



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 Councils 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