUILDING CONTROL

Response to local plan consultations – Cannock Chase and City of Wolverhampton Councils

1. PURPOSE OF REPORT

- 1.1 To consider and agree the council's response to local plan consultations from Cannock Chase District Council and City of Wolverhampton Council (CWC)

2. RECOMMENDATION

- 2.1 That Planning Committee agree responses based on those set out in the appendices, and authorise the Executive Director for Economy, Environment & Communities, in consultation with the Portfolio Holder for Regeneration, to submit the response to the respective councils.
- 2.2 That Planning Committee authorise the Head of Planning and Building Control to amend the final responses as necessary.

3. FINANCIAL IMPLICATIONS

- 3.1 None arising directly from this report.

4. POLICY IMPLICATIONS

- 4.1 Following the decisions of the four local authorities to cease work on the Black Country Plan (BCP), each authority is now beginning work on their own local plans. They are also individually responsible for responding to consultations on local plans being prepared by neighbouring local authorities, both within the Black Country and elsewhere.
- 4.2 Walsall and the other Black Country authorities are heavily constrained, with much undeveloped land being green belt. We are therefore reliant on authorities outside the Black Country to contribute to meeting some of our needs for housing and employment land through the allocation of land in their respective local plans, that is additional to that required to meet their local needs. Proposals in neighbouring authority areas can also impact on Walsall, especially where large developments are proposed close to the boundary that could for example increase traffic levels or result in more demand for schools and other services in Walsall.

- 4.3 Engagement with neighbouring authorities on local plan preparation currently takes place through the Duty to Cooperate (DtC) under the Localism Act 2011. This duty is proposed to be abolished under the Levelling Up and Regeneration Act 2023 (LURA 2023). It is proposed that the DtC is to be replaced by an 'alignment test' to be defined further and detailed in a future government policy statement. However, the date for commencement of the relevant provisions of the LURA 2023 and details of the alignment test have yet to be announced. The success of any DtC engagement may affect the scale of development need that will have to be met in the Walsall Borough Local Plan (WBLP).
- 4.4 The current consultation from Cannock Chase Council is in respect of the regulation 19 version of their local plan. This is the final version of the plan before it is submitted for examination. At regulation 19 stage, it is only possible to comment on whether the local plan is legally compliant and meets the tests of 'soundness' as set out in the national planning policy framework. Soundness is defined in the National Planning Policy Framework (NPPF).
- 4.5 The previous stage of the Cannock Chase plan, the preferred options, which was published in 2021, proposed 500 homes additional to local need, equivalent to 25 per year, as a contribution to meeting the needs of Birmingham and the Black Country, with that amount at the lower end of the options available. The total number of homes proposed for the period 2018-2038 was 6,016, equivalent to 301 per year. The proportion of homes to be affordable (at least 20%) was also lower than the evidence of need, which calculated that 37% should be affordable.
- 4.6 The Black Country authorities also made detailed comments on the proposed wording of policies for traveller sites, employment land and the Hatherton Canal restoration (which is linked to the Cannock Extension Canal SAC, part of which lies in Walsall).
- 4.7 The regulation 19 plan is considered ambiguous in respect of the total number of homes proposed. It states that a minimum of 5,808 dwellings will be delivered over the period 2018 to 2040. This figure (264 per year) is derived from the government's standard method for local need based on a 22-year period but fails to include any additional numbers to contribute to the needs of the Black Country. The policy also still states however that a 500 home contribution will be made towards the needs of Birmingham and the Black Country. The total figure in the plan should therefore be 6,308 homes. Whilst this is slightly higher than that in the preferred options document, the annual rate is lower because the regulation 19 plan is to cover an additional two years.
- 4.8 It should be noted that over the period 2018-2023 a total of 2,489 net new homes were completed in the district, equivalent to 498 per annum.
- 4.9 The plan is supported by a number of supporting documents as evidence. The development capacity study states that there is capacity for 5,419 dwellings on land that is not in the green belt, plus a further 1,002 dwellings on sites that are subject to constraints. There is also capacity for 6,747 homes on sites that are within the green belt. The district is constrained by much of its area being designated as national landscape (formerly the area of outstanding natural beauty).

- 4.10 City of Wolverhampton Council began consultation on the issues and options document (regulation 18) for their local plan on 26 February 2024. The issues and options stage is about asking what matters the plan should address. As such, it does not contain specific policies. In the main, the plan proposes to repeat the policies and designations that were proposed in the draft Black Country Plan.
- 4.11 A key difference from the Black Country Plan however is that the CWC local plan does not propose to meet the city's needs for housing or employment land. The plan states that none of the options being consulted on involve release of green belt land for development, and no green belt sites will be considered for development or assessed as reasonable alternatives throughout the plan preparation process. This is based on the revision to paragraph 145 of the NPPF that was made in December 2023. This paragraph now states: once established, there is no requirement for Green Belt boundaries to be reviewed or changed when plans are being prepared or updated. Authorities may choose to review and alter Green Belt boundaries where exceptional circumstances are fully evidenced and justified, in which case proposals for changes should be made only through the plan-making process." As a result, it proposes to 'export' 11,413 homes to neighbouring authorities. This equates to approximately half the total need which is 21,720 homes over the plan period. 53 ha of employment land are also expected to be exported, which also equates to approximately half of the city's total need.
- 4.12 If the plan fails to provide for the city's needs, this will have significant adverse implications for neighbouring authorities. There is no indication that any offers have been made by neighbouring authorities to meet a the scale of these shortfalls. Unless these shortfalls can be met, there is considered to be a risk of the plan leading to a worsening of overcrowding, homelessness, housing affordability and unemployment both within the city and within neighbouring authority aress.
- 4.13 NPPF paragraph 35 continues to state that "plans are 'sound' if they are positively prepared, providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs, and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development". .

5. LEGAL IMPLICATIONS

- 5.1 Local planning authorities are currently subject to a Duty to Cooperate with neighbouring planning authorities with regards to strategic cross boundary planning matters. The extent of engagement with neighbouring authorities will be tested as part of the examination of the respective authority local plans.
- 5.2 Local plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. The NPPF states that plans are 'sound' if, amongst other requirements, they seek to meet the area's objectively assessed needs; and are informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development.

6. EQUAL OPPORTUNITY IMPLICATIONS

6.1 The local plans will be required to ensure the needs of all sections of the community are met through equality impact assessments in particular.

7. ENVIRONMENTAL IMPACT

7.1 The local plans are accompanied by a sustainability appraisal and Habitat Regulations Assessment, which are required to be updated as the plans are progressed.

8. WARD(S) AFFECTED

8.1 All.

9. CONSULTEES

9.1 Officers in Planning and Building Control have been consulted in the preparation of this report.

10. CONTACT OFFICER

Neville Ball – Principal Planning Policy Officer

neville.ball@walsall.gov.uk

11. BACKGROUND PAPERS

All published. Documents for the local plans can be viewed at the links in the appendices.

Appendix 1

Cannock Chase Local Plan – proposed Walsall Council response to regulation 19 local plan consultation

[Planning Policy | Cannock Chase District Council \(cannockchasedc.gov.uk\)](https://cannockchasedc.gov.uk)

Key Points

The consultation runs until 18 March 2024.

The previous stage of the Cannock Chase plan, the preferred options which was published in 2021, proposed 500 homes additional to local need to meet the needs of Birmingham and the Black Country, equivalent to 25 per year. This was at the lower end of the options available. The total number of homes proposed for the period 2018-2038 was 6,016, equivalent to 301 per year. The Black Country authorities commented that the housing capacity study that was published as evidence should clarify the total capacity of the area rather than confirming if there was capacity for this number. The proportion of homes to be affordable (at least 20%) was also lower than the evidence of need, which calculated that 37% should be affordable.

The Black Country authorities also made detailed comments on the proposed wording of policies for traveller sites, employment land and the Hatherton Canal restoration (which is linked to the Cannock Extension Canal SAC, part of which lies in Walsall).

The regulation 19 plan however is considered ambiguous in respect of the total housing requirement to be met by the plan. **Policy SO3.1** states that a minimum of 5,808 dwellings will be delivered over the period 2018 to 2040. This is the equivalent of 264 per year for local need based on the period 2018-2040 which is derived from the government's standard method. The policy also states that the plan will deliver 500 dwellings to contribute to the needs of the Greater Birmingham and Black Country HMA. If so, the policy should state clearly that provision will be made for a total of 6,308 dwellings rather than 5,808. The higher figure would appear to be the intended one, at least based on the 2023 capacity study which forms part of the supporting evidence. Paragraph 7.1 of the latter states that the 500 dwelling contribution gives rise to a need for land for 6,308 homes over the plan period.

NPPF (December 2023) paragraph 35 states that a plan is 'sound' if it is [amongst other requirements] positively prepared – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development. .

Policy SO3.2 states that for developments above 10 homes, the percentages of dwellings which should be affordable are between 20 and 35%. This requirement should be for developments of 10 or more homes to match the definition of major development in the GDPO. These percentages are also lower than the previously stated need for at least 37% to be affordable. Given that there will be no affordable housing requirement for sites of fewer than 10 homes, the requirement for larger sites should be greater than 37% to ensure the overall need is met. Any lower provision should be justified.

Other Issues

There appears to be a section numbering error between pages 6 and 12. Section 1. Non-Technical Summary jumps straight to 5. Local Plan Vision & Objectives.

On page 18 it states that the Cannock Chase Local Housing Needs Assessment identified a net annual need of 105 dwellings per year. It is assumed this should state 105 affordable dwellings per year.

Appendix 2

City of Wolverhampton Local Plan – proposed Walsall Council response to regulation 18 local plan consultation

<https://www.wolverhampton.gov.uk/planning/planning-policies/wolverhampton-local-plan/how-to-get-involved>

Key Points

The consultation runs until 10 April 2024

It is noted that the plan only proposes to meet approximately half the city's needs for housing or employment land, with the remainder expected to be exported to neighbouring authorities. There is no indication that any offers have been made by neighbouring authorities to meet the scale of these shortfalls. If the plan fails to provide for the city's needs, this will have significant adverse implications for neighbouring authorities in meeting their needs. There is therefore a risk of the plan leading to a worsening of overcrowding, homelessness, housing affordability and unemployment both within the city and within neighbouring authorities' areas.

The proposal not to allocate land for development that is currently designated as green belt, based on what is now paragraph 145 of the December 2023 NPPF, is noted. However, national planning policy should be read as a whole. NPPF paragraph 35 continues to state that "plans are 'sound' if they are positively prepared, providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs, and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development".

The consultation document contains options for housing and employment growth. However, it describes some of these as 'preferred' options. It is not appropriate to describe any particular option as 'preferred' at the regulation 18 stage. This would seem to be contrary to the Gunning principles. See

<https://www.local.gov.uk/sites/default/files/documents/The%20Gunning%20Principles.pdf> .

Furthermore, the decision not to include any option to allocate sites in the green belt would appear to be contrary to these principles.

Paragraph 5.20 of the document states that the four Black Country authorities have agreed an apportionment of the housing contribution from the Shropshire Local Plan which would result in some 593 homes being attributed to meeting needs arising in Wolverhampton. This is considered incorrect. Whilst a statement of common ground has been signed with Shropshire, no formal agreement has currently been made to apportion the offer from Shropshire between the individual Black Country authorities.



Development Management Planning Committee

Report of Head of Planning and Building Control on 07/03/2024

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| 2 | 22/0416 | 41, HIGH STREET, PELSALL, WALSALL, WS3 4LT Ward: Pelsall | RETENTION OF CHANGE OF USE TO HOT FOOD TAKEAWAY AND INSTALLATION OF EXTERNAL FLUE. | GRANT SUBJECT TO CONDITIONS | 40-50 |
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| | | | | | |
|--|--|--|---|--|--|
| | | | EXTENSION APPROVED BY APPLICATION 22/0902. | | |
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Planning Committee

Report of Head of Planning and Building Control on 7 March 2024

Plans List Item Number: 1

Reason for bringing to committee

Of public interest, potential departure from the development plan

Application Details

Location: THE SNEYD, 67, VERNON WAY, BLOXWICH, WALSALL, WS3 2LU

Proposal: PROPOSED ERECTION OF 5 NO. DWELLINGS WITH ASSOCIATED PARKING, LANDSCAPING, GARDENS AND HARDSCAPING WORKS

Application Number: 22/1117

Case Officer: Oliver Horne

Applicant: PSK Pubs Ltd

Ward: Bloxwich West

Agent: Jaspreet Bal

Expired Date: 04-Jan-2023

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

Time Extension Expiry:



Recommendation

Refuse

Proposal

Proposed erection of 5 no. dwellings with associated parking, landscaping, gardens and hardscaping works

Site and Surroundings

The application site is located on the outskirts of Bloxwich, approximately 1km northwest from the mainline railway station on the eastern side of Vernon Way. The site measures 0.25Ha and comprises a vacant area of hardstanding following the removal of a former public house.

The character of the area varies considerably from the east to the west of the application site. To the east the area has a suburban feel, characterised by mid-20th Century terraced housing. To the west the land is less developed, with the Sneyd Local Nature Reserve and lake situated to the south and west, and to its north is the Sneyd Community Association and boating / activities lake. Immediately to the south of the site is the former extended car park of the pub where development has commenced in relation planning permission reference 17/0979 for the erection of 3 no. 5-bedroom dwellings, installation of public greenway route, improvements to existing boundary treatments and landscape works. Further south are two isolated houses.

The Councils proposals Map identifies the site as being located within the Mossley/Dudley Fields Neighbourhood, as well as being within a Coal Development High Risk Area and the Green Belt. A public footpath abuts the site to the west where it joins onto Vernon Way and forks northwards and eastwards away.

Relevant Planning History

15/1117 - Outline application for demolition of public house and construction of 21 dwellings and access (access and layout to be considered). – **Withdrawn 4th April 2017**

17/0152 - First floor extension and change of use of vacant pub to 6 bed dwelling. – **Granted 12th April 2017**

17/0979 - Proposed re-development of existing former car park to public house to consist of the erection of 3 no. 5 bedroom dwellings, installation of public greenway route, improvements to existing boundary treatments and landscape works. **Granted 5th December 2018**

19/0220 - Outline application for demolition of former public house and erection of 14 no. apartments with access and layout to be determined. – **Refused 12th June 2019** on the *following* grounds:

1. The proposals represent inappropriate development within the Green Belt and no very special circumstances have been put forward sufficient to outweigh the harm this inappropriate development would cause to the character and openness of the Green Belt. As such the proposed development would be contrary to paragraphs 144, 145 and 146 of the NPPF 2018, Policy GB1 of the Walsall Site Allocation Document 2019 and the aims and objectives of the Black Country Core Strategy, in particular Policy CSP2.

- 2. The proposed layout would create a large building and hardstanding that would dominate the site and its surroundings, be out of character with the street scene and the surrounding pattern of development, adversely impact on the openness and character of the Green Belt and create a poor residential environment for the future occupiers. As such the proposals are considered contrary to The National Planning Policy Framework, policy GB1 of Walsall's Site Allocation Document 2019, policies HOU2, ENV2, ENV3 and CSP2 of the Black Country Core Strategy and saved policies GP2, H3 and ENV32 of Walsall's Unitary Development Plan.*
- 3. The submission fails to provide accurate up to date evidence about the possible presence of bats, or the impact on their roosts or habitats within the existing building or around the site. The submission is therefore contrary to saved Policy ENV23 of Walsall's Unitary Development Plan and Conserving Walsall's Natural Environment SPD.*
- 4. The site sits within a Development High Risk Coal Area and the submissions fails to include a Coal Mining Risk Assessment to establish the stability of the site for development, which is contrary to Policy ENV14 of Walsall's Unitary Development Plan.*
- 5. The layout of the proposed development would not integrate with the existing built development due to the high density which would be at odds with the surrounding built development along Vernon Way, contrary to the expectations of BCCS policy HOU2. For these reasons the proposal would be contrary to the aims and objectives of the National Planning Framework in particular policies 56, 58, 60, 61, 64, 79, 87, 88 and 89, The Black Country Core Strategy, policies CSP4, HOU2 and ENV3, and Walsall's Saved Unitary Development Plan policies, in particular GP2, and ENV32.*
- 6. The site sits within a remote location and fails to meet the requirements within Policies T11 and T12 for distance to local shops and public transport facilities and the level of parking proposed fails to meet the requirements of Policy T13 of Walsall's Unitary Development Plan.*
- 7. The proposed building and site layout design, with a single pedestrian access into the building, long corridors to serve all of the flats, front door having limited natural surveillance, lack of detail for securing the site, private amenity exposed to the public realm, lack of detail how the doors and windows of the proposed flats would be secured in a remote location would exacerbate and be at risk of anti-social behaviour to the detrimental impact of future occupiers and public safety. For these reasons the proposal would be contrary to the aims and objectives of the National Planning Policy Framework and the Walsall Council's Designing Walsall Supplementary Planning document.*
- 8. The submission fails to show compliance with Policy LC8 of Walsall's Unitary Development plan to justify the loss of the existing pub as a community facility.*
- 9. The proposal fails to include details of the proposed funding, management and maintenance of the Greenway to the frontage of the site, contrary to Policy LC5 (c) of Walsall's Saved Unitary Development Plan.*
- 10. The submission fails to demonstrate compliance with Policy LC1 of Walsall's Unitary Development Plan and Urban Open Space SPD for the delivery of Urban open Space contribution.*

Relevant Policies

National Planning Policy Framework (NPPF)

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

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

Key provisions of the NPPF relevant in this case:

- **NPPF 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 5 – Delivering a sufficient supply of homes**
- **NPPF 8 – Promoting healthy and safe communities**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**
- **NPPF 13 – Protecting Green Belt land**
- **NPPF 15 – Conserving and enhancing the natural environment**

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

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

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

National Planning Policy Guidance

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

Reducing Inequalities

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

Saved Policies of Walsall Unitary Development Plan

- GP2: Environmental Protection
- GP3: Planning Obligations
- GP5: Equal Opportunities
- GP6: Disabled People
- ENV7: Countryside Character
- ENV9: Environmental Improvement Initiatives
- ENV10: Pollution
- ENV14: Development of Derelict and Previously-Developed Sites
- ENV17: New Planting
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV24: Wildlife Corridors
- ENV32: Design and Development Proposals
- ENV33: Landscape Design
- JP7: Use of Land and Buildings in Other Employment Areas-
- H3: Windfall Sites on Previously Developed Land and Conversion of Existing Buildings-
- H4: Affordable Housing parts g, h, i and j
- T7 - Car Parking
- T8 – Walking

- T9 – Cycling
- T10: Accessibility Standards – General
- T11: Access for Pedestrians, Cyclists and Wheelchair users
- T13: Parking Provision for Cars, Cycles and Taxis
- LC8: Community Facilities

Black Country Core Strategy

- CSP4: Place Making
- CSP5: Transport Strategy
- DEL2: Managing the Balance Between Employment Land and Housing
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- HOU3: Delivering Affordable Housing
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality
- ENV8: Air Quality

Walsall Site Allocation Document 2019

HC2: Development of Other Land for Housing

HC3: Affordable Housing and Housing for People with Special Needs

CANNOCK CHASE SPECIAL AREA OF CONSERVATION (SAC) GUIDANCE TO MITIGATE THE IMPACT OF NEW RESIDENTIAL DEVELOPMENT (September 2022)

- EQ2: Cannock Chase Special Area of Conservation

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

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

Affordable Housing

AH1: Quality of Affordable Housing

- AH2: Tenure Type and Size
- AH3: Abnormal Development Costs
- AH4: Provision Location
- AH5: Off Site Provision

Air Quality SPD

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

Consultation Replies

Public Rights of Way: No objections to the proposed development. There are no Definitive Public Rights of Way across or adjacent to the area of the proposed development and therefore no public rights of way conditions or requirements.

Ecology: No objections on ecological grounds with both Cannock Chase SAC and ecological assessment sufficiently assessed as part of the assessment.

Local Highway Authority– Objections including width of footway, security issues, size and complexity of access point, access to Plot 2 the Greenway and maintenance of public greenspace.

Police Liaison Officer: No objection

Strategic Planning Policy: On balance the proposal can be supported on planning policy grounds, however, the interpretation of Para 154 g) is a matter of legal and planning judgement rather than a policy one.

Environmental Protection: No objections, subject to conditions relating to contamination and the provision of a construction management plan.

Archaeology: No objection

Carden Gas Ltd: No objection subject to an informative being included in any planning approval

Coal Authority: No objection subject to conditions relating to:

- 1) The undertaking of intrusive investigations prior to development taking place
- 2) The provision of a signed declaration by a suitably qualified person confirming safety of site prior to occupation

West Midlands Fire Service: No objections and provide general guidance to be dealt with by Building Regulations

Representations

No comments at time of writing

Determining Issues

- Principle of development
- Green belt assessment
- Cannock chase SAC and HRA
- Design, layout and character
- Amenity of neighbours and future occupiers
- Highways
- Ecology and Biodiversity Net Gain
- Ground Conditions and Environment
- Local Finance Considerations
- The Greenway

Assessment of the Proposal

Principle of Development

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

Paragraph 70 of the NPPF states that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. Under the provisions of Saved Policy ENV14 of the Walsall Unitary Development Plane, the Council encourages the reclamation and development of derelict and previously developed land wherever this is technically feasible and in accordance with other policies of the Plan. Saved Policy LC8 of the UDP states that the loss of community facilities, including public houses, will only be acceptable in the following four specific circumstances:

- I. There are other existing facilities, in an equally or more convenient location, which could accommodate any community activities displaced by the proposed development; or
- II. A replacement facility could be provided in an equally or more convenient location; or
- III. There is no longer a need for the facility, or for any other community use which could be appropriately provided on the site in accordance with other policies of this Plan; or
- IV. It would not be possible to retain the facility, or provide an alternative community facility because, despite all reasonable efforts, this would not be viable.

Under Objective 2 of the Walsall Site Allocation Document, the Council will strive to deliver sustainable communities through the development of new housing on vacant,

derelict, and under-used land (including redundant employment land), as well as the regeneration of existing housing areas to provide a range of homes that meet the needs of all members of the community. Under the provisions of Policy HC2 the provision of housing on other previously developed sites will be encouraged provided specific criteria are met, such as; the residential development would not conflict with any national or local designation relating to the site itself.

In refusing the previous planning application for a residential redevelopment of the site (19/0220) the principal of the loss of the existing pub as a community facility was included as a reason for refusal, as no justification was provided. In the time that has passed since this application was determined the existing public house has been demolished; this was noted by the Councils Enforcement Officer in March 2023. It is understood that Planning Enforcement have completed their investigation of this potential breach of planning control and no further action is being pursued for the demolition of the building.

As the demolition of the pub has already occurred, saved UDP Policy LC8 no longer applies and so the principal to develop the site is supported by Saved UDP Policies H3, HOU1, HC2, ENV14 and Objective 2 and Policy HC2 of the SAD and the NPPF, subject to satisfactorily addressing other policies, such as Green Belt.

Green Belt Assessment

This site lies in an isolated location within the Green Belt. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances (para 152 NPPF). Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness is clearly outweighed by other considerations (para 153 NPPF).

The NPPF paragraph 154 states that a local planning authority should regard the construction of new buildings as inappropriate development in the Green Belt, with some exceptions including part 'g' which is set out *below*:

g) 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; or – not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

Planning Practice Guidance states that the courts have identified a number of matters which need to be taken into account in making this assessment. These include, but are not limited to:

- openness is capable of having both spatial and visual aspects - in other words, the visual impact of the proposal may be relevant, as could its volume.
- the duration of the development, and its remediability - taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and
- the degree of activity likely to be generated, such as traffic generation.

Policy GB1 of Walsall's Site Allocation Document (SAD) states that inappropriate development as defined within the NPPF will not be supported in the Green Belt unless '*very special circumstances*' exist which clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm. Planning permission was approved for a first-floor extension and change of use of the existing public house into a 6-bedroom dwelling (ref. 17/0152); however, this was not implemented. There is no evidence that commencement works safeguarded this consent, and as such this permission is no longer extant, especially as the building that was to be extended has been removed.

In refusing the previous outline planning application for a development of 14 apartments on the site (ref. 19/0220), reason for refusal 1 stated that the proposed development constituted inappropriate development within the Green Belt. The officers report identified the vacant public house was in situ at that time and the officer considered the size, volume and position of the proposed building would adversely impact on the openness and character of the Green Belt. The proposals were larger than the existing pub and amounted to inappropriate development in the Green Belt, for which no very special circumstances were identified, in direct conflict with the NPPF.

The current proposal to erect five dwellings would be smaller in scale than the previous outline proposal, however, it is recognised that the proposed development may not represent disproportionate additions to the previous public house in terms of its floor area (22% increase in GIA). Nevertheless, the impact of the more expansive and prominent nature of the proposals including a new access road, parking and turning area, as well as gardens and new boundary treatments, is more contentious and adds a greater level of domestication to the green belt.

Notwithstanding the above, since the determination of the previous application for development, the existing public house has been demolished and application site cleared, leaving just an area of hardstanding. Consequently, any comparison assessment in terms of whether the current proposal represents disproportionate additions to or is materially larger than the existing pub is no longer relevant, as it no longer exists. Given the current situation, the proposed development of a pair of semi-detached, and 3 detached dwellings would have a significantly greater impact on the openness of the Green Belt than the current open site forming an inappropriate impact on the openness of the greenbelt, both visually and spatially. As the proposal spreads the built form, it is considered the footprint has been disaggregated which has a greater impact on the green belt. The other consideration is the duration of the development and the remendability of the site to an open space. Given the proposal is for housing, it means the level of harm to the green belt will be for a considerably extended time frame. Moreover, the proposed development does not provide for any identified affordable housing need within the area and, therefore, provides no policy backed mitigating circumstances in which the principle of the development of the site would be acceptable in the green belt. For the reasons given above, the proposed development constitutes inappropriate development that fails to satisfy Paragraph 154 of the NPPF and Policy GB1 of the SAD.

It has been taken into consideration that a similar development proposal (17/0979) for three 5-bedroom dwellings was approved on 5th December 2018 on land abutting the south of the application site, which previously formed the pub car park and is also

located within the Green Belt. Given the similarities between the two application sites, the following paragraphs assess the justification for the approval of this application, and its implications, or otherwise, on the current proposal for development. It should be noted that whilst this permission is no longer extant, it has been established that the construction of foundations have been substantially completed and the permission for this development is, therefore, safeguarded in perpetuity.

Planning permission for this adjacent development was recommended for refusal, however, the November 2018 planning committee concluded to approve the application against the recommendation for the following reasons:

- Site is in desperate need of redevelopment for the benefit of the wider community.
- This site has been redundant for a number of years.
- The site has seen increased numbers of antisocial behaviour.
- The site has been a cause for numerous cases of fly tipping.
- The site in question is previously developed land and is in desperate need for development.
- Residents are fully in support of the application.
- The proposals demonstrate the best use of land and bring forward the currently underused site.

The above justifications given by the Committee for approving the 2017 application do not individually or cumulatively amount to ‘*very special circumstances*’ as defined by Paragraph 154 of the NPPF. If the current proposal were to be assessed against the same justifications, the following reasoning for non-compliance would apply:

- There is no evidence that delivering some additional open market housing at this location would bring any community benefit and this is not a very special circumstance to outweigh the harm to the greenbelt.
- There are a number of vacant sites in the Borough better placed than this Green Belt site for redevelopment. This is not a very special circumstance for setting aside the harm to the Green Belt.
- The site potential for attracting anti-social behaviour is not a material planning consideration and cannot be used for a very special circumstance. There are other powers to deal with anti-social behaviour.
- If the site attracts fly tipping, the Council has section 215 powers to address this. The potential of fly tipping on a site is not a very special circumstance to overcome the harm to the Green Belt.
- Whilst the site can be considered as previously developed land, now the landowner has cleared the former building the lawful existing development comprises an area of hardstanding. Previously developed land is not a justification for development to overcome inappropriate development in the Green Belt, nor does it form a very special circumstance unless the proposal is judged to cause less than substantial harm, and it would contribute towards meeting an identified affordable housing need. (Para 154g NPPF). The proposal fails on both counts.
- Community support of a development in the Green Belt is not a very special circumstance that can outweigh the harm the development causes to its openness and character.
- The “best use of land” is not a criterion used to address the harm caused to the openness Green Belt set by the government or the courts, nor does it form a very special circumstance. Given the biodiversity depletion across the country, actually improving the natural environment of the site and replanting with diverse

local species would be the only way to demonstrate the much-needed improvement to the site.

The assessment of openness, impact or harm must be assessed based on the site as it is and there are several examples of relevant case law. As the building has been demolished, the public house is not now a consideration of the current planning application and the proposal without doubt has a greater impact on the openness of the Green Belt than the current open site. The fact that the land may be considered previously developed land is irrelevant, because the proposed development causes a greater harm/impact on the Green Belt than the existing open site, meaning that the exception provided by paragraph 154g would not apply in this instance.

Given the above reasoning, in terms of Green Belt Policy, the current proposal constitutes inappropriate development in conflict with Policy GB1 of Walsall's Site Allocation Document and the NPPF and is recommended for refusal.

Cannock Chase SAC and HRA

This proposed application is located within the 15km zone of influence of the Cannock Chase SAC and proposes a net increase of 5 dwelling/s. The Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations") place a duty on competent authorities (in this case Walsall Council) to consider the potential for effects upon sites of European importance prior to granting consent.

The applicant's submitted Habitat Regulation Assessment demonstrates that this development would result in an increase in recreational disturbance and significant harm of the SAC.

The mitigation payment of £329.83 (until 31st March 2024) per each net new dwelling is required in accordance with Black Country Core Strategy Policy EQ2 and the Habitat Regulations. This payment is non-negotiable.

The applicant completed and submitted the Habitat Regulations Assessment form. Whilst it is likely that the applicant will agree to pay the mitigation payments, this has not yet been arranged by way of a legal agreement and this has been included as a reason for refusal in order to reflect the current situation. It is acknowledged, however, that this refusal reason may be resolved in the event of an approval.

Design, Layout and Character

Paragraph 135 of the NPPF emphasises that policies should, inter alia, seek new development be visually attractive as a result of good architecture, layout and appropriate and effective landscaping; and sympathetic to local character and history, including the surrounding built environment and landscape setting'. Para 139 of the NPPF states 'Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents.

BCCS policy CPS4 requires all development to demonstrate a clear understanding of the historic character and local distinctiveness of the area and show how proposals make a positive contribution to place-making and environmental improvement. UDP Policy GP2 expects all developments to make a positive contribution to the quality of the environment and the principles of sustainable development and will not permit development which would have an unacceptable adverse impact on the environment.

Policy ENV32 states that poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted. The Urban Design Policies in Walsall SPD gives more detailed guidance with regard to the qualities should be sought from development to create a successful place.

In refusing planning permission for the previous outline planning application on the site (ref. 19/0220), reason for refusal 2 of the decision notice stated the following:

“The proposed layout would create a large building and hardstanding that would dominate the site and its surroundings, be out of character with the street scene and the surrounding pattern of development, adversely impact on the openness and character of the Green Belt and create a poor residential environment for the future occupiers. As such the proposals are considered contrary to The National Planning Policy Framework, policy GB1 of Walsall’s Site Allocation Document 2019, policies HOU2, ENV2, ENV3 and CSP2 of the Black Country Core Strategy and saved policies GP2, H3 and ENV32 of Walsall’s Unitary Development Plan”

The current application has sought to address the above refusal by proposing a significantly reduced redevelopment of the site. Units 3, 4 and 5 as identified on the proposed site plan would conform with the approved building line created by the approved development to the south, and the proposed height and proportions are also comparable. Whilst the general design of the proposed dwellings is broadly in keeping, the proposed dwellings include a gabled roof design which would conflict with the hipped design of the adjacent approved development. Consequently, the proposals would appear bulkier with a perceptible and unwelcome increased scale and mass.

Units 1 and 2 identified on the proposed site plan would sit forward of the building line created by the approved development to the south, and that of proposed Units 3, 4 & 5. These two units would also be positioned at right angles to the adjacent development and the highway. By virtue of their siting, design and proportions, proposed Units 1 and 2 would have an awkward relationship with the adjacent development and would upset the rhythm of adjacent development. Insufficient justification has been given for the introduction of these two units in terms of why they have been set forward to step out of line with the remainder of the development on this and the adjacent site.

For the reasons outlined above, in terms of design the proposal fails to comply with BCCS Policy CPS4, UDP Policies GP2 and ENV32, and fails to reflect local design policies DW4 and DW3 of the Urban Design Policies in Walsall SPD.

Amenity of Neighbours and Amenity of Future Occupiers Neighbouring Residents:

Under the provisions of Policy GP2 of the Walsall UDP the Council expect all developments to make a positive contribution to the quality of the environment and will not permit development which would have an unacceptable adverse impact.

Within the reasons for refusal of the planning application on the site ref. 19/0220 it was determined that the proposed development would have a detrimental impact upon the amenity of future occupiers in terms of the layout, access, surveillance and security and loss of privacy. This revised proposal has sought to address these concerns.

Proposed Unit 3 would be the closest of the proposed dwellings to the nearest existing residential property of No. 139 Glastonbury Crescent. This dwelling comprises of two storeys and is the end dwelling of a terrace of 4 properties which are set at right angles to the majority of the development that fronts the Crescent. The rear elevation of Unit 3 would be located 15m from the southern garden boundary of No. 139 and 17m from the flank elevation of the dwelling itself. The rear elevations of the other properties fronting onto the Crescent would be set approximately 45m from the rear elevations of Units 3, 4 and 5, with their gardens extending to a length of approximately 14m towards the site.

The above separation distances would ensure that sufficient space would be retained between the proposed development and the nearest neighbouring properties within Glastonbury Crescent and would ensure that daylight, privacy and outlook currently enjoyed by occupiers would not be materially impacted. By virtue of the proposed side-by-side orientation of Unit 5 with to the dwellings within the adjacent approved development to the south, the proposals would also ensure no unacceptable impact would be suffered by future residents of these properties once completed. All separation distances between the proposed development and the adjacent existing housing and adjacent approved housing are in excess of the minimum prescribed distances contained within Appendix D of the Designing Walsall SPD. The introduction of the proposed development would bring an intensification of use to the vicinity, however, the increased vehicular and pedestrian movements associated with the occupation of the new dwellings would be unlikely to impact neighbouring residents by way of disturbance or nuisance.

Overall, in terms of all the amenity issues detailed above, it is considered that the proposal would not have any unacceptable adverse impact on adjoining neighbours and the application is in compliance with Saved Policy GP2 of the Unitary Development Plan and the Designing Walsall SPD, subject to overcoming the harm to the greenbelt.

Future Occupiers:

Light impact, outlook and privacy:

No flank elevation windows are proposed in Units 1-4, and the windows in the flank elevations of Unit 5 would comprise obscure glazing and be fixed shut below 1.7m above internal floor levels. Proposed Units 3-5 are oriented side by side and in line with each other, therefore, there would be no loss of amenity in terms of any undue loss of privacy or harmful impact upon daylight between these properties. Proposed Units 1 and 2 are sited at right angles and in front of Units 3 and 4, and the rear garden of Unit 2 would be located less than 13m away from the primary window serving the front first-floor bedroom of Unit 3. Unimpeded views of the rear garden of Unit 2 would be available, however, the minimum required 13m separation gap between habitable windows and blank walls, as required by Appendix D of the Designing Walsall SPD, would be satisfied. Consequently, in terms of the daylighting, privacy and outlook, potential future occupiers of the proposed development should be satisfactorily safeguarded.

If planning permission were to be approved, then a suitably worded condition requiring that any side facing windows in the proposed development should be obscure glazed and fixed shut below 1.7m above internal floor areas. However, as the application is being refused on other grounds, the imposition of such a condition is not necessary.

Standard of accommodation

The National Design Guide 2021 forms part of the Governments Planning Practice Guidance and provides detailed advice pertaining to the principles of good design. The National Design Guide and Technical Housing Standards – nationally described space standard (DCLG March 2015) sets out minimum floor areas for residential development.

The proposed development provides two 3-bed dwellings (108sqm GIA, over 3 stories), two 4-bed dwellings (158sqm GIA, over 3-storeies), and one 5-bed dwelling (150sqm GIA, over 2-storeis plus significant loft space). These proposed dimensions are in compliance with the above standards and the proposals would provide a sufficient quantum of internal living space for future occupiers. All proposed bedroom sizes meet the minimum requirement and adequate storage could be provided within the internal layouts.

Private amenity space:

The guidance contained within Appendix D within the Designing Walsall SPD advises gardens have a minimum length of 12m or a minimum area of 68sqm usable space. All the proposed gardens fall short in terms of the required length, ranging from 9m (plot 1) to 11m (plot 3). However, in terms of useable areas, adequate garden spaces can be provided, ranging from 65sqm (plot 1) to 203sqm (plot 5). Consequently, in terms of amenity space, the proposals are considered to provide sufficiently sized usable gardens for future occupiers.

Overall, in terms of the standard of accommodation for future occupiers, the application is in compliance with Saved Policy GP2 of the Unitary Development Plan, the Designing Walsall SPD, The National Design Guide 2021 and the nationally described space standard (DCLG March 2015) subject to overcoming the harm to the green belt.

Highways

Policy TRAN2 requires development to manage its transport impacts. Policy GP2 of the UDP requires development to be accessible by a choice of means of transport and to provide adequate parking provision. Policy T7 requires an adequate level of car parking to meet operational needs whilst not exceeding any maximum parking standards that are specified within Policy T13. Policy T13 requires provision of 2 spaces per 3-bedroom dwelling and 3 spaces per dwelling with 4-bedrooms or above. The Air Quality SPD requires that electric vehicle charging points and cycle/electric cycle parking provision is provided within new development.

The proposed development provides private off-street parking for two cars per three-bedroom dwelling and 3 cars for the 4 and 5 bedroom dwellings in accordance with the above Policy. Vehicle tracking has been shown to demonstrate that a refuse truck could enter the development, turn, and exit in a forward gear.

The Highways Authority were consulted when the application was originally submitted, and a number of amendments were requested to the proposed layout, access, footpaths and parking. These amendments were subsequently made, and the proposal now appears to be acceptable. It is noted that the previous planning application on the site (ref. 19/0220) was refused planning permission and a reason for refusal included that the proposal failed to meet the requirements within Policies T11 and T12 for distance to local shops and public transport facilities. This previous proposal also failed to meet parking standards, whereas this revised proposal, does not. Consequently, residents of the proposed development would be less reliant upon walking and public transport and the proposal is acceptable.

On balance, the proposed development is in compliance with Policy TRAN2 of the Core Strategy and Policies GP2, T7 and T13 of the UDP.

Ecology and Biodiversity Net Gain

Policy ENV1 of the Black Country requires development to safeguard nature conservation. Core Strategy Saved Policy EN1 of the Walsall UDP requires development to safeguard nature conservation and the Natural Environment SPD provides guidance on complying with the Black Country Core Strategy and Unitary Development Plan policies for the protection of the natural environment.

The reasons for refusal of the previous planning application on the site (ref. 19/0220) included that the submission failed to provide accurate up to date evidence about the possible presence of bats, or the impact on their roosts or habitats within the existing building or around the site. The current proposal was accompanied by a Preliminary Ecological Appraisal completed by Brown Fisher Environmental.

The Councils Ecology officer was consulted with respect to the application proposal and found that the site has been fully assessed in respect to potential onsite ecological features and protected species. The officer concluded that, should the precautionary methods of working and mitigation measures outlined within the report be implemented, no ecological reasons for refusal would remain. It was recommended that, should planning permission be approved, two planning conditions be imposed relating to a Biodiversity Enhancement Strategy and the implementation of the mitigation and precautionary measures outlined within the submitted Assessment.

Providing the above conditions are imposed the proposal is in compliance with Core Strategy Policy ENV1, UDP Policy EN1 and the Natural Environment SPD.

Ground Conditions and Environment

The NPPF identifies the protection and enhancement of the environment as being one of the three overarching objectives of sustainable development. Policies ENV8 of the Black Country Core Strategy, saved policies GP2, and ENV23 of the Walsall Unitary Development Plan, Policy EN5 and EN6 of the SAD and Conserving Walsall's Natural Environment SPD are all relevant in this regard.

The reasons for refusal of the previous planning application on the site (19/0220) included that the submission failed to include a Coal Mining Risk Assessment to establish the stability of the site for development. This current application was supported by a Coal Mining Risk Assessment, dated 21st October 2022 and prepared by Brown Fisher Environmental. This report appears to have been informed by a range of sources of information. The Coal Authority assessed the report and reviewed the available coal mining and geological information the authors of the Coal Mining Risk Assessment. The report concluded that there is a potential risk posed to the development by past coal mining activity and recommend intrusive site investigations should be carried out on site in order to establish the exact situation in respect of coal mining legacy features. Suggested conditions for inclusion within any planning permission were provided by the Coal Authority, however, as the application is being recommended for refusal on other grounds, this risk posed to development will have to form a reason for refusal.

Environmental Protection were also consulted with respect to the application proposals. The advice received informed officers that as the site is located within

close proximity to an area of the M6 motorway, which is identified as a 'First Priority Area' within the West Midlands Noise Action Plan on account of excessively high traffic noise levels and, therefore, should be given priority investigation in the context of noise action planning. Consequently, it was advised that applicant should conduct an acoustic survey prior to any planning permission being granted to characterise the area, with the subsequent aim of any remedial measures to meet internal levels specified within British Standard BS8233:2014. However, as the application is being recommended for refusal on other grounds it would not be expedient to request the undertaking of an acoustic survey, and this risk posed to amenity will have to form a reason for refusal.

Environmental Protection also advised that the site was likely to suffer from localised land contamination. In the event that planning permission were to be approved, it was advised that a condition should be imposed requiring investigations and any remediation measures be undertaken before any building work commences on site. However, as the application is being recommended for refusal on other grounds, this risk posed to public health will have to form a reason for refusal. A further condition requiring the submission of a Construction Management Plan was also recommended to safeguard against any undesirable impacts from the construction process.

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 5 new homes.

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

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

The Greenway

Policy T8 of the UDP the Council encourage the greater use of walking by means such as safeguarding, promoting and constructing a network of segregated Greenways. SAD Policy LC5 requires developers of sites which include or adjoin parts of the Greenway network to fund the construction or improvement Greenways, together with any necessary links from the Greenway network into the development.

The councils footpath officer was consulted with respect to the application proposals and raised no objections as there are no Definitive Public Rights of Way across or adjacent to the area of the proposed development, therefore, there are no public rights of way conditions or requirements. Notwithstanding the above, a designated Greenway runs north/south across the frontage of the site and across its access. The reasons for refusal of the previous planning application on the site (19/0220) included that the proposal failed to include details of the proposed funding,

management and maintenance of the greenway, contrary to Policy LC5 (c) of Walsall's Saved Unitary Development Plan.

The current proposed site layout shows that the alignment of the greenway relocated from the former vehicle access to the Sneyd Public House and onto the footway alongside Vernon Way. A proposed greenway is not part of the adopted highway maintainable at public expense, or a Definitive Public Right of Way and, therefore, no Stopping Up and Diversion Order is required to achieve the proposed revised greenway layout. The greenway, green space and site access do, however, appear to be in Walsall Council Ownership and Public Rights of Way made the *following* recommendations:

- *Clean and Green Services and Planning Policy are to be consulted on the proposed changes to the greenway alignment and green space, between the adopted footway and planning red boundary site outline.*
- *Asset Management are to be consulted on the proposed site access. As the site access is not part of the adopted highway maintainable at public expense, there may be a requirement for the developer and/or proposed residents to agree private access rights to the proposed development with Asset Management.*
- *The revised proposed greenway alignment for the current proposed development 22/1117 does not appear to meet up with the proposed greenway alignment for the adjacent development 17/0979. The proposed greenway alignment and design must provide continuous level and inclusive access between both development sites. The design should not create a cul-de-sac as this may be unsafe for inclusive pedestrian access and encourage ASB/ fly-tipping.*

It is accepted, subject to resolving the harm to the green belt, that the above matters could potentially be addressed through negotiation with the applicant, however, as the proposal is being recommended for refusal on other grounds, it is considered expedient to issue the recommendation rather than incur additional delays. Given the above, the previous reason for refusal of application reference 19/0220 has not been overcome by this revised proposal, which also fails to include details of the proposed funding, management and maintenance of the Greenway to the frontage of the site, contrary to Saved Policy LC5 of Walsall's Site Allocations Document.

Conclusions and Reasons for Decision

This application has failed to provide SAC mitigation payment and the proposal does not accord with local and national planning policies and guidance as set out in this report. The proposal represents inappropriate development in the Green Belt, fails to take account of the local distinctiveness and rural character of the area and the proposed built development would poorly relate to approved adjacent development in terms of scale, mass, design, density and layout. The proposal also fails to include details of the proposed funding, management, and maintenance of the Greenway.

Positive and Proactive Working with the Applicant

Officers have corresponded with the applicant's agent, however, in this instance there are no material planning considerations in support of the proposals. It is concluded that this application should be recommended for refusal.

Refuse planning permission.

Reasons

1. The proposal represents inappropriate development in the Green Belt and the applicant has failed to demonstrate that either very special circumstances exist or that the harm to the openness both spatially and visually has been outweighed by other considerations. The proposal is therefore in conflict with the NPPF 2023 paragraphs 152, 153 and 154, and Policy GB1 (Green Belt Boundary and Control of Development in the Green Belt) of Walsall's Site Allocation Document (SAD).
2. Proposed Units 1 and 2 would have an awkward relationship with the adjacent approved development, would upset the rhythm as perceived from the highway and cause harm to the open character and visual amenity of the local area. Insufficient justification has been given for the introduction of these two units in terms of why they have been set forward to step out of line with the remainder of the development on this and the adjacent site in conflict with Policies CPS4 (Place Making), ENV2 (Historic Character and Local Distinctiveness), ENV3 (Design Quality) and HOU2 (Housing Density, Type and Accessibility) of the Black Country Core Strategy, UDP Policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals), SAD Policy HC2 (Development of Other Land for Housing), and fails to reflect local design policies DW3 (Character), DW4 (Continuity) and DW6 (Legibility) of the Designing Walsall Supplementary Planning Document and section 12 of the National Planning Policy Framework (Achieving well-designed places).
3. The bulky gabled roof design of proposed Units 3, 4 and 5 would poorly relate to the approved adjacent development in terms of scale, mass and design, contrary to saved policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals) of the Walsall Unitary Development Plan, policies CSP4 (Place Making), ENV2 (Historic Character and Local Distinctiveness), ENV3 (Design Quality) and HOU2 (Housing Density, Type and Accessibility) of the Black Country Core Strategy, SAD Policy HC2 (Development of Other Land for Housing), DW3 (Character), DW4 (continuity) and DW6 (Legibility) of the Designing Walsall Supplementary Planning Document and section 12 of the National Planning Policy Framework (Achieving well-designed places).
4. The application fails to provide the necessary Cannock Chase Special Area of Conservation (SAC) mitigation. The proposed development falls within the 15km zone of influence relating to the Cannock Chase SAC and has failed to provide any information in relation to likely impacts on the SAC arising from the proposed addition of 6 dwellings and has failed to provide any potential necessary mitigation measures or a mechanism for securing them. The application is therefore contrary to the Conservation of Habitats and Species Regulations 2017, Policies CSP3 (Environmental Infrastructure), CSP4 (Place-Making) and ENV1 (Nature Conservation) of the Black Country Core Strategy, Saved Policy ENV23 (Nature Conservation and new development) of the Walsall Unitary Development Plan, Policy EN1 (Natural Environment Protection, Management and Enhancement) of the Walsall Site Allocation Document and the NPPF.

5. The applicant has failed to provide sufficient evidence in the form of proposed funding, management, and maintenance of the Greenway to the frontage of the site, contrary to Saved Policy LC5 (Greenways) of Walsall's Site Allocations Document.
6. The applicant has failed to undertake an appropriate investigation to determine the potential presence of land contamination and/or ground gas to address known ground conditions. In the absence of this evidence the Council is unable to assess whether conditions would be appropriate for the requirement of further investigations and/or mitigating measures to be implemented. The proposal is therefore contrary to Saved UDP Policies GP2 (Environmental Protection) and ENV14 (Development of Derelict and Previously Developed Sites).
7. The applicant has failed to provide sufficient evidence in the form of a noise survey to determine whether the site is suitable for residential development, including any amenity areas from motorway traffic noise. In the absence of this evidence the Council is unable to assess whether conditions would be appropriate for the requirement of further investigations and/or mitigating measures to be implemented. The proposal is therefore contrary to Saved UDP Policies GP2 (Environmental Protection).
8. The applicant has failed to undertake an appropriate investigation to determine the potential risk posed to land stability and public health from former coal mining activity. In the absence of this evidence the Council is unable to assess whether conditions would be appropriate for the requirement of further investigations and/or mitigating measures to be implemented. The proposal is therefore contrary to Saved UDP Policies GP2 (Environmental Protection) and ENV14 (Development of Derelict and Previously Developed Sites).

Notes to applicant

N/A

END OF OFFICERS REPORT



Planning Committee

Report of Head of Planning and Building Control on 7 March 2024

Plans List Item Number: 2

Reason for bringing to committee

Community Interest

Application Details

Location: 41, HIGH STREET, PELSALL, WALSALL, WS3 4LT.

Proposal: RETENTION OF CHANGE OF USE TO HOT FOOD TAKEAWAY AND INSTALLATION OF EXTERNAL FLUE.

Application Number: 22/0416

Case Officer: Ann Scott

Applicant: Mazzameals Ltd

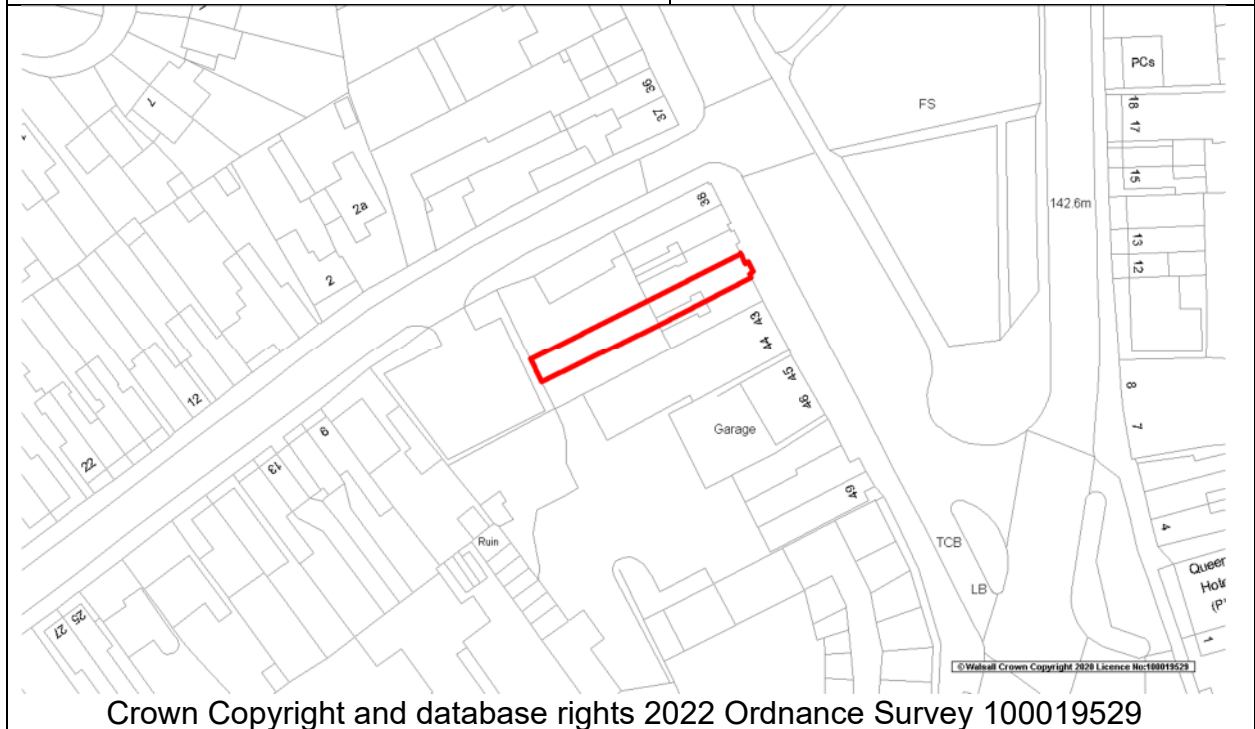
Ward: Pelsall

Agent: CT Planning

Expired Date: 29-Jun-2022

Application Type: Full Application: Change of Use

Time Extension Expiry: 14-Mar-2024



Recommendation

Grant subject to conditions

Proposal

The application proposes the retention of a change of use to hot food takeaway and installation of external flue at 41 High Street Pelsall, Walsall.

Site and Surroundings

The application site is known as Mazza's takeaway and forms part of a parade of two storey shops facing Pelsall Common. The site is situated within the Pelsall Common Conservation Area. The application site is situated in Flood Zone 1 as defined on the Environment Agency Flood Map for Planning. The site is situated in a high-risk area for legacy coal mining development and is situated within the Cannock Chase SAC.

Planning History

06/01431 New Steel Staircase in rear year – Approved 26 October 2006

07/0045/FL Change of use to Café A3 use – Approved 25 February 2007

10/1580/FL Variation of condition 2 of planning approval 07/0045/FL to vary the opening hours from 08:00 – 17:00 Hours Monday to Saturday to 08:00 to 22:00 hours Monday to Saturday and 09:00-22:00 hours Sunday – Approved 21 January 2011.

20/1182 - Temporary permitted development for change of use from class A3,A4 and Mixed (A3/A4) to hot food takeaway until 23rd March 2021. Now extended to 23rd March 2022 under permitted development as set out in Class DA Part 4 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020. – Permitted Development 05 October 2020. Extended to 23 March 2022.

Relevant Policies

National Planning Policy Framework (NPPF)

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

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

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 Allocations Document
- Unitary Development Plan
- Walsall Town Centre Area Action Plan

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 (Officer Summary)

Conservation Officer – Concerns regarding the flue stack and recommends it is enclosed in a brick chimney to reduce the visual impact on the character of the Conservation Area.

Strategic Planning Policy - Proposal is in Pelsall Local Centre. UDP Policy S10 allows for hot-food takeaways in centres subject to considerations including not affecting the amenity of existing dwellings (including on upper floors) by noise smell, disturbance, or traffic impact. Permission will not be granted where there is inadequate off-street parking and where fume extraction causes pollution or nuisance to neighbours.

There is publicly available off-street parking outside the proposal site either side of High Street. Whilst there is a residential unit above the proposal takeaway any loss of amenity appears to be considered with the submission of details of the flue and fan, silencer and building survey to provide an accurate assessment of potential impact, which appears to be mitigated.

The requirements under UDP Policy S10 regarding Planning Conditions over restricted opening times and residential amenity should be considered in the event of any permission being granted.

West Midlands Fire Officer – No Objections

Highways Officer – No objection the premises are located in the District Centre where hot food takeaway uses are expected. General public parking is available on the highway.

Environmental Health – No objections. EH have reviewed the application and have found the proposed odour extraction to be suitable.

Environmental Protection – No objection. The application relates to a commercial food premise; therefore, comments need to be sought from Environmental Health who would regulate the activity and investigate any nuisance complaint.

Environmental Protection's usual comments relate to requiring for an Applicant to address matters arising prior to any business commencing. Unfortunately, this application relates to a site where a hot food business has historically operated for several years, they have obtained a certificate of lawful use, and is retrospective with the business itself being operational for over a year.

On this basis, Planning Officers need to check with Environmental Health, whether they have received any complaints about noise and odour from the activity, which would usually have been addressed via planning conditions, if this application were to be made because of a new planning application. Environmental Protection have no separate comments to make.

West Midlands Police Architectural Liaison Officer – No objections

Public Health –Objection based on the number of hot food takeaways in the vicinity.

Officer comments – noted however, there is no policy basis for a refusal on these grounds.

Community Safety Team - It is recognised that on first opening, there were a number of issues of Antisocial Behaviour raised in the wider Pelsall community. Visitors to the business engaged in a number of nefarious activities which caused disturbance to residents. Therefore, the business was engaged by both the Community Protection Team and the Community Safety Team to resolve these issues. It should be noted that all the requests made to the proprietor were met with compliance. This site has, as a result been monitored and although subsequent complaints have been received and investigated, they cannot be evidenced despite many man hours dedicated to CCTV review etc. There have been no complaints that I am aware of with regard to the flue and its impact on local amenity.

Neighbour and interested Parties Comments (*Officer comments in italics*)

20 comments received objecting to proposal for the following reasons:

- Antisocial behaviour late at night
- Littering
- Inconsiderate parking outside the premises
- Noise and disturbance
- Loss of residential amenity
- Too many takeaways in Pelsall High Street

Determining Issues

- Principle of development
- Heritage assessment
- Cannock chase SAC and HRA
- Design, layout and character
- Amenity of neighbours and future occupiers
- Highways

- Flood Risk / Drainage
- Ground Conditions and Environment
- Planning Obligations
- Other key determining issues

Assessment of the Proposal

Principle of Development

The principle of development has been established during the period of time since the application site was the subject of a certificate of lawful use to change from a Café A3 use to a hot food takeaway A5 use. The application site business employs 5 full time employees.

UDP Policy S10 allows for hot-food takeaways in centres subject to considerations including in Local Centres not affecting the amenity of existing dwellings (including on upper floors) by noise smell, disturbance, or traffic impact. Permission will not be granted where there is inadequate off-street parking and where fume extraction causes pollution or nuisance to neighbours.

Walsall Site Allocation Document SLC1- Local Centres and **SLC2** – Local Centre Development opportunities.

Walsall UDP Saved **Policy EN5 Development in Conservation Areas**
Walsall UDP saved Policy T7 and T13 Car parking standards.

Saved UPD Policy EMP1 Providing for economic growth.

Saved UPD Policy ENV2 Historic character and Local distinctiveness.

National Planning Policy Framework 2023 Chapter 7 Ensuring the vitality of Town Centres. Paragraph 90 Planning policies and decisions should support the role that town centres play at the heart of local communities.

National Planning Policy Framework 2023 Chapter 8 Promoting Healthy and Safe Communities. Paragraph 96 Planning policies and decisions should aim to achieve healthy, inclusive and safe places in beautiful buildings which a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other through mixed use development, strong neighbourhood centres, street layouts that allow for pedestrian and cycle connections. b) are safe and accessible so that crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion. Through the use of well-designed clear and legible pedestrian and cycle routes which encourage active and continual use of public areas; and c) enable and support healthy lifestyles, especially where this would address local health and wellbeing needs.

National Planning Policy Framework 2023 Chapter 16 Conserving and enhancing the historic environment. Paragraph 200 in determining applications Local Planning Authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made to their setting.

Heritage Assessment

Paragraph 200 of the NPPF states “the LPA should identify and assess the significance of any heritage asset that may be affected by the proposals”. The site is within Pelsall Common Conservation Area, a designated heritage asset as defined by the NPPF. Paragraph 201 of the NPPF requires the applicant to describe the significance of the any heritage asset affected including their setting. An amended Heritage Statement has been submitted which states: “The flue is located in a visually constrained location in relation to the vast majority of the Pelsall Common Conservation Area and from the front of number 41 High Street. The flue is visible from near and middle-distance views from various points along the Eastern section of Ashtree Road, from appr the level of number 21 up to the access yard to the rear of the PDA. It is also visible from Ashtree Road Long Stay car park, from buildings around the outside of the yard, and the yard itself, whist the very top of the flue is visible above the single storey building fronting Ashtree Road, near the junction with High Street. All these viewpoints are within the Conservation Area. The materiality of the flue along with its dimensions and height make it an obtrusive feature, in the viewpoints described in the paragraph above. Whilst it is at odds with the surrounding historic built form and fails to enhance and preserve the character and appearance of the Conservation Area, it does not necessarily detract from the ability to appreciate and understand the key archaeological, historic and architectural factors which make up the significance of the Conservation Area as a whole.”

The Conservation Officer suggests that the flue is entirely clad in brick to match the vernacular-built form of the surrounding area. Brick cladding around the flue could be constructed to appear to all outward appearances as a chimney stack which would be in keeping with the historic built form of the Conservation Area. Amended drawings have been provided to demonstrate the flue being enclosed in a false brick chimney.

The construction of a false chimney stack around the flue to full height would offer a solution negating adverse impacts on the character and appearance of the Conservation Area. In accord with Paragraphs 200 to 202 of the NPPF which requires the Local Planning Authority to assess the harm to the significance of the designated heritage assets and to assess whether the harm equates to substantial harm or less than substantial harm. The retention of the use and the flue would have less than substantial harm to the significance of Pelsall Common Conservation Area, the scale of harm would be weighed as low. The proposal is considered to comply with the following policies NPPF 2023 Chapter 16 Paragraphs 200 to 202. The Walsall Unitary Development Plan saved policies GP2 General Principles, ENV29 Conservation Areas, ENV32 Design and Development Proposals, and the Black Country Core Strategy Policies ENV2 Historic Character and Local Distinctiveness, and ENV3 Design Quality.

Cannock Chase SAC and HRA

This proposed application is located within the 15km zone of influence of the Cannock Chase SAC and proposes a net increase of 0 dwelling/s. The Conservation of Habitats and Species Regulations 2017 (“Habitats Regulations”) place a duty on competent authorities (in this case Walsall Council) to consider the potential for effects upon sites of European importance prior to granting consent. This site does not include additional dwellings and therefore the LPA consider that the proposal would not adversely affect the Cannock Chase SAC.

Design, Layout and Character

The proposal to retain the use as a hot food takeaway following the temporary permitted development rights granted in 2020 to help cafes and food outlets keep trading during pandemic to help mitigate the effects of lockdown, the UK government introduced temporary changes in March 2020 to Planning Regulations for England, allowing food retailers to open for takeaway services beyond 'ancillary' level without needing to apply for planning permission through permitted development rights. Businesses are required to notify their local authority when they implement Permitted Development Rights.

The Introduction of these permitted development rights meant that businesses were free to switch between classes in order to meet the needs of the public while remaining in operation, albeit in a different capacity, that is, a restaurant could operate as a takeaway without planning permission. These rights were initially introduced for a period of 12 months (until March 2021). This was then extended by the Government until December (2021). This application seeks to retain the use for a hot food takeaway which was implemented in 2020 following the permitted development change of use rights. The application site is situated in a parade of existing shops within the Pelsall Local Centre. The application site is known as Mazza's.

There is no significant change in appearance of the premises other than the flue installed which is being sought for retention as part of the current application. A condition to secure the brick cladding materials is considered appropriate and a condition requiring the the implementation of the cladding. The relevant planning policies for consideration are as follows; the saved Walsall Unitary Development Plan Policy G2, General Principles, Policy S1 Definition of Town Centre Uses, S2, the hierarchy of centres, Policy S4 The Town and District Centres General Principles, S10 Hot food takeaways, restaurants and other A3 food and drink outlets. A3 use has now changed to Class A5 which is the sale of hot foot for consumption off the premises. The Black Country Core Strategy CEN5 District and Local Centres.

Amenity of Neighbours and Amenity of Future Occupiers

There are a number of comments from third parties with regard to the loss of amenity to the nearby locality from the operation of this temporary use as a hot food takeaway and do not wish to see this use made permanent. These include alleged noise and disturbance, inconsiderate parking, and littering/antisocial behaviour. The proposed use to be retained is considered to be appropriate to the character of a local area centre and other hot food establishments operate within the High Street Area of Pelsall. Due to government legislation changes allowing temporary permitted development rights for the use of Cafes to an A5 hot food takeaway to allow them to continue trading the use is established and appropriate to the local centre. If there are concerns regarding crime and anti social behaviour these are not solely related to the use of these premises as a hot food takeaway but reflect a wider range of societal issue that have increased this type of problem in recent years. Rowdy and inconsiderate behaviour and littering are issues which has been highlighted however there are other establishments in the local area such as other take away and restaurant establishments and public houses that may contribute to this behaviour. The area is covered by close circuit television cameras which are regularly monitored to assist in keeping the public safe in Pelsall. There are several public refuse bins within the vicinity of the application site for the disposal of refuse.

The application site use has been operating within the following hours since the use for a hot food takeaway has been implemented these are 1600 to 23:00 Monday to Saturday and 16:00 to 22:00 on Sundays and bank holidays. These can be controlled by a planning condition. Saved policy S10 of the Walsall UPD relates to Hot Food Take-Aways, Restaurants and other food and drink outlets. Considers these uses in town centre areas and in some shopping and commercial centres. Provided that the use must not adversely affect the amenities of existing or proposed dwellings including those on upper floors. In such locations the Council will impose conditions requiring the premises to close at 23:00 Mondays to Fridays and 23:30 hours on Saturdays. The proposed hours of operation are considered acceptable in relation to Policy S10.

There are no objections from the Environmental Health Section, Environmental Protection or Public Health regarding the use of the site for a hot food takeaway although public health does mention health concerns about additional hot food establishments in the locality. It is also worth noting that the lawful use of the property was a cafe. Which was in operation for a number of years prior to the use of the site as a hot food takeaway, so therefore no substantial change of use has occurred.

The Community Safety Team advises that it is recognised that on first opening, there were a number of antisocial behaviour issues raised in the wider Pelsall community. Visitors to the business engaged in activities which caused disturbance to residents. Therefore, the business was engaged by both the Community Protection Team and the Community Safety Team to resolve these issues. It should be noted that all the requests made to the proprietor were met with compliance. This site has, as a result been monitored and although subsequent complaints have been received and investigated, they cannot be evidenced despite many man hours dedicated to CCTV review etc.

Fear of Crime

Paragraph 135 (f) of the National Planning Policy framework seeks to ensure that planning policies and decisions create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

It is considered that there are no planning policy reasons why the proposed use could not be granted a permanent permission subject to conditions to control the hours of operation. The proposal is considered to comply with Unitary Development Plan Policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals, and ENV3 (Design Quality) and SPD Policies Designing Walsall annexe D, DW1, Sustainability, DW2 Safe and welcoming places, DW3 Character, the Designing Walsall urban design document. Together with the design advice in Chapter 12 of the revised NPPF 2023 Achieving well-designed places.

Highways

The Highways Authority have no objections in principle to the proposed use for a hot food takeaway which is expected in a local area shopping centre. In addition the Highway authority advises there is sufficient public parking available in proximity to the site including on street and public car parking within the Pelsall Green local area. The proposal is therefore considered to accord with the "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 and paragraph 115 of the NPPF 2023.

Flood Risk / Drainage

The application site is situated in flood zone one as defined on the Environment Agency Flood Map for Planning. The proposal is not considered to adversely affect the site and surrounding area from an increase in flood risk in accord with the Black Country Core Strategy ENV5: Flood Risk, Sustainable Drainage Systems, Urban Heat Island and NPPF Chapter 14.

Ground Conditions and Environment

The site is situated in an area at high risk of legacy coal mining development but does not involve built development but the ongoing use of an existing building. In accordance with the NPPF Paragraph 189 and saved policies GP2 and ENV14 of Walsall's Unitary Development Plan apply in relation to legacy coal mining and ground conditions.

Another key determining issues

It is considered that the imposition of safeguarding conditions in this instance to address the harm this development has brought to the location in relation to crime and antisocial behaviour, is considered reasonable. The restriction of opening hours of use to achieve a secure and safe environment for existing and future occupiers is recommended. In accordance with saved UDP policy ENV32, Designing Walsall SPD and the NPPF.

A key aspect being sustainable development creating better places for communities to live and work. Local Planning Authorities are expected to be clear about design expectations. Development Plans should set out a clear design vision of which the Designing Walsall SPD forms the Design Policy as part of the adopted Walsall Development Plan. A condition relating to the flue chimney is also recommended. The proposed development would provide an acceptable level of amenity to existing and future occupiers and is in accordance with the Unitary Development Plan Policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals, and ENV3 (Design Quality) and SPD Policies Designing Walsall annexe D, DW1, Sustainability, DW2 Safe and welcoming places, DW3 Character, the Designing Walsall urban design document. Together with the design advice in Chapter 12 of the revised NPPF 2023 Achieving well-designed places.

Conclusions and Reasons for Decision

Grant

On balance, this application is considered acceptable when assessed against the local and national planning policies and guidance as set out in this report. Account has been taken of the measures to mitigate the visual impact of the installed flue and encase within a false brick chimney to minimise the visual impact on the character of the Pelsall Common Conservation Area. In addition, the matters raised regarding amenity are considered in relation to the control of the hours of operation of the development to be retained.

Considering the above factors, it is considered that the application should be recommended for approval.

Decision Recommendation

Grant subject to conditions

Conditions

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:

- Site location plan received 31 March 2022.
- Amended Elevations Drawing 1547 received 29 January 2024
- Extraction silencer details received 31 March 2022

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).

3. The development hereby permitted shall not be open to customers otherwise than between the hours of 1600 hours to 23.00 hours Mondays to Saturdays and 16:00 hours to 2200 hours Sundays, Bank and Public Holidays

Reason: To protect the amenities of nearby residential occupiers in accordance with saved UDP policies S10, GP2 and ENV32.

4a) Notwithstanding the details as submitted on drawing 'Amended Elevations Drawing 1547 received 29 January 2024' and within 3 months of the date of this decision, prior to the installation of the brick chimney hereby permitted to screen the extraction flue details of facing materials that match, in size, colour and texture, as those which are used in the existing building and a scheme of implementation for the works shall be submitted to and agreed in writing with the Local Planning Authority.

4b) The development shall not be carried out otherwise than in accordance with the approved details and the approved materials shall thereafter be retained for the lifetime of the development.

Reason: To ensure the satisfactory appearance of the development and to comply with saved policies GP2 and ENV32 of the Walsall Unitary Development Plan.

Notes for Applicant

1. The Planning system recognises the following days as bank/public holidays, Easter Monday, last Monday in May, Last Monday in August, 26 December if it is not a Sunday and the 27 December in a year which 25 or 26 of December is a Sunday.

END OF OFFICERS REPORT



Planning Committee

Report of Head of Planning and Building Control on 7 March 2024

Plans List Item Number: 3

Reason for bringing to committee

Called in by a Councillor Andrew in the public interest.

Application Details

Location: 10, HAY HILL, WALSALL, WS5 3DN

Proposal: ERECTION OF FIRST FLOOR REAR BALCONY WITH FULL HEIGHT PRIVACY SCREEN TO SIDE ADJACENT NO. 9 HAY HILL AND RETROSPECTIVE PERMISSION TO RETAIN PLAIN GREY CONCRETE ROOF TILES AND TO RETAIN AN INCREASED ROOF RIDGE HEIGHT ABOVE THE 2 STOREY SIDE EXTENSION APPROVED BY APPLICATION 22/0902.

Application Number: 23/1509

Case Officer: Rebecca Rowley

Applicant: Mr Zak Martin

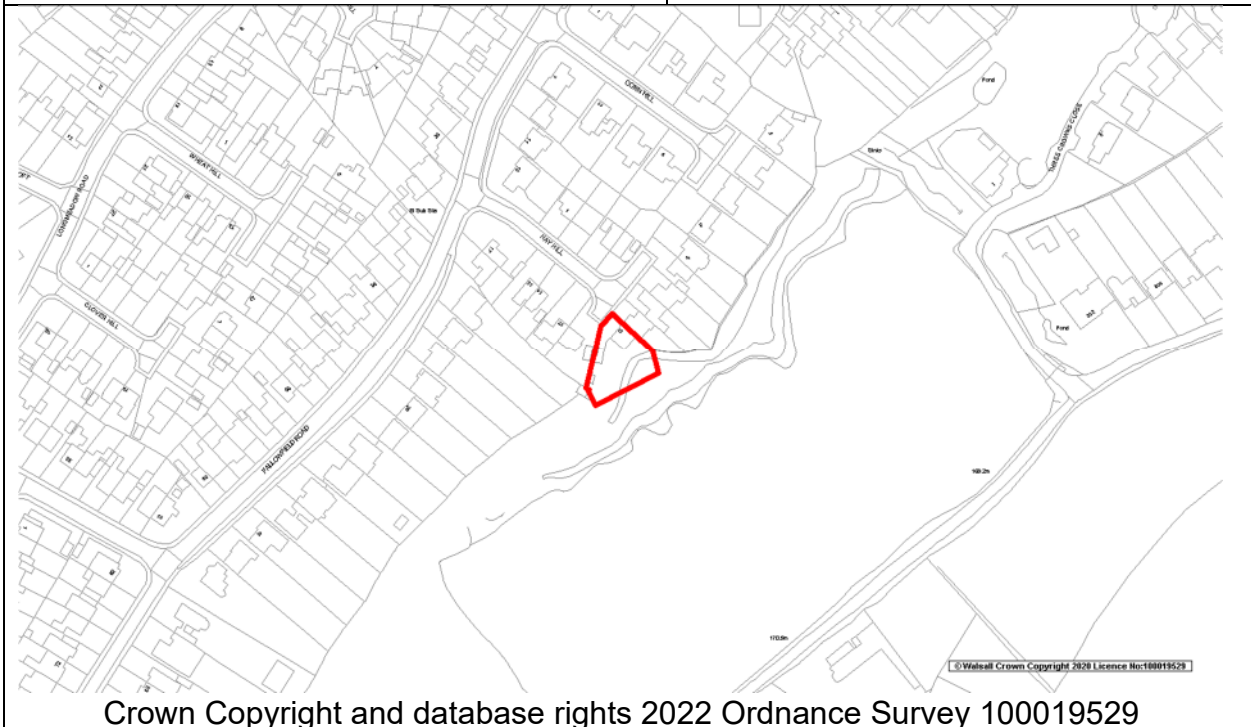
Ward: Pheasey Park Farm

Agent: Mr John Mckeown

Expired Date: 16-Feb-2024

Application Type: Full Application:
Householder

Time Extension Expiry: 19-Feb-2024



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Recommendation

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

Proposal

This application proposes the erection of a first floor rear balcony to a semi detached dwelling.

The balcony would be accessed via patio doors leading from from the first floor central rear bedroom. The balcony would project 1.2m deep from the rear elevation of the dwelling and would be set 1.9m from the shared boundary with no. 9 Hay Hill with a 1.8m high privacy screen to the side of the balcony facing no. 9 hay hill comprised of a solid timber guarding rail with obscurely glazed panel above.

Facing materials would comprise Scandinavian Pine decking boards, with powder coated black steel guarding and handrails.

It was noted during the site visit, the roof tiles that were required by condition 3 of application 22/0902 to match the existing roof tiles have been replaced with tiles of a different design, consequently the applicant is in breach of their 2022 permission. Therefore the retention of these tiles is also being considered by this application.

Discrepancies between the plans approved by condition 2 of application 22/0902 and the as built structure were also observed and thus the applicant is also in breach of condition 2 of their 2022 permission. Therefore the retention of the built design is also being considered by this application. The extended dwelling lacks a 0.4m decrease in the roof ridge height from the original roof ridge height above the two storey side extension. It also appears that the design of the single storey side extension element of the development may not reflect the approved plans but this element is not yet complete so it is not possible to confirm at this point.

Site and Surroundings

The application site is a right-hand side semi-detached dwelling located at the head of a cul-de-sac within the residential estate of Orchard Hills.

The site has been granted permission for extensions to the side and front of the house as detailed in the planning history and this work is mostly complete. Facing materials prior to construction of the approved extensions were brickwork, white fascia panelling to the first-floor front and square interlocking roof tiles to match the original house. The extended dwelling comprises brickwork which closely reflects the original brickwork, but the roof has been replaced with plain grey concrete tiles. The first-floor fascia was not complete at the time of the site visit.

The attached semi to the northeastern side of the application site is no. 9 Hay Hill. The rear elevations of these two properties remain in alignment after construction of the approved extensions.

The neighbouring dwelling to the western side is no. 11 Hay Hill. This house is sited at a right angle to the application dwelling and has no views of the rear of the application site from any habitable room window.

To the rear of the application site is an area of woodland which falls within the Great Barr Conservation Area and are protected by a Tree Preservation Order although the site itself is outside of the Conservation Area boundary.

Relevant Planning History

22/0902 - First floor and ground floor side extension plus front porch and ground floor canopy - Grant Permission Subject to Conditions - 15/09/2022

Relevant Policies

National Planning Policy Framework (NPPF)

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

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

Key provisions of the NPPF relevant in this case:

- **NPPF 2 – Achieving sustainable development**
- **NPPF 4 – Decision Making**
- **NPPF 12 – Achieving well-designed places**

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

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

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

National Planning Policy Guidance

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

Reducing Inequalities

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

Saved Policies of Walsall Unitary Development Plan

- GP2: Environmental Protection
- ENV32: Design and Development Proposals

Black Country Core Strategy

- CSP4: Place Making
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

Supplementary Planning Document

Designing Walsall

- DW3 Character
- Appendix D

Consultation Replies

Tree Preservation Officer

No arboricultural objections

Representations

None received

Determining Issues

- Design, Layout and Character
- Amenity of Neighbours and Amenity of Future Occupiers
- Trees / Protected Trees

Assessment of the Proposal

Design, Layout and Character

The proposed rear balcony would not be visible from public vantage points and is considered would have limited impact on the appearance of the dwelling within the street scene and thus would not have any harmful impact on the character of the application site or the locality in accordance with saved UDP policies GP2: Environmental Protection and ENV32: Design and Development Proposals.

Condition 3 of the permission granted by application 22/0902 required the facing materials of the extended dwelling to match the existing house in size colour and texture. It was noted during the site visit, the roof tiles have been replaced with plain dark grey concrete tiles, which does not reflect the original brown square interlocking ridged concrete roof tiles or that of neighbouring houses. Therefore, the applicant is in breach of condition 3 of their planning approval.

It is acknowledged that the applicant could have lawfully replaced their roof tiles with tiles of any design using their permitted development rights prior to submitting their planning application. However, the change in roof material appears to have taken place during the implementation of the 2022 permission. Hence, they are in breach of their 2022 permission. To resolve this, a breach of condition notice could be issued for the applicant to resolve the matter. However, the planning authority has to first consider the level of impact. The application site is at the head of a cul de sac and Hay Hill rises towards the application house with the house visible along most of the length of Hay Hill consequently, it is noticeable and is visually poor and to the detriment of the local amenity.

A breach of condition notice would require the replacement of all tiles across the entire front and rear roof slopes with brown, square interlocking ridged concrete tiles to reflect the requirement of condition 3 of application 22/0902. As the roof tiles on the rear roof slope are not visible from public vantage points it is considered a reasonable compromise to require replacement of only the front roof tiles and ridge tiles that are visible within the street scene with brown, square interlocking concrete ridged tiles to reflect the requirement of condition 3 of application 22/0902. This requirement will be secured by a planning condition to be executed within 4 months of any permission that may be granted.

The omission of the 0.4m decrease in the roof ridge height above the two storey side extension that has been constructed causes a lack of subservience of the extended elements of the dwelling, contrary to the requirements of saved UDP policy GP2 (Environmental Protection). Furthermore, it is considered the lack of subservience creates a significant imbalance across the pair of semi detached dwellings where the

attached dwelling at no. 9 Hay Hill does have a subservient 2 storey side extension. The lack of subservience and imbalance is considered detrimental to the character and visual amenity of the cul-de-sac contrary to the requirements of saved UDP policy ENV 32 (Design and Development Proposals). It is noted that the as built design of the main roof reflects the original proposal for application 22/0902, which was amended to include the 0.4m decrease in the roof ridge height in response to concerns raised by the planning authority regarding the lack of subservience. The roof ridge will need to be reconstructed to reflect the plans approved by condition 2 of application 22/0902, incorporating the 0.4m set down below the original main roof of the dwelling and this requirement will be secured by a planning condition to be executed within 4 months of any permission that may be granted.

The elevations of the single storey side element of the extended dwelling do not appear to reflect the side sloping pitched roof design that has been approved, although this element of the development was not complete at the time of the latest site visit on 22/02/2024 and therefore it is not possible to confirm whether a breach has taken place at this point. Any future elements of the development that do not reflect the 2022 permission would be liable for planning enforcement action and could require amending retrospectively by the serving of a breach of condition notice.

Amenity of Neighbours and Amenity of Future Occupiers

The original plans proposed the balcony extending across the width of the rear elevation with a separation distance of 0.5m to the shared boundary with no. 9 Hay Hill. It was considered that whilst the balcony would not breach the Council's adopted 45-degree code as outlined in the SPD Designing Walsall, as it would project less than 3.5m beyond the position of the neighbouring window, in this position the 1.8m high obscurely glazed screen would be visible from the nearest first floor rear bedroom window at neighbouring no. 9 Hay Hill to the detriment of neighbouring visual amenity. It was also considered that the position of the balcony in close proximity to the boundary would give rise to the potential for an unacceptable level of overlooking and resultant harm to privacy into the neighbouring garden from an elevated position.

In response to these concerns, an amended plan was submitted, setting the edge of the balcony 1.9m away from the shared boundary with no. 9 Hay Hill. It is considered, this separation distance will limit the visual amenity impact from the nearest first floor bedroom window at the neighbouring dwelling and the separation distance would limit overlooking of the neighbouring garden to a level no greater than the view that already exists from the existing first floor rear bedroom window at the application site.

The roof tiles and amendment to the roof ridge of the extensions that were approved by the 2022 permission do not impact on the 45-degree code in respect of any neighbouring occupant and are considered do not cause harm to amenity by way of shading or outlook from any habitable room window. However, it is considered that the imbalance created by the lack of subservience and the visual impact of the incongruous roof tiles that are visible within the street scene is detrimental to the visual amenity of residents in Hay Hill, contrary to the requirements of saved UDP Policy GP2 (Environmental Protection).

It is considered that subject to adherence to conditions to secure the installation of a 1.8m high privacy screen on the side of the balcony nearest to no. 9 Hay Hill and conditions to secure the replacement of the front roof tiles and to reinstate the approved 0.4m decrease in the roof ridge above the two storey side extension the proposal would

be compliant with the requirements of the SPD Designing Walsall Appendix D in relation to the 45 degree code and saved UDP policy GP2: Environmental Protection.

Trees / Protected Trees

There are trees protected by an area classification TPO (Tree Preservation Order) at the rear of the site (title no. 19/1991). The Tree Officer has advised that the proposed balcony supporting post excavations will be very localised and are unlikely to encounter any significant roots from the TPO trees due to their location approximately 7.0 metres away and in a slightly elevated position in relation to the rear of the house. Consequently, tree roots are unlikely to be prolific where the localised excavations are proposed, and any root severance is going to be very minimal meaning the proposals are unlikely to be of any detriment to the long-term health and stability of the TPO trees.

Conclusions and Reasons for Decision

When assessing the material planning considerations and taking into account the local and national planning guidance and representations received, this application has demonstrated that subject to adherence to conditions these proposals would not result in harm to the character of the house or the local area and would not harm the amenity of neighbouring occupants and thus complies with the policies and guidance set out in this report.

The use of safeguarding conditions in respect of the materials and plans to maintain its appearance and the installation of a privacy screen on the side of the balcony adjacent to no. 9 Hay Hill will further ensure that the neighbour's amenity is protected and that the 6 tests: necessary; relevant to planning and; to the development to be permitted; enforceable; precise and reasonable in all other respects within the national planning guidance are fully met.

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

Officers have spoken with the applicant's agent and in response to concerns raised regarding increased potential for the original scheme overlooking a neighbouring garden, amended plans have been submitted which enable full support to be given to the scheme.

Recommendation

Grant Permission Subject to Conditions

Conditions and Reason

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

- Proposed First Floor Rear Balcony Plans and Elevations, drawing no. HH-DBNK-02 ADD Rev B, submitted 06/02/2024

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).

3. Notwithstanding the details submitted, within 4 months of the date of this decision, the development hereby permitted shall not be carried out otherwise than in accordance with a 0.4m decrease in the height of the roof ridge and roof eaves above the constructed two-storey side extension to reflect 'Proposed Plans and Elevations, drawing no. HH-DBNK-02 Rev A', as approved by condition 2 of planning application 22/0902 and the roof ridge height above the two storey side extension shall thereafter be retained for the lifetime of the development.

Reason: To comply with condition 2 of the permission granted by planning application 22/0902 and to ensure the satisfactory appearance of the development and to comply with saved policies GP2 and ENV32 of the Walsall Unitary Development Plan.

4. Notwithstanding the details submitted, within 4 months of the date of this decision notice, the development hereby permitted shall not be carried out otherwise than in accordance with the grey Marley Modern concrete tiles on the front roof slopes and roof ridge tiles of the dwellinghouse, including the front slope of the main roof of the original dwellinghouse and the front slope of the roof above the two-storey side extension permitted by application 22/0902 shall be replaced with brown square interlocking ridged concrete profiled roof tiles that match in size, colour and texture, the roof tiles which were used in the original building at the time of the 22/0902 decision and the roof tiles at the attached semi-detached dwelling at no. 9 Hay Hill, and the roof tiles shall thereafter be retained for the lifetime of the development.

Reason: To comply with condition 3 of the permission granted by planning application 22/0902 and to ensure the satisfactory appearance of the development and to comply with saved policies GP2 and ENV32 of the Walsall Unitary Development Plan.

5. The walls and rear roof slopes of the development hereby permitted shall not be carried out otherwise than in accordance with facing materials that match, in size, colour and texture, those which are used in the existing building at the time of the planning decision and the facing materials shall thereafter be retained for the lifetime of the development.

Reason: To ensure the satisfactory appearance of the development and to comply with saved policies GP2 and ENV32 of the Walsall Unitary Development Plan.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or succeeding Orders, no side facing windows or doors, other than as shown on the deposited plans, shall be erected or installed in any part of this development.

Reason: To safeguard the amenities of the occupiers of adjoining premises and to comply with saved policy GP2 of Walsall's Unitary Development Plan.

7. Notwithstanding the details as submitted, the development hereby permitted shall not be carried out otherwise than in accordance with the installation of a 1.8m high privacy screen with solid timber guarding rail and obscurely glazed panel above as shown on Proposed First Floor Rear Balcony Plans and Elevations, drawing no. HH-DBNK-02 ADD Rev B to the north eastern side of the rear balcony. The glazed panel shall be obscurely glazed to meet Pilkington level 4 or equivalent and shall thereafter be retained for the lifetime of the development.

Reason: To safeguard the amenities of the occupiers of adjoining premises, and the privacy of occupiers of the application property, and to comply with policy GP2 of Walsall's Unitary Development Plan.

Notes for Applicant

It is noted that the development approved by application 22/0902 is still under construction. Any development that does not reflect the plans approved by condition 2 of 22/0902 does not benefit from planning permission and would be liable for planning enforcement action.

END OF OFFICERS REPORT