



## Planning Committee

Report of Head of Planning and Building Control on 21 June 2021

Plans List Item Number: 1

### Reason for bringing to committee

Called in by a Councillor

### Application Details

**Location:** 53, CHARLEMONT ROAD, WALSALL, WS5 3NQ

**Proposal:** RETROSPECTIVE APPLICATION: PROPOSED NEW FRONT BOUNDARY WALL WITH SLIDING GATED ENTRY AND SOFT LANDSCAPING

**Application Number:** 21/0498

**Case Officer:** Jobe Elwell

**Applicant:** Mr G Binning

**Ward:** Paddock

**Agent:** Mistry Design Services

**Expired Date:** 26-May-2021

**Application Type:** Full Application:  
Householder

**Time Extension Expiry:** 05-Jul-2021

### Recommendation

Refuse Permission



## Proposal

Retrospective application: Proposed new front boundary wall with sliding gated entry and soft landscaping.

As revealed from the submitted front elevation as built plan, and from the officer's site visit, the brick walls and pillars to the front boundary are in place, which this application seeks to retrospectively regularise.

The land levels directly in front of the house, and located behind the boundary wall, have been partly lowered and raised to provide a level surface which has subsequently been hard surfaced. This can be seen from the submitted elevations plan.

From the officer's site visit, the applicant stated that 2.0m high close-board timber fences are to be added along the existing dwarf walls along the side boundaries. This would require planning consent but has not been included in this current planning application.

The proposal also includes additional soft landscaping to be positioned in front of, and behind, the front boundary walls. This would consist of a variety of different species that are expected to grow to obscure the boundary wall.

The boundary walls consist of bricks that match those use in the replacement host dwelling. The proposed railings that would sit atop the walls are to be vertical black painted metal railings.

### Proposed Dimensions

#### **Distance from back of footpath**

1.7m

#### **Brick wall**

29.1m wide

0.2m deep

0.8m high above natural ground level (eastern edge of the boundary) – 2.0m high above natural ground level (northern edge of the boundary)

#### **Metal railings**

1.4m – 3.3m wide (between pillars)

0.6m high (to sit above boundary wall)

1.4m high above natural ground level and including brick wall beneath (eastern edge of the boundary) – 2.6m high above natural ground level and including brick wall beneath (northern edge of the boundary)

**Brick pillars**

0.4m wide

0.4m deep

1.8m high above natural ground level (eastern edge of the boundary) – 3.1m high above natural ground level (northern edge of the boundary)

**Brick pillars surrounding gates**

0.7m wide

0.7m deep

2.6m & 2.8m high above natural ground level

**Boundary gates**

4.4m wide

2.0m-2.2m high above natural ground level

9.2m back from carriageway and 6m from back of footpath

**Proposed planting**

In front of walls: 0.7m – 2.0m high above natural ground level

Behind walls: 1.7m high – 3.0m high above natural ground level

**Site and Surroundings**

The application site is a large detached replacement dwelling which has been constructed and situated within a street scene comprising of detached and semi-detached houses of varied size, mixed design and differing facing materials.

Prior to the construction of the replacement dwellinghouse under application 18/0463, the frontage at No.53 Charlemont Road was characterised by a hedge and picket fence adjacent to the public footpath, with a selection of protected trees behind, and an in-out vehicle access.

The frontages along Charlemont Road are typically dominated by open frontages, dwarf walls and boundary hedges and this is the prevailing character of the area.

The Conservation Officer in their consultation response has noted that No.42 & 44 Charlemont Road date back to at least 1902, and that these dwellings have architectural, historical, artist and architectural interest. And are subsequently considered to be non-designated heritage assets.

**Planning History**

BC42841P - Proposed Private Garage with Granny Flat above – GSC on 03/01/1995

BC45391P - Deletion of Condition 6 imposed on BC42841P, (ie. that the development shall only be used for purposes incidental to the existing dwelling and not sold or let separately) – Refused on 02/01/1996

17/0501 - Replacement Dwelling (New House Build) – GSC on 02/06/2017

18/0463 - Amendment to application 17/0501 for Replacement Dwelling (New House Build) to front elevation omitting render finish and including new window surround details – GSC on 04/06/2018 subject to conditions

19/0030 - T1 - Poplar - fell to ground level – Grant Permission to Protected Trees on 22/02/2019

20/0547 - 3 x Sycamore Trees in front garden – Fell – 09/07/2020 – Subject to conditions

### 6 Charlemont Road

14/1428/FL - New widened access and front boundary 1.8m high pillars and railings – Withdrawn on 28/10/2014

### 24 Woodlands Avenue

18/1287 – Retrospective: Front boundary wall, fence and gates – Refused on 25/01/2019 for the following reason:

- 1. The proposed front boundary wall, fence and gates by virtue of their height and expanse would appear out of character and at odds with its surroundings. The proposal would appear as an overbearing, prominent and discordance feature that would cause unacceptable harm to the visual amenities of the area. The proposal fails improve the character and quality of the area and would set a precedent for the incremental erosion of this high quality sense of place. As a consequence the development is considered to be contrary to the aims and objectives of the National Planning Policy Framework, policies ENV2 and ENV3 of the Black Country Core Strategy, saved policies GP2, 3.6, and ENV32 of the Walsall Unitary Development Plan and policies DW3 and DW9 of Supplementary Planning Document Designing Walsall.*

Appeal ref APP/V4630/D/19/3221852 – Dismissed on 28/06/2019

## **Relevant Policies**

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

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

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

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

- **NPPF 4 – Decision Making**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**
- **NPPF 16 – Conserving and enhancing the historic environment**

On **planning conditions** the NPPF 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. 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.

### **Local Policy**

[www.go.walsall.gov.uk/planning\\_policy](http://www.go.walsall.gov.uk/planning_policy)

### **Black Country Core Strategy**

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

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- ENV32: Design and Development Proposals
- T13: Parking Provision for Cars, Cycles and Taxis

### **Supplementary Planning Document**

#### **Designing Walsall**

- DW3 Character
- Appendix D

It is considered in this case that the relevant provisions of the BCCS, Walsall's saved UDP policies and Designing Walsall and Conserving Walsall's Natural Environment SPD's are consistent with the NPPF.

### **Consultee Comments (Officer comments in italics)**

#### **Conservation Officer – Objection**

- No.42 & 44 Charlemont Road are considered to have historical, artist and architectural interest and are therefore non-designated heritage assets
- A heritage statement will need to be submitted with this application

- The street scape character is one with open frontages some with dwarf walls and some with dwarf walls and hedging behind. A couple of properties have installed close board fencing with concrete posts (approximately 2m (51) and 1.5m (46)), which are out of character with the original open street frontage.
- The proposed boundary wall is out of character with the open frontages and the existing open nature of the street. Whilst there are other similar boundary treatments, in the case of the 2m high close board fence adjacent, this is appears subservient in nature due to its lightweight design and smaller concrete posts.
- The proposed boundary wall is solid in construction, fortress-like in design and will be visually prominent and visually intrusive in the street scene.
- The railings and planting would not visually mitigate this impact.
- The proposed boundary wall would have low to medium harm to the significance of the non-designated heritage assets opposite.
- The proposed wall should be refused or an alternative design sought that reduces the wall and piers and the railings increased in length, so the boundary provides more visual permeability into the site.

#### Local Highway Authority – Objection

- Incorrect information submitted on the application form regarding whether works have begun without consent, existing landscaping, additional information, trees and hedges, accesses and parking (*noted. The application has been assessed based on all submitted information and the officer's site visit*).
- The plans depict a 1.9m set back from the public footpath, although this is actually 1.7m as measured on site.
- The Local Highway Authority were not consulted by the applicant prior to the submission of this application.
- Details of the specification of the construction of the link to the highway crossing are required, to determine whether the proposed access is expected to cater for residential or industrial traffic. Industrial traffic may wear out the residential dropped kerb already installed in front of the gates.
- The layout plan does not take into account the re-instatement of the full kerb for the redundant vehicle crossing at the original access for the site.
- The high brick wall and pillars restrict the visibility of cars pulling out of the site, and for pedestrians passing the site when cars are pulling out. The proposed planting would further obscure this visibility. This presents a hazard to highway and public safety.

#### **Neighbour and Interested Parties Comments**

Representations received from 3 local addresses objecting to the proposal based on



the following points:

- The development does not accord with the original permission
- The boundary walls and gates create a visually dominating and incongruous feature that harms the character of the street scene
- The amount of commercial traffic to and from the property, including the ownership of 29 vehicles, is the result of a courier business being run from the property which adversely affects neighbouring amenities
- The large tarmacked area resembles a car park rather than a residential property
- The application does not include replacements for the protected trees that were recently removed, as per the conditions of the original tree removals. The number of trees to be replaced are incorrect.

### **Determining Issues**

- Design and Character of Area
- Amenity of Nearby Residents
- Parking and Highway Safety

### **Assessment of the Proposal**

#### Design and Character of Area

The originally proposed front curtilage for the 18/0463 application for the replacement dwelling that was approved on 04/06/2018, included two accesses, one directly onto Charlemont Road at the north-east of the site and a second onto the access way of No.53 Charlemont Road. The boundary parallel to Charlemont Road was specified as being a picket fence with holly bushes with a series of trees and a lawn behind this in the centre of the frontage, punctuated by an in-and-out curving driveway.

Having visited the site, it was explained by the applicant that this approved frontage design was never intended to be implemented as it would not match the scale and appearance of the replacement dwelling. At the time of the visit, the brick wall and pillars were already in place and the ground levels had been raised and hard surfaced behind the walls. Retaining walls had been put in place to account for the changes in land levels, but there were no raised boundary treatments along the side elevations, parallel to the access ways to No. 53A & 55B Charlemont Road. Although this was explained by the applicant that an approximate 2.0m high close board timber fence was to sit atop of the retaining walls. However, this has not been demonstrated on any supporting plans and would require separate planning permission as the total height would exceed 2.0m.

Considering the predominant dwarf walls and open frontages along Charlemont Road,



the proposed boundary walls, railings and gates are considered to not integrate with the prevailing character of the local area. It is acknowledged that there was previously a hedge in the same position in addition to other nearby hedges, namely 55 & 55A. However, these are considered to present a materially different appearance to the proposed walls and railings; the hedges provide a softer appearance that positively contributes to the quality of the area. The proposed boundary possesses a dominating fortress-like appearance that introduces an incongruous appearance within the street scene. This directly contrasts to the nearby frontages of the surrounding area.

At the south-eastern corner of the site, the top of the pillars is 1.8m high which increases to 3.1m at the north-eastern corner of the site, according to the elevation drawings provided. This is considered to be of an excessive height that presents an overbearing feature. As seen from the applicant's front door and windows, this height remains level across the frontage due to the raised ground levels. Whilst an aesthetic benefit for the applicant, this adversely affects the character of the wider street scene.

Whilst on site, it was explained that the desire for the proposed boundary was to provide additional security for the applicant's expensive vehicles that would be kept on the front parking area. It is unsupported whether there are high crime levels within this area, however the development has the potential to increase the fear of crime through the excessive height and appearance of the treatment, thus negatively impacting the perception of the area. Never-the-less, this would be a wholly private gain that similarly, comes at the detriment to the character of the street scene.

It is noted that the walls are set back by 1.7m from the public footpath (as measured on site). Furthermore, small shrubs are to be planted in front of and behind the walls, which are in attempts to mitigate to visual impact of the walls. However, it is considered that whilst an improvement over the existing unlawful boundary, this would still include an overall mass and bulk that would not integrate harmoniously with the overall character of the area, thus detrimentally harming the character of the street scene. On balance, the introduction of planting is considered would not outweigh the harm arising.

It has also been noted that prior to the withdrawal on 28/10/2014, application 14/1428/FL at No.6 Charlemont Road could not be supported. This was due to similar concerns regarding the overall massing and bulk of a large frontage that would similarly not integrate with the prevailing character of dwarf walls and open frontages along Charlemont Road. It would be inconsistent for the LPA to reach a different conclusion given that there have since been no material changes to the street scene or to Walsall's relevant policies. Furthermore, the LPA elected to refuse permission for a similar application (18/1287) on 25/01/19 that was proposing retrospective boundary walls and gates at 24 Woodlands Avenue. The applicant's appealed this decision, however the appeal was dismissed on 28/06/19, re-affirming the LPA's concerns over the harm to the continuity and character of a street scene which likewise featured dwarf walls and open frontages.

The prior raising / lowering of ground levels to ensure a flat surface, which has since

been hard surfaced to provide a large parking area does require planning permission. The land has been lowered by approximately 0.6m on the south-eastern end and raised by approximately 0.7m on the north-western side, which, given the 604.3m<sup>2</sup> area, is considered to be significant enough to constitute as an engineering operation. Never-the-less, whilst not reflective of the surrounding properties and not in accordance with the original permission, the changes to land levels in itself does not create significant harm to justify a reason for refusal in this instance.

Whilst the creation of a large expanse of hard surface to the front drive does result in significant harm to the character of the area, and to the wider street scene, this does not form part of this current planning application and would need to be dealt with separately.

The Conservation Officer has objected to the proposal on the grounds that the boundary treatment is unreflective of the local surroundings and would not integrate harmoniously with the character of the street scene. They have also stated that the properties opposite No.53; No.42 & 44 Charlemont Road, are considered to have historical, artist and architectural interest and are therefore non-designated heritage assets. For this reason, the aforementioned harm to the street scene is also considered to result in a low to medium harm to the significance of the non-designated heritage assets opposite. No Design & Access or Heritage Statement has been received with this application. They subsequently recommend that the application is refused or significantly amended. This adds weight to the officer's recommendation of refusal.

#### Amenity of Nearby Residents

The positioning of the boundary walls and gates would be approximately 20.5m from the front windows of No.44, and approximately 29.7m from the front windows of No.52. These distances are considered acceptable to not result in a detrimental harm to their overall outlook. Due to existing boundary treatments for the respective properties, the proposed boundary walls and fencing is considered to not result in a detrimental harm to the outlooks of No. 51 & 55.

Whilst there are a large number of vehicles currently on the frontage, as noted on site, some of these are due to the construction still taking place at the property and some appeared to be private vehicles. Whilst a business could be operating from the premises, at this time this does not appear to constitute as a change of use, and does not form part of this application. However, should additional evidence come forward of private commercial vehicles, not related to the construction at the property, being permanently parked at the property as part of a courier business, this would require a separate investigation and potentially a future planning application.

It has been noted that the removal of the protected sycamore trees was granted on 09/07/2020 subject to the condition that two replacement trees (to be agreed in writing by the LPA) are planted within 12 months of the removal of those two trees. Whilst three trees were removed, as stated in the officer's report, only two of these were included under the original tree preservation order, thus only two are conditioned to

be replaced. Although some planting is proposed, these do not appear to include the replacement protected trees. There is still time to implement this within the original 12 months since removed, so does not need to form part of this application.

### Parking and Highway Safety

The existing / proposed parking area differs significantly from the formerly approved parking area. This facilitates the parking of over 4 vehicles within the curtilage of the replacement dwellinghouse which complies with the terms of the saved UDP Policy T13. Whilst noted in neighbours objections; the 'car park' appearance still complies with the requirements of Saved policy T13 and thus does not justify a reason for refusal on highways grounds.

The Local Highway Authority have objected to the proposal on numerous grounds. These include: the incorrect information on the application form, the lack of details regarding the link to the central vehicle crossings and the re-instatement of the original dropped kerb. Whilst these points require clarifying and amending on the plans and a new application form to reflect this, the proposal has been assessed on the basis of the overall information submitted and as seen as part of the officer's site visit. It is considered a refusal on these grounds would not therefore be warranted.

However, the Local Highway Authority have stated that the positioning of the walls and gates, together with the high walls with proposed dense planting behind and in front of the walls, creates significant screening that obscures the visibility of cars exiting the driveway. This presents very little notice to the car pulling out of the driveway of any pedestrians walking along the public footpath. Similarly, the high walls present no visibility to the pedestrians themselves of any cars pulling out of the driveway. This presents a significant hazard to highways safety.

### **Conclusions and Reasons for Decision**

The proposed boundary walls, gates and railings are considered to present a visually obtrusive feature that would have an overbearing impact on the street scene. This would not integrate harmoniously with the prevailing character of the area, thus detrimentally harming the Charlemont Road street scene. Therefore the proposal is considered contrary to BCCS policies ENV2 and ENV3, saved UDP policies: GP2 and ENV32, SPD Designing Walsall and the NPPF.

The proposed development is considered to not have a detrimental effect on the outlook, daylight or privacy to neighbouring habitable rooms or the rear garden amenity area. Therefore, the residential amenities will remain protected and the proposed development is in accordance with saved UDP policy GP2.

There is adequate space for three parking spaces within the curtilage of the dwellinghouse. However, the height and position of the boundary treatment has the potential to obscure vehicle and pedestrian visibility to the detrimental impact on highways safety. Therefore, the application is considered to be contrary to saved UDP

policy T13 and the NPPF.

On balance, it is concluded that this application should be recommended for refusal.

### **Positive and Proactive Working with the Applicant**

#### **Refuse**

Officers have spoken with the applicant's agent and amended plans were requested to reduce the height of the wall, pillars and railings, with the addition of a heritage statement and for the change in land levels to be more clearly shown in original and proposed elevations / cross-sections, the proposed fencing along the side boundaries to be included with this application and for more information to be stated on whether the replacement protected sycamore trees would form part of the application. A deadline was provided for the submission of this, but these amendments and additional information have not been received. Therefore, the LPA has tried to work pro-actively with the applicant and applicant's agent on this application, and it was clearly stated that unless this information was received, the current recommendation would be refusal. Therefore, the LPA will determine the application as it stands and in its current state this cannot be supported.

### **Decision Recommendation**

Refuse Permission

### **Reasons for Refusal**

1. The proposed boundary walls, gates and railings are considered to present a visually obtrusive feature that would have an overbearing impact on the street scene. They possess a bulk and mass that is of a disproportionate size and imposing design that subsequently creates an incongruous feature. This would directly contrast with the prevailing dwarf wall and open frontage character of the Charlemont Road street scene, thus detrimentally harming the character of the local area. Therefore the proposal is considered contrary to BCCS policies CSP4, ENV2 and ENV3, saved UDP policies GP2 and ENV32, DW3 of the Designing Walsall SPD and the National Planning Policy Framework.
2. The proposed boundary walls, gates and railings are of a substantial height and in close proximity to the public footpath, which provides insufficient visibility for vehicles exiting the driveway of any passing pedestrians along the public footpath. This would be further exacerbated by the proposed planting of large vegetation both in front of and behind the boundary walls. This is considered to result in unacceptable harm to highways safety. Consequently, the application is considered contrary to saved UDP policy T13 and the National Planning Policy Framework.
3. The proposed boundary walls, gates and railings are in close proximity to non-designated heritage assets at No.42 & 44 Charlemont Road which is considered to adversely affect their setting and thus presents a harm to their heritage significance. This application fails to provide sufficient assessment or justification in heritage terms. Therefore the proposal is considered contrary to

BCCS policies ENV2 and ENV3, saved UDP policies: GP2 and ENV32, DW3 of the Designing Walsall SPD and the National Planning Policy Framework.

### Notes for Applicant

N/A

**END OF OFFICERS REPORT**