



## Planning Committee

Report of Head of Planning and Building Control on 15 July 2021

Plans List Item Number: 7

### Reason for bringing to committee

Called in by Councillor Wilson on the grounds that the application requires delicate judgement and there is significant community interest

### Application Details

**Location:** 144, WHETSTONE LANE, ALDRIDGE, WALSALL, WS9 0EZ

**Proposal:** CHANGE OF USE FROM GARAGE/GARDEN STORE TO ONE BEDROOM DWELLING WITH ADDITION OF PORCH PLUS ACCESS DRIVE AND CAR PARKING.

**Application Number:** 19/0313

**Case Officer:** Leon Carroll

**Applicant:** Anthony Doohar

**Ward:** Aldridge Central And South

**Agent:** Paul Spooner

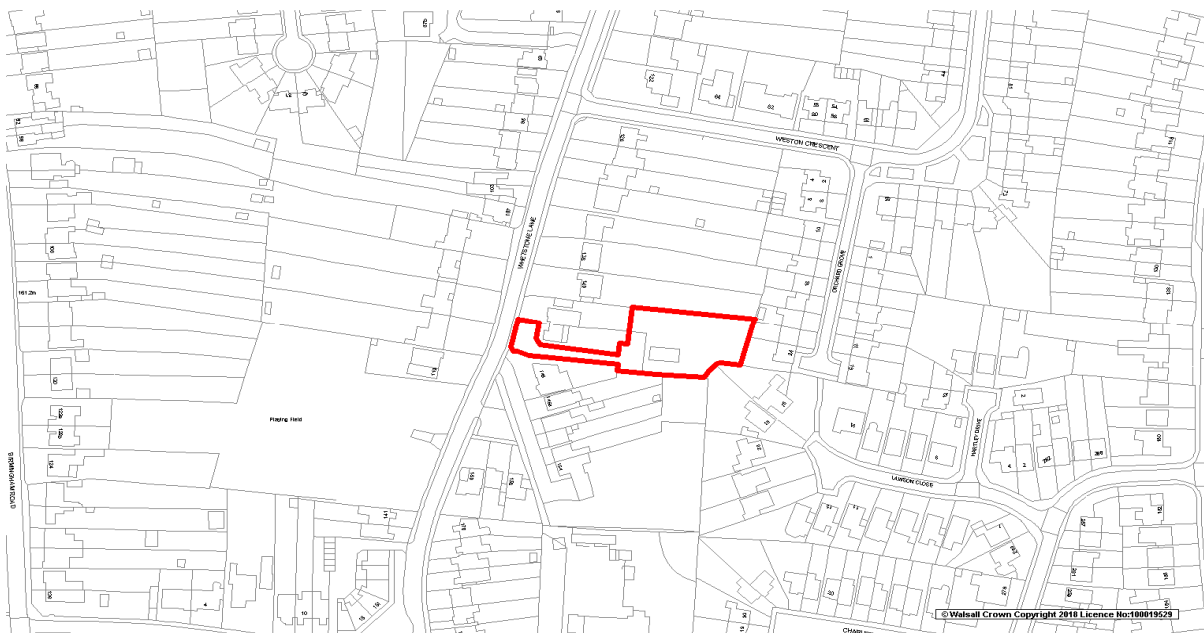
**Expired Date:** 01-May-2019

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

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

### Recommendation

Refuse



## **Current Status**

At the Planning Committee meeting of 21<sup>st</sup> June 2021 Members resolved to defer this item to the next available Planning Committee meeting due to technical issues arising at that time.

The following section of this update report will set out any changes since the original report (which follows), including matters to be addressed which were contained within the previous supplementary paper.

### **Supplementary Paper**

1. The applicant submitted detailed swept path drawings showing that a fire appliance could access the site safely. The proposal is therefore acceptable in terms of highway safety.
2. Further drawings were submitted by the applicant in order to demonstrate their position that the retained trees would be unaffected by the change of use however the Council's tree officer's concerns regarding future pressure to prune or fell these trees are not allayed by the additional drawings. The proposal is still therefore considered to be unacceptable due to the impact on trees and is contrary to saved policy ENV18 of the Walsall Unitary Development Plan.

### **Any Other Updates**

None

### **Conclusion**

No change to officer recommendation as set out in the original report.

## **THE ORIGINAL REPORT FOLLOWS:**

### **Proposal**

The proposal relates to the change of use of an existing detached garden building to an independent dwelling, along with the construction of a porch to the front and parking/access from Whetstone Lane.

### **Site and Surroundings**

The site is the rear garden of 144 Whetstone Lane which is located in a suburban residential area to the south of Aldridge district centre. Adjoining the site to the south is 146 Whetstone Lane which sits at a slightly higher level than the application site. The site is bounded to the west by Nos 16-18 Lawson Close and Nos 22-24 Orchard Grove. The site includes land which currently forms part of the rear gardens of Nos 142-144 Whetstone Lane and as such shares a boundary to the north with No 140 Whetstone Lane.

### **Relevant Planning History**

16/0138: Erection of 3 detached 4 bed, two storey houses. Refused 19/04/18. Appeal dismissed 12/12/18

03/2383/FL/E6: One dwelling & access. Refused 27/01/04. Appeal dismissed 05/10/04

## Relevant Policies

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

[www.gov.uk/guidance/national-planning-policy-framework](http://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 5 – Delivering a sufficient supply of homes**
- **NPPF 8 – Promoting healthy and safe communities**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**
- **NPPF 14 – Meeting the challenge of climate change, flooding and coastal change**
- **NPPF 15 – Conserving and enhancing the natural environment**

On **planning conditions** the NPPF (para 55) says:

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

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

### **National Planning Policy Guidance**

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

### **Reducing Inequalities**

The Equality Act 2010 (the '2010 Act ') sets out 9 protected characteristics which should be taken into account in all decision making. 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](http://www.go.walsall.gov.uk/planning_policy)

### **Saved Policies of Walsall Unitary Development Plan**

- GP2: Environmental Protection
- ENV18: Existing Woodlands, Trees and Hedgerows
- ENV23: Nature Conservation and New Development
- ENV32: Design and Development Proposals
- T7 - Car Parking
- T13: Parking Provision for Cars, Cycles and Taxis

### **Black Country Core Strategy**

- CSP4: Place Making
- HOU1: Delivering Sustainable Housing Growth
- HOU2: Housing Density, Type and Accessibility
- ENV1: Nature Conservation
- ENV3: Design Quality
- ENV5: Flood Risk, Sustainable Drainage Systems and Urban Heat Island

- ENV8: Air Quality

## **Walsall Site Allocation Document 2019**

HC2: Development of Other Land for Housing  
EN3: Flood Risk

## **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**

- DW1 Sustainability
- DW2 Safe and Welcoming Places
- DW3 Character
- DW4 Continuity
- DW5 Ease of Movement
- DW6 Legibility
- DW7 Diversity
- DW8 Adaptability
- DW9 High Quality Public Realm
- DW9(a) Planning Obligations and Qualifying development
- DW10 Well Designed Sustainable Buildings

### **Air Quality SPD**

- **Section 5 – Mitigation and Compensation:**
- Type 1 – Electric Vehicle Charging Points
- Type 2 - Practical Mitigation Measures
- Type 3 – Additional Measures
- 5.12 - Emissions from Construction Sites
- 5.13 – Use of Conditions, Obligations and CIL
- 5.22 - Viability

## Consultation Replies

### Community Safety Team

Suggestions made regarding prevention of crime, and concerns expressed regarding use of shared access in future.

### Local Highway Authority

The Local Highway Authority considers the current application is a significant reduction on the scale and quantum of development compared to the previous scheme and consequently significantly less intensive in terms of potential vehicle movements. The proposal looks to utilise the existing access shared by 142 and 144 and not a new access, although the existing shared access may need to be widened to accommodate a Fire Appliance, subject to confirmation by an Autotrack analysis.

The Local Highway Authority considers that on balance the current proposal in traffic terms will only marginally increase vehicle movements at an existing access and will not have an unacceptable impact on road safety or have severe cumulative impacts on the operation of the road network and is in accordance with the NPPF 2018 paragraph 109.

### Pollution Control

No objection.

### Severn Trent Water

As the proposal has minimal impact on the public sewerage system STW have no objections to the proposals and do not require a drainage condition to be applied.

### Tree Preservation Officer

The Council's Tree Officer objected to the proposal on the grounds that the proposal would result in future pressure to lop or fell both protected trees on site and unprotected trees adjacent to the site which nevertheless provide important amenity value to the local environment.

### West Midlands Fire Service

WMFS were broadly in support of the proposal subject to compliance with Building Regulations and also noted that access routes should have a minimum width of 3.7m between kerbs, noting that WMFS appliances require a minimum height clearance of 4.1m and a minimum carrying capacity of 15 tonnes (ADB Vol 1, Table 13.1).

### West Midlands Police Architectural Liaison Officer

No objection subject to suitable security measures

## Representations

22 letters of objection were received from 12 addresses.

Grounds for objection were as follows (*Officer comments in italics*):

- Precedent (*each application is judged on its own merits*)
- Increased traffic
- Highway safety

- Not in keeping with style of housing in this locality
- Inadequate access
- Land stability
- Loss of trees/impact on protected trees
- Concerns regarding future use of dwelling
- Noise and disturbance
- Planning condition preventing use as living or commercial accommodation
- Impact on wildlife
- Concerns that the building has already been converted

## **Determining Issues**

- Principle of Development
- Design, Layout and Character
- Amenity of Neighbours and Amenity of Future Occupiers
- Highways
- Ecology
- Flood Risk / Drainage
- Trees / Protected Trees
- Stability of Land
- Local Finance Considerations

## **Assessment of the Proposal**

### **Principle of Development**

The proposal would add to the supply of housing so could potentially be supported by paragraph 59 of the National Planning Policy Framework, subject to detailed consideration of the potential impact of the proposal on local character, trees, the amenity of neighbouring properties and highway safety.

### **Design, Layout and Character**

The planning history of this site includes an application for one dwelling in 2003 which was refused and dismissed on appeal to the Planning Inspectorate, and an application for three dwellings in 2018 which was also refused and dismissed on appeal. The findings of the inspectors in those cases are therefore a material consideration. Then, as now, national legislation and guidance encouraged the development of infill sites within urban areas provided that a satisfactory residential environment could be provided.

No 144 Whetstone Lane is situated in a suburban residential area with a generally linear layout of straight roads lined with detached and semi-detached dwellings set back from the highway and with large mature rear gardens. This area was developed in the middle of the 20<sup>th</sup> century and with very few exceptions has retained its original layout and character.

The existing building is described as a detached garden store/garage, though some works appear to have already been carried out to convert the building to residential appearance with garage doors replaced by patio doors. The building is rectangular with a dual pitched roof. The addition of a porch is considered to have minimal visual impact. In its current authorised use as a garden store the building is only accessible on foot via the rear garden of No 144 Whetstone Lane and as such has an acceptable



impact on the character of the local area.

The change of use of the building to an independent dwelling requires the provision of parking and a vehicular access and would also include the construction of boundary treatments and pedestrian footpaths in order to facilitate its use as such. The proposed dwelling would not have an active street frontage and would be located behind Nos 142 and 144 Whetstone Lane. As such the proposed layout would be out of keeping with the established pattern, layout and character of the area which is defined by properties with a direct street frontage and large mature rear gardens. The proposed layout fails to respond to local character, reinforce local distinctiveness or reinforce the existing urban structure. The development is therefore contrary to the aims and objectives of the National Planning Policy Framework, policies CSP4, HOU2, ENV3 and ENV3 of the Black Country Core Strategy, saved policies GP2 and ENV32 of the Walsall Unitary Development Plan and the Supplementary Planning Document: Designing Walsall.

### **Amenity of Neighbours and Amenity of Future Occupiers**

The proposed change of use of the existing garden building to an independent dwelling will necessitate the creation of a driveway and parking area alongside the boundary with 146 Whetstone Lane. The addition of a porch is not considered to increase the impact of the building on neighbouring occupants and no other extensions to the building are proposed.

The introduction of a new access drive will however result in vehicle activity and disturbance to the existing occupiers of 142 and 144 Whetstone Lane and in particular 146 Whetstone Lane. The starting and revving of vehicle engines and associated vehicle movements would therefore be introduced in close proximity to the rear private amenity space of Nos 142-146 Whetstone Lane and would have a harmful impact on the standard of amenity for those dwellings.

Furthermore, the nearest point of the existing building is approximately 64m from the pedestrian footway on Whetstone Lane which is far in excess of the recommended distances for refuse and recycling bins. The proposal would therefore have an unacceptable impact on the amenity of future occupants of the site. The development is therefore 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, ENV10 and ENV32 of Walsall's Unitary Development Plan and the Designing Walsall Supplementary Planning Document.

### **Highways**

The Highway Authority considers that on balance the current proposal in traffic terms will only marginally increase vehicle movements at an existing access and will not have an unacceptable impact on road safety or have severe cumulative impacts on the operation of the road network and is in accordance with the NPPF. The applicant has submitted detailed swept path drawings showing that a fire appliance could access the site safely. The proposal is therefore acceptable in terms of highway safety.

### **Ecology**

A survey submitted with the previous 2016 planning application determined that there were no gaps present in the existing outbuilding to allow access for bats. Whilst this survey is now out of date, it is considered that the situation remains the same and that



based on the information available bats are not likely to be present. Safeguarding conditions would be applied to any approval to ensure caution when carrying out works to the roof structure.

### **Flood Risk and Drainage**

The proposal relates to the conversion of an existing building, and as such the development is considered to have a minimal impact on flood risk provided that rainwater from the additional hardstanding is drained within the site. Severn Trent Water had no objection to the proposal and the development is considered to be acceptable in terms of flood risk.

### **Impact on Trees**

The construction of the porch and extending the driveway is unlikely to have any significant detrimental impact on the existing trees on site, two of which are protected by TPO - Oak T1 and Beech T2. Ash T3 was removed with consent following significant storm damage.

However, there are some significant trees outside of and adjacent to the south boundary of the site including what appears to be an evergreen Holly hedge. Due to their proximity and orientation the trees and hedge will cast shade on the proposed dwelling for much of the day. The Holly hedge in particular has considerable growth potential and any shading will get worse as it increases in height. Evergreen trees located to the south of a dwelling and in such close proximity are likely to result in pressure to have them removed or inappropriately pruned. To a lesser extent the TPO Oak to the east of the property is also going to contribute the shading of the dwelling. Further drawings were submitted by the applicant in order to demonstrate their position that the retained trees would be unaffected by the change of use however the Council's tree officer's concerns regarding future pressure to prune or fell these trees are not allayed by the additional drawings. The proposal is therefore considered to be unacceptable due to the impact on trees and is contrary to saved policy ENV18 of the Walsall Unitary Development Plan.

### **Local Finance Considerations**

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

This application proposes 1 new home.

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

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

## **Conclusions and Reasons for Decision**

Given that there are no material planning considerations in support of the proposals

which outweigh the concerns described above it is concluded that this application should be recommended for refusal.

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

The Local Planning Authority has acted positively and proactively in dealing with applications at this site. Previous applications for residential development of the site have been considered and subsequently refused. Most recently planning application 16/0138 was refused and an appeal to the Planning Inspectorate dismissed. Whilst the current proposal represents a reduced form of development the fundamental concerns with previous refusals have not been overcome as part of the current application under consideration, and the applicant has had the opportunity to act on advice previously given, including that in the decision notice and officer report for the previous refusal and comments made by the Planning Inspector.

### **Recommendation**

Refuse

### **Reasons for Refusal**

1. The proposed dwelling would not have an active street frontage and represents inappropriate backland development which is out of keeping with the established pattern, layout and character of the area which is defined by properties with a direct street frontage and large mature rear gardens. The proposed layout fails to respond to local character, reinforce local distinctiveness or reinforce the existing urban structure. The development is therefore contrary to the aims and objectives of the National Planning Policy Framework, policies CSP4, HOU2, ENV3 and ENV3 of the Black Country Core Strategy, saved policies GP2 and ENV32 of the Walsall Unitary Development Plan and the Supplementary Planning Document: Designing Walsall.
2. The proposed development would harm the residential amenity of Nos 142-146 Whetstone Lane by reason of the introduction of additional parking and an access driveway in close proximity to the private amenity space of those dwellings. The proposed change of use would fail to provide a satisfactory standard of amenity for future occupants and the development is therefore contrary to saved policies GP2 and ENV32 of the Walsall Unitary Development Plan, the Designing Walsall Supplementary Planning Document and paragraph 127(f) of the National Planning Policy Framework.
3. The proximity of the existing building to be converted to a residential dwelling and the proposed access road to retained trees, some of which are protected by TPO 8 of 2004, will result in future issues including significant overshadowing, leaf litter, bird droppings on cars etc and future residents are likely to have safety concerns and concerns over property damage. These issues are therefore likely to lead to pressure from future residents to have the remaining trees severely pruned or removed which would be detrimental to the landscape character of the area and contrary to Saved policy ENV18 of Walsall's UDP.

### **END OF OFFICERS REPORT**