



## Planning Committee

Report of Head of Planning and Building Control on 10 February 2022

Plans List Item Number: 8

### Reason for bringing to committee

Called in by Councillor Nasreen on the grounds that the application requires delicate judgement.

### Application Details

**Location:** 48, MELLISH ROAD, WALSALL, WS4 2EB

**Proposal:** RESUBMISSION OF 20/1268 FOR PART TWO STOREY AND PART SINGLE STOREY REAR EXTENSION PLUS GARAGE CONVERSION.

**Application Number:** 21/0971

**Case Officer:** Rebecca Rowley

**Applicant:** N Sander

**Ward:** St Matthews

**Agent:** Manraj Michael Singh

**Expired Date:** 02-Sep-2021

**Application Type:** Full Application:  
Householder

**Time Extension Expiry:** 31-Dec-2021



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### Recommendation

Refuse Planning Permission

## Proposal

### Two Storey and Single Storey Rear Extensions

- Width: 10.2m
- Depth: 5.6m on the ground floor, 3.8m deep at the first floor
- Height to eaves: 2.6m ground floor, 5.1m first floor
- Ridge Height: 3.3m ground floor, 7.0m first floor

### Conversion of the existing detached rear garage to a playroom

- No extensions or alterations are proposed to the garage other than replacement of the garage door and a small window with an entrance door and bi-folding doors facing onto the applicant's garden.

## Site and Surroundings

The application site is a detached dwelling, situated within a street scene (Mellish Road) comprising detached and semi-detached houses of varied size and mixed design with differing facing materials.

This property is situated on the corner of Mellish Road and Rushwood Close and is built in the same style as all others on Rushwood Close with the dormer windows projecting from the front and rear.

The property sits forward of the building line along Mellish Road, meaning the neighbour at No.50 projects further to the rear than No.48. Consequently there are side facing windows that would look out onto any rear extension, however these are obscure glazed.

There are a number of protected trees on the front of 48 & 50 Mellish Road, and 9 protected Lime trees along the boundary between No.48 & 50 Mellish Road and 1 Rushwood Close.

## Planning History

- 19/0529 - T1 Lime - Crown reduce to a height of 7.0m. T2 Lime - Fell to ground level. T3 Lime - Fell to ground level. T4 Lime - Fell to ground level. – refused permission for works as requested on the grounds that no evidence had been submitted to implicate the trees in the cause of current or future damage to the building and the detrimental impact of the proposed work to the amenity, aesthetic and landscape value of the area. Granted permission to reduce T1, T2, T3 and T4 to 12m height and 2/3m radial spread – 24/06/2019
- Appeal AA/TPO/V4630/7512 of the decision for application 19/0529 – dismissed 27/02/2020 on the grounds that given the positive contribution that the trees make to the character and appearance of the area and the harm identified, none of the factors submitted by the appellant, taken either singly or cumulatively, provide sufficient justification for the works proposed.
- 19/1220 – Part Two Storey and Part Single Storey Rear Extension with internal Changes and Garage Conversion – GSC on 20/08/2020
- 20/1245 - prior approval for a larger home extension for a single storey rear

extension, 8.00 metres deep from the original rear elevation, 4.00 metres maximum height measured externally from the natural ground level, 3.00 metres high at the eaves measured externally from the natural ground level – GSC 18/11/2020

- 20/1268 - Two Storey and Single Storey Rear Extensions plus Garage Conversion – Refused permission 10/02/2021 on the following grounds:
  1. The proposed two storey rear extension presents unacceptable detrimental harm to the character of the original dwelling and to the surrounding Rushwood Close street scene. The large projecting twin gable design with accentuated eaves detailing, together with the overall size and mass of the extension, is not reflective of the character of the original dwelling and does not appear subservient in relation to the host property. At a prominent corner location, the overbearing design would be an incongruous addition to the Rushwood Close street scene, which would be visible from numerous public vantage points. The visually obtrusive extension would disrupt the consistency and continuity of the existing street scene to the detriment of the character of the local area. Therefore, the application does not comply with Saved Policies GP2 and ENV32 of Walsall's Unitary Development Plan, CSP4, ENV2 & ENV3 of the BCCS, and the NPPF.
  2. The proposed development would adversely affect the privacy of No.2 Rushwood Close. The two side facing bedroom windows in the proposed extension and the additional side facing study window in the main dwellinghouse, would facilitate direct overlooking into the neighbouring property's ground and first floor habitable room windows. The separation distance of these windows would be below the required 24m minimum separation distance stated in the Designing Walsall SPD. Considering that there is currently no facing habitable room windows in the existing side elevation of No.48, the proposed development would introduce a new harm that is not proportional to the character of the area, and would consequently detrimentally impact their privacy. Therefore, the application does not comply with Saved Policy GP2 of Walsall's Unitary Development Plan, the Designing Walsall SPD and the NPPF.
  3. This application fails to demonstrate the potential impacts to the protected Lime trees in the rear garden. Without any satisfactory evidence supporting the application, the proposed development presents a potential harm to the overall health and longevity of the protected trees within the site and result in harm to the visual amenity of the area. Therefore, the proposal is not in accordance with Saved Policies ENV18 & GP2 of Walsall's Unitary Development Plan, NE7 & NE8 of Walsall's Natural Environment SPD and the NPPF.

## **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 12 – Achieving well-designed places**
- **NPPF 15 – Conserving and enhancing the natural 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
- ENV1: Nature Conservation
- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

### **Walsall Site Allocation Document 2019**

EN1: Natural Environment Protection, Management and Enhancement

### **Saved Unitary Development Plan**

- GP2: Environmental Protection
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV32: Design and Development Proposals
- T13: Parking Provision for Cars, Cycles and Taxis

### **Supplementary Planning Document**

### **Conserving Walsall's Natural Environment**

Development with the potential to affect species, habitats or earth heritage features

- NE1 – Impact Assessment
- NE2 – Protected and Important Species
- NE3 – Long Term Management of Mitigation and Compensatory Measures

Survey standards

- NE4 – Survey Standards

The natural environment and new development

- NE5 – Habitat Creation and Enhancement Measures
- NE6 – Compensatory Provision

Development with the potential to affect trees, woodlands and hedgerows

- NE7 - Impact Assessment
- NE8 – Retained Trees, Woodlands or Hedgerows
- NE9 – Replacement Planting
- NE10 – Tree Preservation Order

### **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**

### **Local Highway Authority**

Support

### **Pollution Control**

Pollution Control requires the applicant to:

- (i) Address any installation of a solid fuel appliance
- (ii) Agree a Construction Management Plan

### **Tree Preservation Officer**

Concerns raised - The proposed extension is likely to be detrimental to the existing protected trees and lead to their removal due to the proximity of the proposed extension/assumed hard standing and the issues surrounding shading, the proximity of the crown and honeydew deposition.

## **Neighbour and Interested Parties Comments**

2 representations were received from 2 neighbouring occupants raising the following concerns:

- Negative impact on privacy
- Potential loss of natural light to our property. Our property has a large window in the wall facing the property at 48. This window provides a lot of natural light to our hallway, staircases and both the first and second floor landings. It appears that the second floor extension could block or reduce this light.

## **Determining Issues**

- Has this application overcome the previous reasons for refusal?
- Other material planning matters

## **Assessment of the Proposal**

### **Has this application overcome the previous reasons for refusal?**

Specifically:

1. *Unacceptable detrimental harm to the character of the original dwelling and to the surrounding Rushwood Close street scene (summarised).*

As no significant amendments have been made to the design of the proposed extensions compared to the previous application 20/1268, reason no. 1 for refusal remains. It is also noted that the current proposal is a very similar design to drawing 3 of 7a, submitted on 22/10/2019, which was the first of six design amendments that were submitted for application 19/1220 before the LPA could support that particular application.



The rear garden boundary wall is 2.1m in height. The entire of the existing rear of the property above the eaves height is visible above this wall from the public vantage point, even with some limited screening provided by boundary trees and foliage. Whilst this wall and foliage may screen the lower parts of the proposed extension it is considered that the majority of the first floor rear, as well as the additional depth of the side elevation of the first floor extension would be of sufficient visibility within the street scene to create an impact. Therefore, the submitted unilateral undertaking which proposes the ongoing retention of an existing boundary wall and vegetation does not address this refusal reason.

Accentuated eaves detailing was referred to in the previous refusal reason and this application demonstrates an effort to simplify this detail. This particular point can be removed from the reason for refusal, however there are no changes to the height of the eaves or the roof ridge of the two storey rear extension and therefore, regardless of a minor change to the eaves detail, the harmful impact would remain.

The applicant's agent has been advised that amendments are required to reduce the size and mass of the proposed two storey extension at the rear of the property but no amendments have been received to date.

Therefore this application fails to overcome the previous first refusal reason.

*2. The proposed development would adversely affect the privacy of No.2 Rushwood Close (summarised).*

The side facing first floor bedroom window has been removed. It is acknowledged that the side facing first floor office room window was permitted by the approval of application 19/1220.

The second reason for refusal has therefore been overcome.

*3. This application fails to demonstrate the potential impacts to the protected Lime trees in the rear garden (summarised).*

Whilst an arboricultural report has been submitted in an effort to demonstrate the potential impacts to the protected Lime trees in the rear garden, the Council's Tree Officer has raised concerns over the likely future pressure of removal of these trees from a result of this proposed development.

The 3 protected Lime trees in the rear garden provide a high degree of amenity value to the locality, and form an integral part of a linear group feature when combined with 3 x other protected trees on the adjacent property. A recent application to fell these 3 trees (19/0529) was dismissed at Appeal. An Arboricultural Impact Assessment (AIA) has been submitted in support of the application which states, "The trees are protected by a Tree Preservation Order, however ... it is not seen how it is possible to construct the extension without significant harm to the trees to the rear."

The AIA has categorised the trees, in accordance with British Standard 5837:2012 Trees in Relation to Design Demolition and Construction, as being in the B1 category (good trees). The Council's Tree Officer considers these trees have been downgraded on the basis of past management and should instead be categorised as A2 being "Trees, groups or woodlands of particular visual importance as arboricultural and/or landscape features".

The proposed single storey element of the extension would be located approximately 6m from the base of the nearest tree, which has a root protection distance of 7.4m. No details have been submitted of any potential patio area leading off the proposed bi-fold doors at ground floor. Given the ground level in this area rises gently, a greater amount of excavation would be required to achieve any such hard standing area which has the potential to result in damage to the trees root system and overall longevity. Whilst conditions could be attached to any permission to restrict permitted development rights regarding external areas of hardstanding, this alone would not address the Council's concerns and would fail to overcome the original refusal reason.

The proposed second storey element of the extension would be located approximately 7m from the crown of the tree. The crown of the tree extends to 7m from the base indicating there would be a conflict in this area and that significant pruning works would be required to allow the construction of the extension and to maintain a reasonable clearance between the edge of the canopy and the building fabric. In addition, the southern elevation of the second storey element is shown as a gable end which means that any pruning of the crown in this area would have to be undertaken to a height of 2m over and above the height of the proposed ridge (i.e. 9m above ground level), which would not be considered in line with best practice and would have a detrimental impact on the shape, form and visual amenity value of the tree. The remaining crown would overhang the roof of the property and is likely to lead to the future pressure of severe pruning or removal of the tree(s) due to the deposition of tree debris onto the building, fears in adverse weather condition and the dripping of honeydew onto various parts of the building, and any future patio area.

The trees are located on the south side of the building, slightly to the east. An assessment of the shade indicates the building would almost be completely shaded in the morning to around early afternoon which is also likely to lead to the Council being placed under pressure to allow severe (cyclical or repeated) pruning or removal of the tree(s).

Therefore, construction of the proposed extensions and likely future associated amenity issues are considered would have a detrimental effect on these protected trees which would likely result in pressure for their future severe pruning or removal resulting in an unacceptable harmful impact on the visual amenity of the locality.

Impacts to these protected trees remain, and the third refusal reason is maintained and updated to reflect this position.

### **Other material planning matters**

#### **Air Quality**

Environmental Protection require conditions to prevent the installation of any solid fuel burning appliance in the premises and that a construction management plan be submitted and approved prior to commencement of development at this site. The reasons for this are to protect air quality and neighbouring amenity. Should members be minded to approve this application, it is recommended that conditions to address these matters be included in the decision.

#### **Impact on Neighbouring Amenity**

A representation received raised concerns regarding privacy. The refused application was considered only to impact on the privacy of no. 2 Rushwood Close to a level that would be significant enough to warrant refusal on this ground. As this previous reason



for refusal has been overcome and no additional doors or windows are proposed compared to the refused scheme, it is considered that the proposal poses no significant further risk of harm to the privacy of neighbouring occupants to warrant refusal in this instance.

In terms of the objection made regarding loss of light to a neighbour's hallway and staircase, hallways, staircases and landings are not considered to be habitable rooms that occupants of a dwelling would spend any significant amount of time in and therefore do not hold the same weight as a habitable room when considering the impact of a development on light to these rooms and would not warrant a refusal reason.

However, the proposal includes a first floor side facing bathroom window looking towards no. 50 Mellish Road. Should members be minded to support this proposal, a condition should be included to ensure that this window is obscurely glazed to protect the privacy of occupants of the application site and neighbouring occupants.

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

The key material planning considerations, neighbour comments and consultee responses have been weighed in assessing the planning application and it is considered that whilst the principle of the proposed extensions would be acceptable and the design would not cause any significant harm to the amenity of neighbouring occupants when using their homes or gardens, nor harm to highway safety subject to the use of planning conditions, the proposed development would not integrate well with the local area and would adversely impact on the character, appearance and identity of the site and the area contrary to the aims and objectives of the National Planning Policy Framework, BCCS policies CSP4, ENV2 and ENV3, saved UDP policies GP2 and ENV32 and the SPD Designing Walsall Policy DW3.

Taking into account the above factors, it is considered that the application should be recommended for refusal

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

Officers have spoken with the applicant's agent regarding the amendments that would be required to overcome the previous reasons for refusal. No amendments have been made to the design to date, and in this instance, officers are unable to support the proposal.

### **Decision Recommendation**

Refuse Permission

### **Reasons for Refusal**

1. The proposed two storey rear extension presents unacceptable detrimental harm to the character of the original dwelling and to the surrounding Rushwood Close street scene. The large projecting twin gable design together with the overall size and mass of the extension, is not reflective of the character of the original dwelling and does not appear subservient in relation to the host property. At a prominent corner location, the overbearing design would be an incongruous addition to the Rushwood Close street scene, which would be visible from numerous public vantage points. The visually obtrusive extension

would disrupt the consistency and continuity of the existing street scene to the detriment of the character of the local area. Therefore, the application does not comply with Saved Policies GP2 and ENV32 of Walsall's Unitary Development Plan, CSP4, ENV2 & ENV3 of the Black Country Core Strategy, and the National Planning Policy Framework.

2. Notwithstanding the submitted details, the proposed two storey rear extension has the potential to result in detrimental impacts to, and future pressure for severe pruning or removal of, the existing 3 x protected Lime trees due to the proximity of the proposed extension to the trees and encroachment of their Root Protection Areas. Such harm to these trees of high amenity value would result in unacceptable impacts to the visual amenity of the locality and contrary to the requirements of the National Planning Policy Framework, Walsall's Saved Unitary Development Plan policies GP2 and ENV18, Walsall's Site Allocation Document EN1 and the Supplementary Planning Document Conserving Walsall's Natural Environment.

### **Notes for Applicant**

None

**END OF OFFICERS REPORT**