

20/00904/FUL

Miss E Morgan

CODSALL
Cllr John Michell
Cllr Robert Spencer

73 Oaken Park Codsall WV8 2BW

First floor side extension over existing single storey extension.

1. SITE DESCRIPTION AND PLANNING HISTORY

1.1 Site Description

1.1.1 The application property is a modest sized three bedroom semi-detached dwelling located within a quiet and mature residential area of Codsall. The property is set back beyond a good-sized front driveway which at some point in the past has subsumed the original fore-garden.

1.1.2 The property presents a tile-hung and rendered front elevation, and features a brick and tile pitched-roof ground floor extension which projects forward of the front elevation of the property and extends the full depth of the property and beyond into the rear garden. This extension appears to correspond with the permission granted in 2012, as summarised below. A single storey rear extension is also present, which it is assumed is that which was subject to an application in 2006 (see below also).

1.1.3 A pedestrian access to the rear garden has been retained between the aforementioned extension and the contiguous boundary with the neighbouring property (No.72).

1.1.4 The neighbouring property at No.72 is set slightly forward of the application property by about 1m and sits slightly below the ground level of No.73, but by no more than approximately 0.4m. The house at No.72 is separated from the contiguous boundary with No.73 (the application property) by its own driveway width, which runs along the side of the property. There is a side door to No.72 positioned along the side elevation of the property, along with a side facing clear glazed window. This window appears to serve a dining area associated with the kitchen, which is served by a front facing window also.

1.2 Relevant Planning History

2006: Single storey rear extension - Permission not required (06/00659/FUL)

2011: Two storey side extension - Refused (11/00286/FUL)

2011: Two storey side extension - Refused (11/00978/FUL)

2012: Single storey side extension - Approved (12/00246/FUL)

2. APPLICATION DETAILS

2.1 Proposed Development

2.1.1 The application proposes the erection of a first floor side extension, positioned above the existing ground floor side extension. The proposed development would provide 2no. bedrooms, resulting in a net increase of just 1no. bedroom from the current situation, due to associated internal alterations. A shower room is also proposed.

2.1.2 The extension would be set back from the first floor front elevation of the original house by 0.675m and would extend backwards and beyond the rear elevation of the original house. The overall depth of the proposed extension is 9.66m.

2.1.3 Habitable (bedroom) windows would face front and rear, with 4no. ground floor obscure glazed side facing windows proposed, to compensate for the loss of the existing roof lights that currently serve the existing ground floor extension. These windows would serve a WC, utility room and the repositioned kitchen. There would also be 1no. first floor obscure glazed window to serve a shower room.

2.2 Agent's Submission

2.2.1 The application has been accompanied by a confidential statement setting out personal circumstances which are presented in support of the current application. Given the content of this statement, it is not considered appropriate to reproduce or summarise its content within this public report. Nevertheless, I will, out of necessity, briefly refer to aspects of the submission elsewhere in this report as part of my considerations regarding the planning balance.

3. POLICY CONTEXT

3.1 Within the Development Boundary

3.2 Adopted Core Strategy

Policy EQ4 Protecting and enhancing the character and appearance of the Landscape
Policy EQ9 Protecting Residential Amenity
Core Policy 4: Promoting High Quality Design
Policy EQ11 Wider Design Considerations
Appendix 5 Car parking standards
Appendix 7 Space about Dwellings
South Staffordshire Design Guide 2018

3.3 **National Planning Policy Framework (NPPF)** taken as a whole and in particular Section 12.

3.4 National Planning Policy Guidance

3.4.1 Planning law requires that applications for planning permission be determined in accordance with the development plan unless materials considerations indicate otherwise.

3.4.2 The law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case and is ultimately a decision for the courts. Provided regard is had to all material considerations, it is for the decision maker to decide what weight is to be given to the material considerations in each case, and (subject to the test of reasonableness) the courts will not get involved in the question of weight.

4. CONSULTATION RESPONSES

Councillor R Spencer: *I would like to call-in this application because I consider that there will be no detrimental impact on the character of the area nor a material impact on the amenity of the neighbour, and as such, I feel that the proposed extension is in accordance with EQ11 and EQ9 of the Core Strategy, contrary to the officer recommendation.*

Codsall Parish Council (received 26/11/2020) : Recommend Approval.

Third party representations - A single letter of objection has been received from the neighbouring property on the grounds of inappropriate design which would change the character and appearance of Oaken Park.

5. APPRAISAL

5.1 The application has been called to the Planning Committee by Councillor Spencer who considers that there will be no detrimental impact on the character of the area nor any material impact on the amenity of the neighbour and the application should be approved subject to suitably worded conditions in agreement with the Lead Planning Manager namely time limit, approved plans, side windows to be obscurely glazed and matching materials.

5.2 Key Issues

- Principle of development
- Have there been any material changes in circumstances?
- Impact on neighbouring properties
- Access and parking
- Personal Circumstances
- The Planning Balance

5.3 Principle of development

5.3.1 The property is within the development boundary where alterations to dwellings such as this can be considered to be an acceptable form of development, providing there is no adverse impact on neighbouring properties or the amenity of the area.

5.4 Have there been any material changes in circumstances?

5.4.1 The application before me whilst for a first floor extension only, when combined with the existing ground floor extension, appears to be virtually identical to the previously refused application 11/00978/FUL, albeit that the internal layout differs.

5.4.2 In considering application 11/00978/FUL, the then Case Officer concluded that the proposed extension would have an adverse impact upon the neighbours and was out of keeping with the area and was thereby contrary to the relevant Local Plan Policy at that time.

5.4.3 This previous decision is a material planning consideration in this case and carries weight. I must therefore consider whether there have been any material changes in circumstances since that previous decision which might justify a different outcome for what essentially amounts to the same development to that which has previously been refused by the Local Planning Authority.

5.4.4 On the ground, there do not appear to have been any physical changes, with the obvious exception of the ground floor side extension to the application property. There do not appear to have been any meaningful alterations or additions to the neighbouring property (No.72).

5.4.5 It is the case that the Council's adopted Development Plan has changed since the previous 2011 refusal, which was considered under the since replaced Local Plan. The Policy

relied upon by the Council for the 3 reasons for refusal at that time of that previous refusal was Policy BE26 which read:

POLICY BE26 NEW DEVELOPMENT - DESIGN CRITERIA

New development should:

- a) Be sympathetic with the appearance and character of the surrounding area and be appropriate in scale, mass, design, materials, layout and siting, both in itself and in relation to adjoining buildings and spaces;
- b) Have a satisfactory means of access and have adequate car parking provision;
- c) Avoid placing an undue burden on existing services, the local road network or other infrastructure;
- d) Include provision for landscaping appropriate to the character of the surroundings;
- e) Retain any important open area, gap in a frontage or natural or built features, such as trees, hedges, walls, fences and banks;
- f) Avoid harming the amenities of neighbouring residential properties;
- g) Avoid any adverse affect on the architectural or historic character and setting of a listed building.

5.4.6 Whilst this policy has been replaced, having compared the above wording of Policy BE26 against the current adopted Core Strategy Policies I note that the same policy considerations and requirements can still be found within a combination of Policies EQ9 and EQ11 of the Core Strategy.

5.4.7 Policy EQ9 of the current Core Strategy is aimed at protecting residential amenity and calls for all development proposals to take account of the amenity of nearby residents, including with regard to privacy and daylight.

5.4.8 Policy EQ11 refers to wider design considerations and includes requirements for development to "respect local character and distinctiveness" as well as requiring development to "contribute positively to the streetscene and surrounding buildings, whilst respecting the scale of spaces".

5.4.9 It appears to me, therefore, that there have been no physical or significant planning policy changes in circumstances since the previous refusal in 2011 which might support a different decision for essentially the same form of development which the Council has previously considered to be unacceptable (but not appealed by the applicants).

5.4.10 However, as previously indicated, in this case there are also personal circumstances at play which have been presented in support of the current application which I will refer to later in this report.

5.5 Impact on neighbouring properties

5.5.1 In accordance with Local Plan Policy EQ9, all development proposals should take into account the amenity of any nearby residents, particularly with regard to privacy, security, noise and disturbance, pollution, odours and daylight.

5.5.2 The previous Case Officer for the earlier application (11/00978/FUL) considered that there would be no loss of privacy or overlooking resulting from the then proposed development. I concur with the previous Case Officer in terms of there being no loss of privacy or overlooking.

5.5.3 It was also observed that as the extension was to the south side of the application property, the impact on the light to the neighbours (north facing) side elevation would be

limited. That said, Reason 3 of the previously refused application did actually refer to the reduction in daylight, to the neighbouring property. Regardless, there is no doubt in my mind that were the first floor extension to be erected as is proposed there would inevitably be some impact in terms of daylight.

5.5.4 As I have indicated above, there would be a total of 4no. ground floor side windows within the resulting extension (1no. within the proposed first floor, and 4no. installed within the existing ground floor extension). Nevertheless, these would all be obscure glazed and the ground floor windows would all face out at the side boundary fence at a distance of no more than 0.8m away. I consider this to be an acceptable arrangement, which would not have an adverse impact upon the occupiers of No.72.

5.5.5 However, the introduction of the proposed first floor would replicate the layout and design which the previous Case Officer considered would be overly dominant in relation to the neighbouring property (No.72), by reason of its height and depth, which was exacerbated by the difference in levels between the application property and the neighbouring house.

5.5.6 In the absence of any material physical changes on the ground, the same concerns regarding dominance must still apply, in my opinion.

5.6 Impact on the character of the area

5.6.1 Policy EQ11 'Wider Design Considerations' of the adopted Core Strategy states: 'in terms of volume, scale, massing and materials, development should contribute positively to the street scene and surrounding buildings, whilst respecting the scale of spaces and buildings in the local area'.

5.6.2 Additionally, the adopted South Staffordshire Design Guide (2018), at Section 5 "Minor Developments" stresses that: " extensions should be subservient to the main building. The extension should respect the scale and form of the main building and its relationship to adjacent buildings, including the gaps between them."

5.6.3 In considering the application in 2011 (11/00978/FUL) the Case Officer quite rightly identified the need for subservience and a requirement for a 1m gap along the side of the extension to allow access to the rear garden. However, since then the Council approved the ground floor extension in 2012, which only provides an approximate 0.8m gap. As such, this latter point does rather fall away.

5.6.4 In terms of subservience, the first floor set-back would be 0.675m. I would have preferred to see a greater set-back, but the Agent advises me that in order to deliver the development aspired to by the Applicants, with reference to the Personal Circumstances submitted, a greater set-back could not be achieved without compromising the level and nature of the accommodation being sought.

5.6.5 I noted at the time of my site visit that Oaken Park has a very open and spacious feel, which very much characterises the area however a number of properties have been extended at first floor to the side. There is great variety in house types and a rather pleasant and open feel to the road and houses therein. Whilst I have no particular issue with the proposed design of the proposed extension per se, as was identified in the earlier Officer Report, the development would result in a loss of openness within the street scene, to the detriment of the character of the immediate area.

5.6.6 That being the case, I find that the development would fail to satisfy the requirements of Policy EQ11 of the adopted Core Strategy, and in particular sub-paragraphs C (Form) e)

and f), as well as the South Staffordshire Design Guide (in particular Section 5 "Minor Developments").

5.7 Access and parking

5.7.1 There is ample off-road parking to serve the property and the proposed development.

5.8 Personal Circumstances

5.8.1 As indicated earlier in this report, the application has been accompanied by a confidential supporting statement which sets out Personal Circumstances which are presented in support of the application and to justify the need for the accommodation which the first floor extension would facilitate.

5.8.2 To briefly summarise these, the Personal Circumstances as they have been presented indicate that there is a family member who lives at the property who has a lifelong condition, which affects movement and coordination. The condition is such that they require assistance with many everyday tasks. The extensions would facilitate the provision of a suitable sized bedroom allowing space for circulation which is stated as being essential both now and, in the future, as too is the additional shower room. Furthermore, the net increase in bedrooms would make it possible for family members and/or a carer to stay, to give some respite care.

5.8.3 An Applicant's personal circumstances would not normally be a material planning consideration, unless exceptionally or clearly relevant. On the basis of what has been presented with this application, it does appear to me that the Personal Circumstances are clearly relevant in this case and appear to be the main driver for the proposed development.

5.8.4 The matter of Personal Circumstances has been debated in the Courts, with Lord Scarman in the case of Westminster City Council v Great Portland Estates PLC (1985) defining a material consideration by whether it served a planning purpose and whether that planning purpose related to the use and character of land. Of particular relevance, he added:

"Personal circumstances of the occupier are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of the environment the human factor. The human factor is always present, of course, indirectly as background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it."

5.8.5 Furthermore, in Chelmsford BC v First Secretary of State and Draper (2003) the conclusion was made that very special circumstances, if personal to the applicant, do not create a precedent. That would very much support the well-worn phrase of "each case on its merits".

5.9 The Planning Balance

5.9.1 The personal circumstances presented in this case, and all that brings with it, are recognised and in no way called into question, and to my mind they do attract weight in the planning balance.

5.9.2 However, the counter to this has to be the fact that planning permission has previously been refused for essentially the same physical extension in 2011. I note that the current

Applicants were the Applicants for that previously refused application, albeit that their circumstances have changed in recent years. Nevertheless, this previous refusal must, in my opinion, carry more weight in the overall planning balance.

5.9.3 Whilst I am sympathetic to the Personal Circumstances at play in this case, I am rather hamstrung by, and cannot ignore, the fact that the proposed extension would still have the same physical attributes and impacts that the Council has previously found to be unacceptable, in terms of its size, massing and design; its adverse impact upon the open character of the area; and adverse impact on the neighbouring property due to dominance.

5.9.4 I have wrestled long and hard with the issues at play in this case, and whilst I take absolutely no pleasure in coming to this view, on balance, I must find against the proposed extension, and recommend refusal.

6. CONCLUSIONS

6.1 For the reasons set out above and given the planning history which has seen a virtually identical proposal refused previously, notwithstanding the Personal Circumstances presented with this current application, I find, on balance, that the application should be Refused.

6.2 There have been no physical changes on the ground, and whilst policy references have changed, the current Core Strategy policies at play require the same of new development proposals as their predecessor. Therefore, I conclude that the proposal fails to accord with Policies EQ9 and EQ11, as well as the South Staffordshire Design Guide 2018 and I recommend the application be Refused.

6.3 I have considered the previous 3 reasons for refusal and consider that the previous reasons 1 and 2 included some repetition and should be combined.

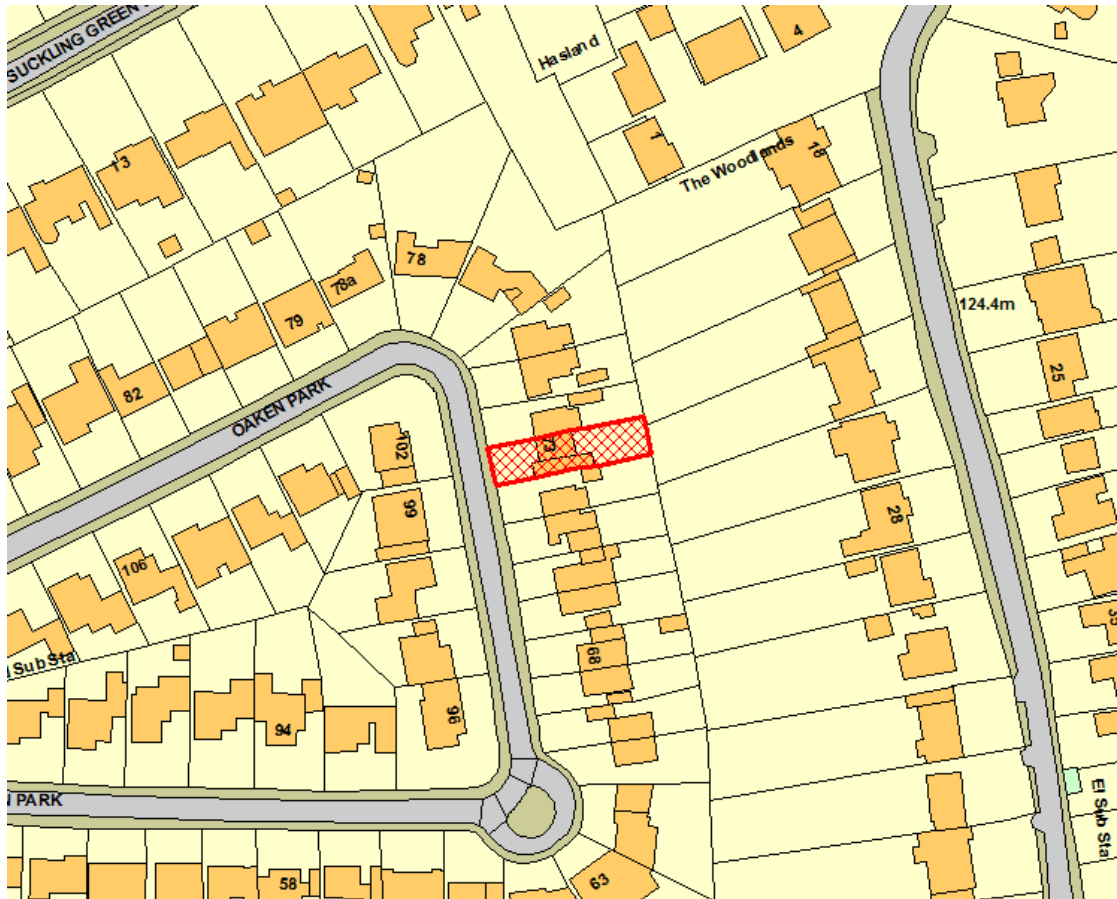
7. RECOMMENDATION - REFUSE

Reasons

1. The size, massing and design of the proposed development would be too dominant in the area and it would have an adverse effect on the area, contrary to policy EQ11 of the adopted Core Strategy.
2. The development would be prejudicial to the amenity of the adjacent property because it would be an overly dominant form of development and reduce natural daylight levels, contrary to Policy EQ9 of the adopted Core Strategy.

INFORMATIVE

Proactive Statement - Whilst paragraph 38 of the National Planning Policy Framework (2019) requires the Local Planning Authority to work with applicants in a positive and proactive manner to resolve issues arising from the proposed development; in this instance a positive solution could not be found and the development fails to accord with the adopted Core Strategy (2012) and the National Planning Policy Framework (2019).



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