

**18/01115/FUL**

**Applicant** Mrs Surrinder Kaur

**Location** 62 Repton Road West Bridgford Nottinghamshire NG2 7EJ

**Proposal** Single storey rear extension (retrospective change to previous planning permission 17/02766/FUL)

**Ward** Musters

## **THE SITE AND SURROUNDINGS**

1. The application relates to a two storey detached, interwar property constructed of a dark red brick with a red plain tiled pitched roof. The frontage has a double height bay window faced in hung plain tiles. The property has been extended to the side with a two storey addition, constructed pursuant to planning permission granted in January 2017. There was until recently a circa 3 metre deep, single storey rear extension alongside a circa 4 metre deep conservatory (approved in 2003), however, these have been demolished and replaced with the flat roofed, single storey rear extension that is the subject of this application, originally constructed pursuant to planning permission granted in January 2018. However, it was subsequently established that the extension was not constructed in accordance with the approved plans and the current application seeks to regularise the situation.
2. To the rear of the recent extension is a paved patio area, with an approximately half a metre step down from the rear of the property due to the changes in land levels, that leads to a circa 50 metre deep rear garden. The garden is bordered by high hedges and trees, with a garden room and shed at the far end of the garden. The property is located in a residential part of West Bridgford, surrounded by similar size and aged properties.

## **DETAILS OF THE PROPOSAL**

3. The initial submission was for a revision to the as built single storey rear extension to the property and also for the formation of a new, raised rear patio area to be flanked by a close boarded timber fence to the neighbouring properties.
4. During the determination of the application officers met with the applicant and their agent on site to assess the proposal and expressed concerns regarding the proposed raised patio and fencing. As a result of those discussions it was clarified that the raised rear patio would be withdrawn from the proposal, and that only permission to revise the as built single storey rear extension would be sought. The withdrawal of the raised patio from the application was confirmed in writing.
5. Furthermore, although the single storey rear extension has been recently constructed on site, and despite the proposal description it should be noted that this application does not seek to regularise that structure, but to modify it

by reducing its overall height to better relate to the permission granted in January 2018 under application ref: 17/02766/FUL.

6. Therefore, the committee is asked to assess the proposal for a single storey rear extension measuring a total of 9.8 metres in width, across the extent of the rear elevation of the property, and 6.5 metres in depth projecting from the rear elevation of the original dwelling, a further 3.7 metres and 2.7 metres respectively beyond the former extension and conservatory this extension replaced. The rear extension is constructed with facing materials matching the dwelling with a flat roof design set behind a coped parapet wall. Overall, the extension is proposed to measure a maximum of 3.675m in height (at the southern end of the proposal alongside number 64 Repton Road), reducing to 3.645m to the northern (side) elevation (alongside 60 Repton Road), taking into account the slope across the site with ground levels rising from north to south. The roof form includes a centrally positioned glazed lantern roof light, large glazed doors facing out towards the applicant's garden and a new opening in the north (side) elevation facing towards the rear of number 60 Repton Road.

## **SITE HISTORY**

7. Planning ref: 03/00822/FUL- Single storey side and rear extensions. Granted in July 2003.
8. Planning ref: 16/02914/FUL - (Demolition of garage and rear extensions) Erection of two storey side extension, single storey front and rear extensions. Granted in January 2017. This was not implemented in accordance with the approved plans and resulted in a further application (referred to below) being submitted seeking to regularise matters.
9. Planning ref: 17/02766/FUL – (Demolition of garage and rear extensions), two storey side extension, single storey front and rear extensions. (Resubmission). Granted January 2018. The single storey extension was constructed in accordance with the approved plan and resulted in the current application being submitted, again seeking to regularise matters.

## **REPRESENTATIONS**

### **Ward Councillor(s)**

10. One Ward Councillor (Cllr Jones) objected to the proposal as originally submitted due to the increase in height of the rear extension when compared to the planning approval (17/02766/FUL) as it was overly bulky and unnecessarily high. Concerns were also expressed regarding the use of the roofing materials (paving slabs) and its visual impact on the neighbouring properties. Cllr Jones also objected to elements of the two storey side extension (that do not form part of this planning application) and to the proposed raised patio that was considered to be over dominant and due to the proposed fencing out of character, creating a hemmed in feeling to neighbouring properties.
11. Following the submission of the revised plans, removing the raised patio and clarifying that the height of the proposed rear extension would be reduced, by removing courses of bricks, to a maximum height of 3.675m from ground

level to the top of the coping stones atop the parapet, Cllr Jones confirmed that he still objects to the proposal as it does not significantly reduce the height and, therefore, is still overbearing to the neighbours and also that there are still issues with the guttering on the two storey side extension (again an element of application ref: 16/02914/FUL not forming part of the current proposal).

### **Statutory and Other Consultees**

12. Due to the scale and nature of the proposal, i.e. a residential extension, no statutory or other consultees input was required.

### **Local Residents and the General Public**

13. Five written representations have been received from the two immediate neighbouring properties (60 and 64 Repton Road) objecting to the proposal on grounds which can be summarised as follows:
  - a. Proposal is too high and dominant, especially within 2m of the boundary.
  - b. Proposal is too deep and dominates neighbouring properties.
  - c. Plans are not clear as to what is being proposed.
  - d. Inaccuracies on the application forms.
  - e. Overbearing and dominant nature of the rear extension.
  - f. Overshadowing and loss of light from rear extension.
  - g. Concerns about soil shrinkage due to proximity of buildings to trees.
  - h. Overbearing nature of proposed fence and patio.
  - i. Applicants cannot be trusted to implement what has been built as demonstrated by two previous applications and necessary enforcement action.
  - j. Concerns that the Planning Department have already determined this application.
  - k. Other issues with the two storey element should be regularised as part of this application.
  - l. Drawings are inaccurate/seek to deceive.
  - m. Breaches of building regulations.
  - n. References to the GPDO and General Development Order.
  - o. Ugly, monolithic structure that is out of keeping with the area.
  - p. Applicants have flagrantly abused the planning system.

- q. The proposal should be assessed as a new application, not a retrospective one nor a resubmission.
  - r. Loss of privacy from window in side elevation of extension.
  - s. Previous planning approvals show a disregard of the neighbours and set a dangerous precedent.
14. Following further submissions by the applicant's agent clarifying what is being proposed and confirmation that the patio and fencing was withdrawn from the submission two further letters of objection were received from the neighbouring properties confirming that their previous objections still stood and also raising concerns regarding rights to light, the impact from light emitted through window in side elevation of the extension, the accuracy of Certificate A of the application forms; the risk of fire due to students renting rooms in the applicants property (a potential change of use), and also concerns about the drainage.

## **PLANNING POLICY**

15. The Development Plan for Rushcliffe consists of The Rushcliffe Local Plan Part 1: Core Strategy and the 5 saved policies of the Rushcliffe Borough Local Plan 1996.
16. Other material planning considerations include the updated 2018 National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG), and the Rushcliffe Borough Non Statutory Replacement Local Plan (NSRLP) (2006). The publication version Local Plan Part 2: Land and Planning Policies is also a material consideration although these policies carry limited weight as they are currently the subject to an independent examination and the plan has not yet been formally adopted.
17. Any decision should therefore be taken in accordance with the Rushcliffe Core Strategy, the Neighbourhood Plan, the NPPF and NPPG and policies contained within the Rushcliffe Borough Non-Statutory Replacement Local Plan where they are consistent with or amplify the aims and objectives of the Core Strategy and Framework, together with other material planning considerations.

## **Relevant National Planning Policies and Guidance**

18. The proposal falls to be considered under the National Planning Policy Framework (NPPF) and should be considered within the context of a presumption in favour of sustainable development as a core principle of the NPPF. The proposal falls to be considered under section 12 of the NPPF (Achieving well designed places) and it should be ensured that the development satisfies the criteria outlined under paragraph 127 of the NPPF. Development should function well and add to the overall quality of the area, not just in the short term but over the lifetime of the development. In line with paragraph 130 of the NPPF, permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions

## **Relevant Local Planning Policies and Guidance**

19. Policy 1 of The Rushcliffe Local Plan Part 1: Core Strategy reinforces a positive and proactive approach to planning decision making that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. The proposal falls to be considered under Core Strategy Policy 10 (Design and Enhancing Local Identity). Development should make a positive contribution to the public realm and sense of place, and should have regard to the local context and reinforce local characteristics. The development should be assessed in terms of the criteria listed under section 2 of Policy 10, and of particular relevance to this application are 2(b) whereby development should be assessed in terms of its impacts on neighbouring amenity; 2(f) in terms of its massing, scale and proportion; and 2(g) in terms of assessing the proposed materials, architectural style and detailing.
20. Whilst not a statutory document, the policies contained within the Rushcliffe Borough Non-Statutory Replacement Local Plan should be given weight as a material consideration in decision making. The proposal falls to be considered under the criteria of Policy GP2 (Design and Amenity Criteria) of the Rushcliffe Non-Statutory Replacement Local Plan, specifically GP2d, whereby development should not have an overbearing impact on neighbouring properties, nor lead to a loss of amenity. The scale, density, height, massing, design and layout of the proposal all need to be carefully considered, and should not lead to an over-intensive form of development.

## **APPRAISAL**

21. Members are advised that there is currently a single storey extension built to the rear of the property, constructed pursuant to the planning permission granted in January 2018 under application ref: 17/02766/FUL. However, following concerns expressed by the neighbour an investigation by the Borough Council confirmed that the structure as erected did not accord with the approved plans and was taller than the approved rear extension. Following discussions with the applicants, they were advised that the structure as built (which measured 3.930m tall above the ground level at its highest) was unlikely to be considered favourably, however a reduction in its overall height, to 3.6m as approved under application would resolve the matter without the need for a further planning application. For technical reasons (set out below in Para.27) the applicant's agent advised that this was not possible and therefore the current application has been submitted for consideration to seeking to regularise the situation and permission for modifications to the extension as currently built.
22. As a point of clarification Members are advised that regardless of whether the application is described as "retrospective" or "resubmission" it is still a planning application to be determined on its own merits, taking into account all material planning considerations. Furthermore, it should be noted that any apparent failings by the applicant's builders are not a material consideration. Members are reminded that enforcement procedures (this application being the result of an enforcement investigation) are intended to be remedial rather than punitive and, therefore, the planning system cannot and should not be

used to “punish” an applicant’s previous failings to lawfully implement a valid planning permission.

23. It should also be noted that application 17/02766/FUL for the “(Demolition of garage and rear extensions), two storey side extension, single storey front and rear extensions. (Resubmission)” as granted in January 2018 constitutes a fall-back position. This means that the development approved under application 17/02766/FUL legally forms an acceptable form of development that could be lawfully implemented and, therefore, this should be used as a measure against which the current proposal must be assessed i.e. it is a material planning consideration. In short, any harm attributed to the current proposal can only relate to the differences between the approved extension (regardless of the fact it has not been built) and the current application that Members are asked to determine.
24. Finally, Members will note from both the Ward Councillor’s objections and the objections received from residents that their comments also relate to the two storey elements approved to the side of the applicants dwelling. The alleged breaches have been investigated by the Enforcement team and whilst there were elements that did not comply with the approved plans, given the nature of those breaches it was not considered expedient to take any further action, other than to advise the property owners that the breaches would remain unauthorised, and this application only relates to the single storey rear extension to the property. For the avoidance of doubt it should also be noted that the proposed raised patio and fencing element of the original submission has also been withdrawn and, therefore, no longer forms part of the of the application Members are asked to determine.
25. Regardless of the fact that it has not been built in accordance with the approved plans, the single storey rear extension approved under application ref: 17/02766/FUL would have measured 9.8m in width, projected 6.5m out from the rear elevation of the original property and 3.6m high (at its highest) measured externally from the finished ground level to the top of the coping stones on the parapet wall surrounding the structures flat roof.
26. The current application proposes a single storey rear extension measuring 9.8m in width, projecting 6.5m out from the rear elevation of the original property and 3.675m high (at its highest) measured externally from the finished ground level to the top of the coping stones on the parapet wall surrounding the structures flat roof. The reduction in the height of the extension as built on site would be achieved by removing three courses of brickwork. In other words, the current proposal is a maximum of 0.075m (or 75mm) taller than the approved application (ref: 17/02766/FUL). Therefore, Members’ consideration should be focussed on any harm arising as a result of this increase in height, effectively the impact that the additional 75mm in height has on the amenity of the neighbouring properties and whether or not that harm is significant enough to warrant refusal, particularly bearing in mind that application 17/02766/FUL can still lawfully be implemented, i.e. the fall-back position.
27. In discussing the issues with the agent, officers requested information to demonstrate why the lawful permission could not be implemented, i.e. lowering the height of the parapet wall to at least achieve the approved height of the structure even if the parapet wall height itself would not necessarily

comply with that approval. The agent has advised that the 'flat roof' of the structure is not actually flat, but that the roof actually falls from the rear elevation of the house to prevent rain water pooling on the roof's surface and to use gravity to force the rain water to flow towards the gutters and guttering installed on the rear elevation of the extension. As a result of the roof covering not being flat (despite the fact that the parapet wall that cloaks the roof covering is level), if the height of the bricks were reduced to an overall height of 3.6m then part of the roof surface would become exposed and that not all the surface water on the roof would be contained, potentially allowing it to flow onto the neighbour's property. Furthermore, exposing the highest part of the sloping roof covering would also be visually less attractive than concealing it behind the parapet wall. Therefore, it is the agent's position that the two courses of brick work above the lowest part of the roof covering are required as this is the minimum upstand that can be achieved and this would result in the extension being 3.675m high above the finished ground level.

28. Therefore, the key consideration in the determination of the application is the impact on neighbouring amenity, having specific regard for access to or loss of light, overbearing, overlooking and loss of privacy, in relation to the proposed increase in height of the extension.
29. Objections from the neighbouring property have been received objecting on grounds of a loss of privacy arising from the additional window in the side elevation of the extension. Whilst this is a ground floor window, as a result of changes in ground level, this window which serves the kitchen/day room, would have the potential to result in overlooking of the garden to the neighbouring property, albeit that there is some boundary treatment/natural growth that may limit any overlooking. Furthermore, the previous approval for a single storey extension was subject to a condition requiring that this window was to be obscure glazed. With the exception of two top hung windows, the window installed in the extension is fixed shut and has been obscure glazed, although this appears to have been achieved through the application of an obscure film, rather than using glass which has been permanently rendered obscure. It is not considered that the retention of the two top hung casements as clear glazed opening windows would result in unacceptable overlooking or loss of privacy. However, a condition is recommended requiring the replacement of the largest pane of glass with glass which is permanently obscured.
30. It should be noted that the ground and first floor windows to the south elevation (within the two storey extension which is not the subject of the current application) would serve shower rooms/WC and were previously conditioned through the determination of application 17/02766/FUL that those windows be obscure glazed to prevent overlooking and loss of privacy. Concerns also expressed over the windows opening outwards over the boundary and resulting in a safety hazard were also addressed by a planning condition requiring the windows to open inwards and only when at 1.7m above floor level within the rooms they serve. These windows do not form part of the current application, however the conditions attached to permission 17/02766/FUL would still apply and serve to protect the privacy of the occupants residing in the adjoining residential properties.

31. Objections have also been received from neighbouring properties concerning the height and scale of the single storey rear extension. Whilst it is acknowledged the single storey rear extension is of a larger scale than the extensions found on properties to either side of the application site, and slightly greater in eaves height than previously approved, the increase in height of 75mm is not considered to result in an unacceptable overbearing impact or loss of light. This view is reached giving due consideration to the fall-back position of the extant planning permission approved in January 2018 that could be implemented on site.
32. Representations from a neighbour refer to the fact that the extension does not comply with the provisions of the Town and Country Planning (General Permitted Development) Order (the Order) and that procedures referred to in the Order have not been followed by the Borough Council. The extension, the subject of this application, does not comply with the criteria in the Order (which apply to extensions/additions which may be undertaken as 'permitted development') and, therefore, planning permission was required for the addition. Similarly, the procedures referred to by the neighbour are applicable to extensions which are being proposed under the permitted development rights, therefore, they do not apply to applications for planning permission. It is, however, material to the decision on this application that the scale of the proposed extension is marginally greater in height than what could be constructed under Schedule 2, Part 1 Class A of the Town and Country (General Permitted Development) Order 2015. It is therefore considered, in conclusion, that an objection to the increased height of the rear extension could not be reasonably sustained as a reason to refuse the application.
33. Objections have also been received in respect of the external appearance and stylistic approach to the design and the impact on the character of the area. In considering the design of the extensions, through the various applications for this property, and the impact on the street scene, the front and side extensions were considered to relate well to the scale, design and appearance of the existing dwelling and were, therefore, considered to be acceptable. In contrast, the rear extension with its flat roof design does not seek to replicate directly the design of the host property with its pitched roofs but this does not mean that it represents an unacceptable design approach. Furthermore, the location of the extension, to the rear of the property, does not impact on the street scene or public realm. The facing materials match those used elsewhere on the property. Again, consideration must also be given to the approved extension which bears a considerable similarity to the proposal under consideration. Any refusal on design grounds is considered to be very difficult to justify and defend at any subsequent appeal in light of the fact that the only difference between the approved scheme and the current proposal is an increase in height of 75mm.
34. Concerns regarding the alleged unauthorised occupation of the applicant's property and its potential change of use to a house of multiple occupation (HMO) were also investigated by the enforcement team and found to be unsubstantiated. During this investigation, the investigating officer was advised by the owner of the property that part of the extended property is used to accommodate an elderly family member who has full access to and use of the rest of the property i.e. they are not living separately and independently from the rest of the family. Furthermore, at the time of the

investigation a foreign exchange student was also temporarily staying with the family, an arrangement that is reciprocated to the applicant's child as part of a school foreign exchange programme. This does not amount to a material change of use of the property.

35. In conclusion, it is considered that the scale, form design and appearance of the extension is acceptable in the context of residential amenity and impact on the street scene and character of the area. Furthermore, when compared to the fall-back position and taking all the material considerations into account, the current proposal is not considered cause demonstrable harm to the amenities of the neighbouring properties such as to warrant refusal. The application is therefore recommended for conditional approval.
36. Negotiations have taken place during the consideration of the application to address adverse impacts identified by officers/to address concerns/objections raised in letters of representation submitted in connection with the proposal. As a result, elements of the proposal were withdrawn, addressing the identified adverse impacts of this element, and a reduction in the height of the extension was negotiated, thereby resulting in a more acceptable scheme and the recommendation to grant planning permission.

## **RECOMMENDATION**

It is **RECOMMENDED** that planning permission be granted subject to the following condition(s)

1. The development hereby permitted shall be carried out in accordance with the Floor Plans (1:50), Site Plan (1:500) and Site Location Plan (1:1250) received on 14 May 2018 and the revised elevations (scale 1:100) received on 2 January 2019.

[For the avoidance of doubt and to comply with policy 10 (Design and Enhancing Local Identity) of the Rushcliffe Local Plan Part 1: Core Strategy and policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan]

2. Within two months of the date of this permission, with the exception of the two top hung opening casement windows, the glazing in the window in the north elevation of the single storey extension shall be replaced with glass which has been rendered permanently obscured to Group 5 level of privacy or equivalent and the window shall be retained as non-opening. Thereafter, the window shall be retained to this specification for the lifetime of the development.

[To protect the amenity of the neighbouring property and to comply with policy 10 (Design and Enhancing Local Identity) of the Rushcliffe Local Plan Part 1: Core Strategy and policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan]

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order with or without modification) no additional windows, doors or openings of any kind shall be formed in the north (side) or south (side) elevations of the approved development without

first obtaining the relevant planning permission to do so.

[To safeguard the reasonable residential amenities of adjoining properties and to comply with policy GP2 (Design and Amenity Criteria) of the Rushcliffe Borough Non-Statutory Replacement Local Plan].

4. Other than for general maintenance, cleaning and repairs the flat roofed area shall not be accessed for any purpose incidental to the enjoyment to the occupiers of the property, nor shall the flat roofed area be used as a balcony/terrace at any time.

[For the avoidance of doubt and to protect the amenities of neighbouring residents and to comply with policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan]

### **Notes to Applicant**

This permission does not give any legal right for any work on, over or under land or buildings outside the application site ownership or affecting neighbouring property, including buildings, walls, fences and vegetation within that property. If any such work is anticipated, the consent of the adjoining land owner must first be obtained. The responsibility for meeting any claims for damage to such features lies with the applicant.

The provisions of the Party Wall Act 1996 may apply in relation to the boundary with the neighbouring property. A Solicitor or Chartered Surveyor may be able to give advice as to whether the proposed work falls within the scope of this Act and the necessary measures to be taken.