



Appeal Decision

Site visit made on 15 November 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2023

Appeal Ref: APP/V4630/W/22/3301180

Former Mali Jenkins Care Home, 129 The Crescent, Walsall WS1 2DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Habinteg Housing Association against the decision of Walsall Council.
 - The application Ref 21/1240, dated 5 August 2021, was refused by notice dated 14 April 2022.
 - The development proposed is erection of 18 No. affordable CAT2 & CAT3 one and two bedroom apartments with associated parking and landscaping.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 22 December 2022.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 18 No. affordable CAT2 & CAT3 one and two bedroom apartments with associated parking and landscaping at Former Mali Jenkins Care Home, 129 The Crescent, Walsall WS1 2DE in accordance with the terms of the application, Ref 21/1240, dated 5 August 2021, subject to the conditions in the schedule attached.

Preliminary Matters

2. The appellant submitted a revised site layout plan with their Planning Appeal Statement (Appendix NB3). This revised site layout seeks to break up the proposed hardstanding areas with landscaping. However, this revised layout would reduce the number of parking spaces to one per dwelling on site. As such, I do not consider this revised site layout to be necessary as it would result in a reduced number of parking spaces for the occupants which could lead to a demand for on-street parking. I therefore do not accept this revised plan and have dealt with the appeal on that basis.
3. The appellant also submitted a revised boundary treatment plan with their Planning Appeal Statement (Appendix NB3). The updated boundary details introduce a boundary wall to the front of the appeal site to continue the street scene along The Crescent, which would help screen the parking area. As this was submitted at appeal stage, no parties would be prejudiced by my acceptance of it. I have therefore dealt with the appeal on that basis.

Main Issues

4. The main issues are the proposal's effect on:
 - The character and appearance of the surrounding area.

- The living conditions of future occupiers, with regard to natural daylight and outlook.

Reasons

Character and Appearance

5. The appeal site is a parcel of land located off The Crescent. Adjacent to the site is a Toby Carvery Restaurant with associated surface car park. To the rear of the site is a new housing development that is currently under construction. Adjacent to the west boundary of the site is a small area of woodland containing mature trees with a three-storey apartment development beyond.
6. The southern side of The Crescent is characterised by low-rise two-storey residential houses. In contrast the northern side, where the appeal site is located, comprises buildings of varying heights that do not have a specific relationship to each other. Consequently, the part of the road where the appeal site is located does not have a defining character.
7. The appeal site is brownfield land, occupied previously by a building used as a residential care home that has since been demolished. As a result, its current condition contributes to the lack of character on the northern side of The Crescent.
8. The proposal would introduce a three-storey apartment block to the site with vehicular access and parking to the front. The proposal would be similarly positioned to where the previous residential care home building was sited. Furthermore, it would not come forward of the building line along The Crescent. As such, the proposed development would not appear alien to the appeal site or its surrounding context.
9. Despite being taller than the existing residential properties opposite the appeal site, the proposal's height would give the building a presence within the locality. It would also reflect other buildings of a similar size and scale in the nearby area. Therefore, the height, massing, and scale of the proposal would not be harmful to the character and appearance of the surrounding area.
10. The proposed elevations would provide variety in the form of setbacks, balconies, and the use of brick and render materials, and the creation of communal gardens at ground level would soften the developments appearance. This would create interest and variety in the street scene. Consequently, the proposed development would make a positive impact on the character and appearance of the area by providing a built frontage on a currently vacant plot along this side of the road.
11. Whilst there would be some harmful effects arising from the proposed hardstanding to the front of the development, this would be softened by the proposed landscaping.
12. For the reasons given, the proposal would accord with Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan (2005) (UDP), and Policies CSP4, ENV2, ENV3 and HOU2 of the Black Country Core Strategy (2011) (Core Strategy). Collectively, these policies seek to ensure new development is of high quality design and respects the context and local distinctiveness of the surrounding area. The proposal would also accord with Policy HC2 of the Walsall Site Allocation Document (2019) (SAD), which amongst other things,

seeks to ensure the design of developments take account of its context and surroundings. In addition, the proposal would also accord with the design objectives of the National Planning Policy Framework (Framework).

13. In reaching this conclusion I have had regard to the guidance contained within the Council's Designing Walsall Supplementary Planning Document for Urban Design (2013), which sets out urban design guidelines for the borough of Walsall.

Living Conditions

14. The Council suggest that the proposed development would not be fitted with windows to the habitable kitchen areas, resulting in unacceptable levels of amenity for future occupiers. In response to this, the appellant has submitted a 'Proposed Accommodation Light Assessment' (March 2022). It assessed the predicted natural daylight levels in the proposed development's living rooms, kitchens, and bedroom areas. The assessment covered the following three parameters; Average Daylight Factor (ADF), Room Depth Criteria (RDC), and Daylight Distribution (DD).
15. The ADF results indicated that all rooms assessed achieve ADF values that exceed the Building Research Establishment (BRE) guidance Site Layout Planning for Daylight & Sunlight.
16. The RDC results showed that all rooms passed at a test depth of 7.3m, which is a relatively small reduction in the test depth of c.7.6m. The report concludes that this is acceptable for a project of this nature.
17. The DD results showed that all rooms passed with the exception of Ground R5. However, this room passes when it is truncated by c.2.3m and also passes the ADF test without being truncated. The report indicates that this is considered to be acceptable. Furthermore, the habitable kitchen area would form part of the living room/dining area, which would have a window in the living room/dining area. The formula to calculate Room Depth is based on the concept that light is reflected by the walls, floor and ceiling. It is therefore likely that natural light would reflect off walls and surfaces to reach the rear half of the room (away from the window), which is where the kitchen would be located.
18. From the evidence before me, I am satisfied that the report provides a suitably robust assessment of daylight and sunlight within the proposed development. The report demonstrates that light levels to habitable rooms would be acceptable having regard to BRE guidance, and the Council has not indicated any alternative standards or guidance that an assessment of light to the habitable rooms should be considered against. Therefore, I find that there would be adequate natural light to all habitable rooms of the proposed development.
19. In addition, the proposed development would provide adequate outlook for future occupants, with generally unobstructed views of either the communal garden or car parking areas. Although there would be no kitchen windows, views would be available from the living/dining area.
20. For the reasons given, I conclude that the proposed development would accord with Saved Policies GP2 of the Walsall UDP, and Policy ENV3 of the Core Strategy, and Policy HC2 of the SAD. Collectively, these policies seek to ensure high quality design of new developments, and a satisfactory residential

environment where people choose to live. The proposal would also accord with the design principles in the Framework.

21. The Council's Decision Notice referred to Policy ENV32 of the UDP, and Policy CSP4 of the Core Strategy. However, I find that these policies do not relate to living conditions and are therefore not applicable to this main issue.

Other Matters

22. Some residents nearby have suggested that the proposal would result in a loss of privacy and natural light to their properties. However, the proposed development would not cause a loss of natural light or privacy through overlooking to neighbouring residents due to the sufficient separation distances between the proposed development and the neighbouring dwellings.
23. Concerns have been raised about vehicular parking and highway safety issues. Nevertheless, the parking issues were resolved as part of the application process and sufficient parking spaces would be provided on site for the future occupants. As the proposal would utilise an existing access, there is no obvious reason why any further change to it would be required. Moreover, the Highways Authority does not consider the development would have an unacceptable impact on highway safety or have a severe cumulative impact on the operation of the road network. Based on the evidence before me, I have no reason to disagree.
24. There is no persuasive evidence that the proposal would adversely affect trees or wildlife, or cause noise and disturbance to nearby local residents. A condition could be imposed to limit any potential disturbance during the construction phase.
25. Local residents raise a number of concerns including in relation to fear of crime and anti-social behaviour, inadequate space for emergency services, and drainage issues. I have given careful consideration to these matters but based on the information provided they would not constitute reasons to dismiss the appeal.

Planning Obligation

26. The appellant has submitted a planning obligation in the form of a Unilateral Obligation dated 16 November 2022.
27. The Framework states that planning obligations should only be sought where they meet the tests set out in paragraph 57. These tests, which mirror those set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2012, require that planning obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
28. Within the obligation the owners of the appeal site undertake to provide 25% affordable housing as affordable rent tenure in perpetuity. The obligation meets the requirements of Regulation 122 of the CIL Regulations and secures compliance with Policy HOU3 of the Core Strategy.
29. Policy HOU3 seeks to deliver affordable housing in partnership with developers and states that local planning authorities will seek to secure 25% affordable housing on all sites of 15 dwellings or more where this is financially viable. The

policy goes on to make clear that the tenure and type of that housing will be determined on a site-by-site basis, based on best available information regarding housing need, site surroundings and viability considerations.

30. Whilst the proposal is for 100% affordable housing, the planning obligation ensures that the proposal meets the minimum required amount of affordable housing (25%) and is therefore policy compliant.
31. The proposal would not provide the tenure mix preferred by the Council. However, as explained by the appellant this would be difficult to manage as part of the scheme. In any event, the proposal is seeking to provide 100% affordable housing which is to be welcomed.

Planning Balance

32. The Council has confirmed that it cannot demonstrate a 5-year housing land supply (5YHLS) of deliverable sites as required by the Framework. As such, there is an undersupply of deliverable housing sites within the borough.
33. Paragraph 11 of the Framework sets out that decisions should apply a presumption in favour of sustainable development, and that, under criterion 11d), where the policies that are most important for determining the application are out of date, planning permission should be granted unless: i) the application of policies within the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. The appeal site is not subject to policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development. Given the lack of a 5-year housing land supply, paragraph 11d) of the Framework is engaged.
35. The appeal site is situated within a sustainable location with access to a range of services and facilities by use of sustainable modes of transport. The Council has a shortfall in housing land supply. The proposed development would contribute towards meeting this need and would also deliver a scheme for 25% affordable housing, thereby contributing to the social aspect of sustainability.
36. The proposal would contribute towards the short-term economic growth during the construction phase and future occupation would contribute to the local economy and help support the sustainability of local services and facilities in the area. Socially, the proposal would provide 18 affordable one and two bedroom apartment with associated parking. Taken together, these benefits of the proposal would attract substantial weight.
37. In comparison, the identified harms are relatively few. Whilst there would be some harmful effects from the hardstanding to the front of the development, this would be outweighed by the benefits of the scheme.
38. The Council has raised no objection to the proposal in respect of matters including living conditions of neighbouring occupiers, highways, biodiversity, trees, drainage, and flooding. Based on my observations on site and the evidence before me, I have no reason to disagree. In terms of the planning

balance, I find that a lack of identified harm in respect of these matters would comprise a neutral factor.

39. The submitted Unilateral Obligation provides an appropriate mechanism to secure affordable housing. I am satisfied that this obligation is directly related to the development and fairly related in scale and kind. It therefore carries substantial weight in favour of the proposal.
40. The proposal is in accordance with the development plan, taken as a whole. The benefits arising from the proposal would be substantial. I have identified no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Having regard to the provisions of the development plan and all material considerations, planning permission should clearly be granted.

Conditions

41. The Council has suggested conditions which I have considered, making amendments where necessary in the interests of clarity and consistency, and to ensure compliance with the tests contained in the Planning Practice Guidance.
42. In addition to the standard time limit condition, I have imposed a condition specifying the relevant drawings and to require the development to be carried out in accordance with them as this provides certainty.
43. Conditions requiring a ground contamination survey and a Remediation Statement are necessary to ensure safe development of the site and to protect human health and the environment. These are worded as a pre-commencement so that the survey and any remediation measures are implemented prior to ground disturbance.
44. A condition requiring an Arboricultural Method Statement is necessary in the interests of visual amenities of the area. This is worded as a pre-commencement so that the approved statement is implemented prior to ground disturbance.
45. A condition relating to a Construction Environmental Management Plan is required to protect the living conditions of neighbouring occupiers and for the purposes of highway safety throughout the development works.
46. Conditions are imposed relating to air quality in the interests of creating a sustainable form of development and to encourage the use of ultra-low emission vehicles.
47. I have imposed conditions to ensure the adequate drainage of the site and to avoid flooding. Conditions relating to hard and soft landscaping have been imposed to ensure the satisfactory appearance of the development.
48. A condition requiring the provision of cycle storage for the proposed development is also reasonable and necessary in the interests of promoting sustainable transport. A condition requiring a written validation report is imposed to safeguard the living conditions of intended occupiers.
49. To protect and enhance wildlife, I have imposed conditions relating to the provision of bird nesting opportunities. Conditions are also warranted to conserve local protected species and to ensure site clearance takes place outside of the bird breeding season. Conditions relating to the protection and

replacement of trees and shrubs are also necessary for the satisfactory appearance of the development.

50. A materials condition is appropriate to ensure that those used are in keeping with the area. A condition imposing security measures is necessary to ensure the safety and security of the development and its occupiers.
51. The Council's suggested conditions in relation to a remediation statement have been merged to avoid repetition. Similarly, suggested conditions relating to an Arboricultural Method Statement, bird nesting boxes, air quality, foul and surface water, and landscaping have been merged where necessary.
52. I have omitted some of the Council's suggested conditions where there was repetition. For example, a condition relating to a Construction Methodology Statement has been omitted as this is generally secured by condition 9. The suggested condition relating to no external lighting has not been included as it would conflict with condition 23.

Conclusion

53. For the reasons given, the proposal complies with the development plan, read as a whole. No material considerations have been shown to have sufficient weight as to warrant a decision otherwise than in accordance with it. Therefore, the appeal is allowed.

Helen Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan – Drg No: 1655-23-AWSM-XX-XX-DR-A-001-P1
 - Site Layout Plan – Drg No: 1655-23-AWSM-XX-XX-DR-A-100-G
 - First Floor Plan – Drg No: 1655-23- AWSM- A1- 01- DR- A- 106, Rev P3
 - Second Floor Plan – Drg No: 1655-23- AWSM- A1- 02- DR- A- 107, Rev P3
 - Ground Floor Plan – Drg No: 1655-23- AWSM- A1- GF- DR- A- 105, Rev P3
 - 1 Bedroom 2 Person Part M4(3) – Drg No: 1655-23- AWSM- A1- GF- DR- A- 110, Rev P1
 - 2 Bedroom 3 Person Part M4(3) – Drg No: 1655-23- AWSM- A1- GF- DR- A- 112, Rev P1
 - 1 Bedroom 2 Person Part M4(2) – Drg No: 1655-23- AWSM- A1- ZZ- DR- A- 111, Rev P1
 - 2 Bedroom 3 Person Part M4(2) – Drg No: 1655-23- AWSM- A1- ZZ- DR- A- 113, Rev P1
 - Roof Plan – Drg No: 1655-23- AWSM- A1- R1- DR- A- 108, Rev P2
 - Elevations Plan – Drg No: 1655-23- AWSM- A1- ZZ- DR- A- 109, Rev P4
 - Site Sections Plan – Drg No: 1655-23-AWSM-XX-ZZ-DR-A-101-P1
 - Boundary Treatment Plan – Drg. No: 1655-23-AWSM-XX-XX-DR-A-102-P2
- 3) Prior to built development commencing, a ground contamination survey and assessment of ground gas, having regard to current best practice, shall be undertaken.
- 4) Prior to built development commencing, a copy of the findings of the site investigation, ground contamination survey and ground gas assessment, together with an assessment of identified and/or potential hazards arising from any land contamination and/or ground gas shall be forwarded to the local planning authority.
- 5) Prior to built development commencing, a 'Remediation Statement' setting out details of remedial measures to deal with the identified and potential hazards of any land contamination and/or ground gas present on the site and a timetable for their implementation shall be submitted in writing to and agreed in writing by the local planning authority. The development shall not be carried out otherwise than in accordance with the approved Remediation Statement.
- 6) If during the undertaking of the approved remedial works or during the construction of the approved development unexpected ground contamination not identified by the site investigation is encountered, development shall cease until the 'Remediation Statement' required by Condition 5 has been amended to address any additional remedial or mitigation works required and has been submitted to and agreed in writing by the local planning authority.
- 7) A validation report setting out and confirming the details of the remedial measures implemented, cross referencing those measures with the approved Remediation Statement, together with substantiating information and justification of any changes from the agreed remedial arrangements shall be

submitted in writing to and agreed in writing by the local planning authority prior to the development being brought into use.

- 8) Prior to the commencement of development hereby approved, an Arboricultural method statement, detailing the location and specification of tree protective fencing and any construction methodology to be implemented within the RPAs of the retained trees shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with the approved Arboricultural Method Statement.
- 9) Prior to the commencement of construction or engineering works a Construction Environmental Management Plan shall be submitted in writing to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall include:
 - a) Construction working hours
 - b) Parking and turning facilities for vehicles of site operatives and visitors
 - c) Loading and unloading of materials
 - d) Storage of plant and materials used in constructing the development
 - e) A scheme for recycling/disposing of waste resulting from construction works
 - f) Site security arrangements including hoardings
 - g) Wheel washing facilities and/or other measures to prevent mud or other materials emanating from the application site reaching the highway
 - h) Measures to prevent flying debris
 - i) Dust mitigation measures
 - j) Measures to prevent site drag-out (including need for wheel cleaning and use of a road-sweeper)

The approved Construction Environmental Management Plan shall be implemented throughout the construction period.

- 10) Prior to installation, full details of an Air Quality Low Emission Scheme shall be submitted to and approved in writing by the local planning authority, to install 3 electric-vehicle charging points in the parking bays and Ultra-Low NOx boilers inside the properties. The approved Air Quality Low Emission Scheme shall be installed prior to first occupation of the development and thereafter be retained for the lifetime of the development.
- 11) Prior to the first occupation of the development hereby permitted a Low Emission Scheme Validation Statement shall be submitted to and approved in writing by the local planning authority. The Low Emission Scheme Validation Statement shall demonstrate that the agreed Air Quality Low Emission Scheme has been installed and is operational.
- 12) Prior to installation, plans shall be submitted to and approved in writing by the local planning authority to show the disposal of foul and surface water flows. The approved scheme shall be implemented in accordance with the approved details before first occupation of the development.
- 13) Prior to first occupation of the development hereby permitted, the car park shall be implemented, consolidated, hard surfaced and drained so that surface water run-off from the area does not discharge onto the highway or into any highway drain, together with the clear demarcation of all parking bays. The parking area shall thereafter be retained and used for no other purpose.

- 14) Prior to commencement of the above ground construction of the development hereby permitted, details of landscaping including both hard and soft landscape works and earthworks, including details of replacement tree planting in mitigation for the ones lost to accommodate the development, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details before first occupation of the development.
- 15) Prior to installation, details of the proposed cycle shelter including its proposed location, which shall be covered and illuminated, shall be submitted to and approved in writing by the local planning authority. The cycle shelter facility shall be fully implemented in accordance with the approved details before first occupation of the development and thereafter retained and used for no other purpose for the lifetime of the development.
- 16) Prior to the first occupation of the development hereby permitted, a written Validation Report shall be submitted to and approved in writing by the local planning authority to demonstrate the following measures have been installed and complied with:
 - a. Habitable rooms with facades onto The Crescent and the Public House shall have acoustic glazing with a minimum sound reduction property, R_w , of 38 dB.
 - b. Habitable rooms with a façade onto The Crescent and the Public House shall have acoustic ventilation, with a minimum sound reduction property, R_w , of 38 dB in the open position.The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development.
- 17) Prior to the first occupation of the development hereby permitted, details of the size and locations of bird nesting boxes shall be submitted to and approved in writing by the local planning authority. The bird nesting boxes shall be installed in accordance with the approved details and thereafter retained for the lifetime of the development.
- 18) The development hereby permitted shall not be carried out otherwise than in accordance with the agreed mitigation measures as detailed in the Preliminary Ecological Appraisal by Ecus Ltd dated April 2021 and such measures shall thereafter be retained for the lifetime of the development.
- 19) All site clearance shall take place outside the bird breeding season (February to August) unless carried out under the supervision of a qualified and experienced ecologist.
- 20) The development hereby permitted shall not be carried out otherwise than in accordance with the recommendation and guidelines in the approved Arboricultural report and AIA and these recommendations and guidelines shall be implemented for the lifetime of the development.
- 21) If within a period of 5 years from the date of the planting of any trees, shrubs or plants, that tree shrub or plant, or any tree shrub or plant planted in replacement for it, is removed, uprooted, destroyed or dies and or becomes seriously damaged or diseased in that period another tree shrub or plant of the

same species and size as that originally planted shall be planted at the same place.

22) The development hereby permitted shall not be carried out otherwise than in accordance with the approved external materials as shown on the submitted plans. The facing materials shall thereafter be retained for the lifetime of the development.

23) Notwithstanding the information shown on submitted plans, the development hereby permitted shall not be carried out otherwise than to meet the following minimum security measures and thereafter the security measures shall be retained:

- a. All external doors to individual dwellings to be PAS24; 2016.
- b. All shared external doors shall have a door entry phone system and electronic lock release linked to each flat.
- c. All ground floor windows and over accessible roofs to be PAS24; 2016.
- d. All ground floor windows and over accessible roofs including French doors and patio doors to have not less than one pane of 6.4mm laminated glass.
- e. Dusk until dawn lights (white light source) to be installed adjacent to each external door.
- f. Recycling and refuse areas to be secured at the rear of the properties in a lockable storage facility.
- g. Boundary treatment to be erected around the perimeter of the site.
- h. All access gates shall be of the same construction of the perimeter fencing, self-closing, facing the street, lockable with a key front and rear, designed to not create any climbing aids.
- i. No lead or metal shall be used on the ground floor.
- j. All the dwellings shall be fitted with an intruder alarm by a registered SSAIB or NSI engineer to British Standard (BS EN 50131 Grade 2).
- k. Mail boxes shall be constructed of a minimum 1.5 metre steel construction, being lockable individual letter boxes, secure anti-theft proof and wall mounted located at the primary entrance/exit lobby point of the building, covered by CCTV.
- l. Lighting within internal communal areas shall be PIR activated.
- m. All energy meters shall be placed at the front of the dwellings.

*****End of Conditions*****