

Economy, Environment and Communities, Development Management

Planning Committee

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

Plans List Item Number: 5

Reason for bringing to committee

Application has been called in by Councillor Hussain on the grounds that delicate judgement is required.

Application Details

Location: ROTHER, HIGHGATE DRIVE, WALSALL, WS1 3JJ

Proposal: CONSTRUCTION OF A NEW 3 BEDROOM HOUSE AND ASSOCIATED ENGINEERING WORKS TO THE REAR OF ROTHER, HIGHGATE DRIVE

Application Number: 20/0309

Case Officer: Leah Wright

Applicant: Kasore Khan

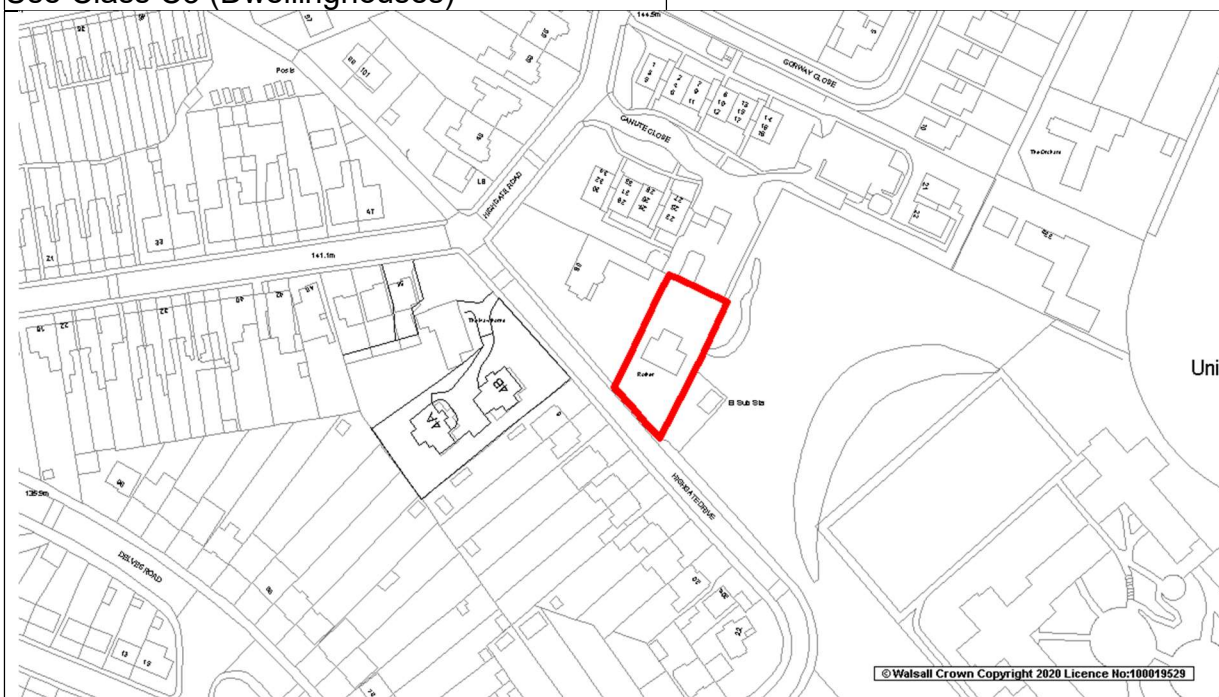
Ward: St Matthews

Agent: Paul Spooner

Expired Date: 11-May-2020

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

Time Extension Expiry:



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Recommendation

Refuse

Proposal

This application proposes a new three bedroom dwelling to the rear of the existing dwelling known as 'Rother'. The new dwelling will have a total floor area approximately 123 sqm. The dwelling is an 'L' shape with accommodation provided over two floors and has a pitched roof with gable features and roof lights. The dwelling would measure 5.9m in maximum height with eaves of 2.3m. It would measure 11.3m in maximum width and 10.2m in maximum depth. Several window openings are proposed to all elevations of the ground floor including wide bi-folding doors serving the lounge area and rooflights inserted at first floor level to provide natural light to the bedrooms. The accommodation includes the following:

Ground floor: Living/dining room, kitchen, bathroom, bedroom, and store.

First Floor: Two bedrooms (one en-suite) and store.

The development also proposes shared amenity space between Rother and the new dwelling, low level planting, parking and a retaining wall in accordance with structural engineer's details.

In relation to the main dwelling 'Rother', the proposed building be would situated at the rear of the garden and the separation distance between the two dwellings would be approximately 5.18m. The proposed building would also have proximity to the neighbouring property No 58 on the western boundary and distance between the proposed and neighbouring dwelling is 5.2m.

There is a live application with the Local Planning Authority (21/0834) that proposes a new two storey dwelling house adjacent to and within the rear garden of 58 Highgate Road (on this agenda). This site has a higher ground level than the application site and the distance between this proposal and the proposed dwelling at 58 Highgate Road is approximately 13.6m.

It should be noted that the proposal was amended from a "proposed family annex to the rear of 'Rother' Highgate Drive, Walsall" to "Proposed new dwelling and associated engineering works at the rear of 'Rother' Highgate Drive Walsall".

Site and Surroundings

The application site is located on the Highgate Drive which is predominately residential area. The application property known as Rother is a detached house that is generously set back from the road and benefits from wider frontage. The site boundary is concealed by number of large trees and shrubs.

Other properties within the vicinity of the application site are typically of varying styles and set back. To the east of the site are open fields, to the western boundary is

number 58 Highgate Road and to the north is car park and residential apartments situated on the Canute Close which is cul-de-sac. The application site benefits from provision of off-street parking and open wide frontage and main dwelling is set back from the highway.

The site is not within a conservation area nor is it a listed building.

Relevant Planning History

08/0338/FL: Two-storey Rear Extension: GSC 18.04.2008

08/0895/FL: Two-Storey Rear Extension (Increase Approved length): GSC 18.07.2008

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 4 – Decision Making**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**
- **NPPF 15 – Conserving and enhancing the natural environment**

On planning conditions the NPPF (para 55) says:

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

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

National Planning Policy Guidance

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

Reducing Inequalities

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

Development Plan

www.go.walsall.gov.uk/planning_policy

Local Policy

www.go.walsall.gov.uk/planning_policy

Black Country Core Strategy

- CSP4: Place Making
- ENV2 (Historic Character and Local Distinctiveness)
- ENV3: Design Quality
- HOU2 (Housing Density, Type and Accessibility)

Saved Unitary Development Plan

- GP2: Environmental Protection
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV32: Design and Development Proposals
- H10: Layout, Design and Dwelling Mix
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

Site Allocation Document

- HC2: Development of Other Land for Housing

Supplementary Planning Document

Conserving Walsall's Natural Environment

Development with the potential to affect trees, woodlands and hedgerows

- NE7 - Impact Assessment

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

Designing Walsall

Appendix D

Consultation Replies

Highways:

06/04/2020- No objection; note to applicant regarding keeping the highway free from mud or material.

07/04/2021- No objection to the revised application subject to all parking areas to be fully implemented and thereafter retained and the Annex remaining ancillary to family members of the main dwelling in order to clearly define the use of the development that it shall not be occupied independently from the main dwelling house on the grounds of access and parking.

Planning Policy:

15/04/2020- 'The Hawthorns' opposite the site is a locally listed building but the position of the proposal to the rear of the existing house means that it is unlikely to affect the setting of this building. The application site appears to contain a number of mature trees so advice should be sought from the council's ecology advisor about the possible impact on bats, as well as from the tree officer.

21/04/2021- Amended plans raise no new strategic planning policy issues beyond original comments.

Severn Trent:

01/04/2020- No objection; note to applicant regarding public sewer.

14/04/2021- Comments as per 01/04/2020.

West Midlands Fire:

30/03/2020- No objection; note to applicant regarding Approved Document B, Volume 1, Dwelling-houses.

10/04/2021- Requirement B5: Access and facilities for the fire service.

Trees:

19/05/2021- Amended block plan removes the proposed vehicular access which has removed the impact on the trees to the southeast of the site in third party property. Concern regarding boundary treatment; this will be detrimentally affected by excavations required to allow the construction of the boundary wall. No treatment details for southeast boundary (but this could be dealt with via condition). If the issues are addressed, conditions regarding tree and ground protection could be provided to ensure the long-term health and condition of the off-site trees.

01/12/2021- Principle of a new wall inside the boundary is acceptable. Concern regarding damage to roots of adjacent trees and site access. Clarification on both points is required.

Representations

No letters of representation have been received.

It should be noted that the application was called in to committee by Councillor Hussain on the grounds that delicate judgement is required, however it was not specified what the delicate judgement is.

Determining Issues

Principle of Development

- Design and Character of Area
- Impact on amenity of neighbouring properties
- Amenity of future occupiers
- Highways
- Trees
- Flood Risk and Drainage
- Local Finance considerations

Assessment of the Proposal

Principle of Development

The proposal would add to the supply of housing so could potentially be supported by paragraph 60 of the National Planning Policy Framework, subject to detailed consideration of the potential impact of the proposal on local character, trees and the amenity of neighbouring properties. BCCS Policy CSP2 and SAD Policy HC2.

The principle of development is therefore considered acceptable subject to all other material considerations set out in this report.

Design and Character of Area

The application proposes a detached three bedroom dwelling positioned in the rear garden of the existing dwelling and would provide accommodation over two levels.

The original description of development was for a family-annex which was considered to introduce a significant building which would be situated at the rear of the original dwelling in tandem with it. The applicants revised description is for a three bedroom detached dwelling. Whilst it is noted the applicant suggests their parents and relatives would reside in it in the first instance, that situation may change in the future. The government tells us planning should consider land use and private interests. If the application was deemed acceptable a condition to retain the dwelling as an annex to Rother would be imposed.

Given applicant's personal circumstances, the LPA have tried to work proactively with them. The opportunity was given to reduce the size and scale of the originally proposed annexe to provide accommodation for the parents which included one bedroom, kitchen, living area and WC facilities. The second option suggested to the applicant was to extend the main dwelling to facilitate the family members and their elderly parents.

The applicant has explained that the reason for the additional bedrooms is that the intended occupiers are elderly relatives and need the support of others at times when the applicant is not available to provide that support. It has been made clear that applicant is not available during the week to care for their elderly parents so effectively their requirements are for creation of separate planning unit which was confirmed with the revised application form and description and would have no connection to the main dwelling. Whilst noting the applicant's comments, the position of the dwelling and the use for family members essentially does give a connection. Given this position, it is considered, extending the current property would be the better solution in this instance.

In this case the development would comprise a new dwelling. Consequently, the proposal has to be assessed against the development plan policies, in accordance with section 70(2) of the TandCPA 1990 and section 38(6) of the PandCPA 2004 unless there are material considerations, which in this instance to provide accommodation for elderly relatives. Unfortunately, as there is a suitable alternative, the material considerations for the new dwelling are significantly diminished. The distance between the dwelling and the existing dwelling, "Rother", is approximately 7.2m and structure will have close proximity to the western boundary with number 58 Highgate Road and to the north car park and residential apartments situated on Canute Close. The building will be apparent from the streetscape when viewed from the north boundary particularly due to the height; the structure would also afford view from the Highgate Drive due to the close proximity to the western boundary and overall height and scale. Due to the location the new dwelling it would appear cramped and contrived in nature with the structure abutting its northern and western boundary meaning that the structure would sit uncomfortably and uncharacteristically in this position; and therefore, resulting in visually obtrusive form of development.

Furthermore, it is noted that generally the existing dwelling forms part of the more spacious setting where dwellings sit within generous plots. The proposed dwelling would effectively be inserted covering a significant area of the rear garden, resulting in a cramped form of back land development. Overall, the proposed building due to its height, size and scale within this prominent position would appear incongruous and as discordant feature contrary to planning policies with UDP policies GP2, ENV32, H10 and SPD 'Designing Walsall.'

An email was received from Councillor Hussain on the 14th July enquiring about property which was on sale on Little Gorway. The sales description for the property included two storey guest house which was not part of the main house. The applicant had forwarded this information to the Councillor in support of their current application that a precedent has already been set in the local vicinity. Reviewing the planning records of Little Gorway, revealing that 7a and number 7 are two separate properties. This is different to the current proposal. Both of the Little Gorway properties have street frontage and they are two separate planning units. This different to the current proposal. Planning permission reference 06/1185/FLH1 approved a side and rear extension to 7A Little Gorway. In these circumstances

this type of example cannot be used to justify the applicants' current case as each case is assessed on its own merits and there are significant material differences between the two cases.

Impact on amenity of neighbouring properties

The proposed dwelling would have a close proximity to the No 58 and residential apartments situated to the north of the site. Currently the site boundary is enclosed by number of trees and shrubs. However, in order to facilitate the proposed building, there is no indication that these trees would or could be retained, and it is likely the trees would be lost. The dwelling would be more prominent from the neighbouring properties. It is noted that there is slight drop in the ground level towards the rear of the property, but due to the height and size of the building it would still be visible from the adjoining dwelling. There is a window serving a bathroom to the west elevation which would look onto 58 Highgate, it is considered that this could be obscure glazed with a high level top opening light. Subject to this forming a condition, this could go some way to mitigating detrimental harm to this neighbouring property in terms of overlooking.

Designing Walsall SPD Appendix D specifies separation distances. In this case there are no windows at first floor so the 24m separation distance between habitable windows in two storeys (and above) developments would not apply. Further the SPD specifies there should be 13m separation between habitable windows and blank walls; again this does not apply in terms of the development proposed. Should the application be considered acceptable, a safeguarding condition to prevent further windows and doors would be imposed.

The dwelling proposes windows to the south which would look onto the existing dwelling "Rother". It is considered that the ground floor bedroom and living room/dining room would impact on the outlook of the existing dwelling Rother which currently benefits from unobstructed views to the north; as such the proposed dwelling would be considered to be overbearing.

The new dwelling would be sited at the rear of the main dwelling and sharing the same amenity space. This would result in poor quality 'Tandem' development, consisting of one house immediately behind another and sharing the same access is unsatisfactory because of the difficulties of access to the house at the back and the disturbance and lack of privacy suffered by the front dwelling. Whilst in this instance, the local highway authority have not objected to the development, assessing it as an annex, subject to conditions to ensure the proposed parking is installed and that the new dwelling be conditioned to only be an annex to Rother, this does not overcome the harm to neighbours and the detrimental impact to the character of the area.

The proposal is considered to be an independent dwelling which would increase excessive comings and goings to the site which would intensify the use of site and would result in more noise disturbance to the adjoining neighbours once the building is occupied. The proposal would also reduce the safety and security of neighbouring dwellings and rear gardens raising concerns about the fear of crime which would be detrimental to residential amenities. The proposal would be contrary to UDP policies GP2, EN32, H3, H10 and SPD 'Designing Walsall'.

Amenity of future occupiers

Designing Walsall SPD Appendix D states that garden dimensions should be 12m in length or a minimum area of 68sqm for dwellings.

The development proposes shared amenity space for the existing dwelling "Rother" and the proposed dwelling. The shared space between the dwellings measures 195sqm and as such would meet the minimum standards however this space is not considered to be private given the tandem style development and there has been no indication of how this space is to be shared, nor has the plot been shown as subdivided for either house. As such it is considered that the shared amenity space for two separate dwellings is not acceptable bringing detrimental harm to both occupiers given the access to the new dwelling is essentially via the shared amenity space.

The proposed bedrooms are all of an adequate size and meet the requirements of minimum GIAs as stated in the National Space Standards. Bedroom 1 is single aspect and whilst it would be preferred for it to be dual aspect it is considered that the window would still allow for an adequate amount of daylight into the bedroom. All habitable rooms at ground floor would be served by windows. In terms of bedroom 2 and 3, they are not served by a window and instead there are rooflights proposed. It is considered that as this application proposes a stand-alone dwelling, the rooflights would not be sufficient to allow for natural daylight into the rooms. The addition of further windows would further impact on neighbour's amenity.

In terms of outlook, bedroom 1 would have views onto the shared amenity space and in close proximity to the existing dwelling (at a separation distance of approximately 9.5m. The habitable room windows of the living/dining rooms would also be looking onto the rear of Rother at a distance of 7.5m. It is considered that this would create an unacceptable outlook and sense of enclosure for future occupiers due to how close the proposed dwelling would be sited to the existing dwelling. Bedrooms 2 and 3 would have no outlook due to being served by a singular rooflight at a height of approximately 2m. It is considered that the dwelling would have an inadequate internal daylight to the detriment of their future amenity.

Highways

Notwithstanding the lack of detail around internal access and parking arrangements, on the basis that the proposal does not include the creation of a secondary access onto Highgate Drive (according to the application form and amended block plan), the Highway Authority has no objections, subject to all parking areas being implemented and thereafter retained, the new dwelling being conditioned as an annex and no additional vehicular accesses being created. Should the application be deemed acceptable, these matters can be secured by condition.

Trees

The applicant has provided a tree survey, tree constraints plan, tree protection plan and Arboricultural method statement.

Whilst the Council's tree officer, considers the principle of a new wall inside the boundary is acceptable there is still concerns regarding adjacent trees and banking.

Section 1-1: tree assessment states the existing unauthorised blockwork wall to be demolished and rebuilt. This may have implications for damage to the roots of the adjacent trees and was a concern raised in earlier correspondence. This will depend on the existing foundations of the wall and if the applicant intends to rebuild the foundations or use the existing to build a new all on top of. This requires clarification.

The Tree Protection Plan (TPP) indicates that site access will be via the northwest side of the site, adjacent to the boundary with 58 Highgate Drive. This requires clarification as the easiest access to the rear is via the southeast side but the TPP shows this area fenced off. This may be due to the fact there is a banking immediately adjacent to the southeast boundary and the weight of even small site vehicles for material movement may destabilise this but clarification is required.

Further to the above, bullet point d) of paragraph 180 of the NPPF 2021 states that opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate. It is considered that any loss of trees as a consequence of this proposal would be contrary to National Policy.

It is considered that the application at present has not provided sufficient information to address the concerns of the Council's tree officer and as such the development has the potential to be detrimental to adjacent trees and banking contrary to Policy ENV18 of the Unitary Development Plan, NE8 of the Conserving Walsall's Natural Environment SPD and NPPF 15- Conserving and enhancing the Natural Environment. Should the proposal be considered acceptable, the tree impacts would need to be resolved prior to issuing a decision, as currently the information would not be able to be secured via a condition.

Flood Risk and Drainage

The site, which is in Flood Zone 1, is not in an area known for flooding and there are no watercourses nearby. It is therefore considered that the development would be acceptable in terms of flood risk if accompanied by an appropriate foul drainage and surface water drainage scheme, preventing surface water run off onto the public highway or public highway drains which would be secured by condition on any permission.

Any other Matters

If the application was to be considered acceptable conditions would be recommended to meet the requirements of the Black Country Air Quality for electric charging points and Low NOx boilers.

Local Finance Considerations

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

This application proposes 1 new home.

The Government has indicated that, for 2019-20, it will award approximately £1,000 per dwelling per year, plus a further £350 for each affordable dwelling, for each net additional dwelling provided. The payment is made each year for a period of 4 years from completion of the dwelling. In 2019-20 the total payments, taking account of completions over the last 4 years, are expected to amount to £2,911,601.

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

Conclusions and Reasons for Decision

The applicant was given the opportunity to reduce the scale of development or create a Granny Annexe which would integral part of the main dwelling. The reduction in height and size of the building was suggested and it is considered the reduced scale of the building to the rear would still meet the requirement for providing the accommodation for the elderly parents. The personal circumstances of the applicant does not form part of material consideration in assessing this application; however a

balanced approach was taken in considering all the circumstances. Given the significant differences between the Little Gorway properties promoted by the applicant and the current situation, it is considered this is not a material consideration in the determination of the current planning application. The amended description and development as a three bedroom detached dwelling fails to comply with the adopted planning policies and the development would be detrimental to the living conditions of the nearby occupiers and has the potential to be a detriment to adjacent trees and banking.

Positive and Proactive Working with the Applicant

The planning agent was contacted to reduce the scale of the development. Unfortunately, the applicant was not able to comply with the request reducing size and scale of the development or reconsider other options for extending the main dwelling.

Recommendation: Refuse

1. The proposed dwelling by reasons of its size, height and scale would result in a cramped form of development which would cause detrimental harm to the character and amenity of the local area, would erode the spatial characteristics of the existing site and would be poorly related to its surroundings in terms of design, density and layout, contrary to saved policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals) of the Walsall Unitary Development Plan, policies CSP4 (Place Making), ENV2 (Historic Character and Local Distinctiveness), ENV3 (Design Quality) and HOU2 (Housing Density, Type and Accessibility) of the Black Country Core Strategy, SAD Policy HC2 (Development of Other Land for Housing), DW3 (Character), DW4 (continuity) and DW6 (Legibility) of the Designing Walsall Supplementary Planning Document and section 12 of the National Planning Policy Framework (Achieving well-designed places).
2. The proposal represents inappropriate tandem development and over intensification of the use of the site, increasing comings and goings which would result in an unacceptable level of additional noise and disturbance to neighbouring residential properties once the annex is occupied. In addition, this form of inappropriate tandem development reduces the levels of safety and security for the occupiers of Rother and the future occupiers of the new dwelling plus adjacent neighbours of the application site, raising concerns for the fear of crime. The proposal would be detrimental to residential amenities and is therefore contrary to UDP policies GP2 (Environmental Protection), ENV32 (Design and Development of 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).
3. The proposed development would provide an unacceptable standard of amenity for future occupants due to an insufficient level of private rear garden amenity space. The proposal is therefore contrary to saved policy GP2

(Environmental Protection), of the Walsall Unitary Development Plan, policy ENV3 (Design Quality) of the Black Country Core Strategy, SAD Policy HC2 (Development of Other Land for Housing), and DW5 (Ease of Movement) and Appendix D of the Designing Walsall Supplementary Planning Document (Numerical Guidelines for Residential Development).

4. The existing dwelling, "Rother" would have an insufficient level of private rear garden amenity space which would fail to reflect the size of gardens in the locality. The proposal is contrary to Saved UDP Policy GP2 (Environmental Protection), Appendix D of the Designing Walsall SPD (Numerical Guidelines for Residential Development) and the NPPF.
5. Bedrooms 2 and 3 which are sited at first floor would fail to provide future occupiers with a satisfactory level of amenity due to the lack of windows/light sources, thus resulting in a lack of sunlight/daylight and an inadequate outlook. The bedrooms are contrary to saved policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals) of the Walsall Unitary Development Plan, policies CSP4 (Place Making), ENV3 (Design Quality) SAD Policy HC2 (Development of Other Land for Housing) and section 12 of the National Planning Policy Framework (Achieving well-designed places).
6. The proposal has not provided sufficient information to address the concerns from the Council's tree officer and as such the development has the potential to be detrimental to adjacent trees and banking contrary to Policy ENV18 of the Unitary Development Plan, NE8 of the Conserving Walsall's Natural Environment SPD and NPPF 15- Conserving and enhancing the Natural Environment.

END OF OFFICERS REPORT