

DELEGATED REPORT

Report by Claire Booth	Date of report: 26/05/2023	Ref: 69428/FUL
Registration: 31/03/2023	LDFC: 04/05/2023	Expiry Date: 26/05/2023
Site Visit: 21/04/2023	Site Notice: N/A	Press Date: N/A
17:20:00		
Objections: 1	Con Area: N/A	Adv Type: N/A
Reason for Delay:		EIA: NA
N/A		Dec Level: DEL
		Stat Class: MIDW

Proposal: Erection of 1 no. dwelling in side garden

Location: 9 Elland Close, Bury, BL9 8LG

Description

The application site relates to the garden area of an eastern end of a semi-detached true bungalow located at the hammerhead of a cul-de-sac of like properties in Unsworth. It has existing detached garages at an angle at the side of the existing bungalow, accessed from the existing driveway. The bungalows on Elland Close are all of the same scale, massing and design.

Bordering, the northern boundary of the site is no.7 Elland Close. It is at a slight angle to the sites garages. The nearest window is an obscure glazed bathroom window. Bordering the southern boundary of the site are the garden areas and rear elevations and yard areas of properties on Parr Lane.

Permission is sought to sperate the existing residential curtilage into two plots, demolish the existing garages located at the side, and erect a detached 3-bed bungalow within the garden area at the side of no. 9 Elland Close with spaces for two cars and a side and rear gardens. It is also proposed that the existing property to which the garden area currently relates, would be sectioned off with a timber fence and would be given a small rear garden and space for one car to park along the gable end of the existing properly, albeit, blocking the side door access in to the application property, and for one car to park across the frontage of the existing dwelling.

Relevant Planning History

48009 - Detached garage at rear of existing detached garage. Approved with conditions, 18/05/2007

Publicity

21 nearby neighbours have been consulted about the proposals by letter. One objection has been received which raises the following concerns:

1. The property is far too close to the gardens and garages on Parr Lane
2. The plans show it is taking over 50% of the garden and as such doesn't fall within garden grabbing legislation
3. My neighbours and myself have paid on numerous occasions to have the trees maintained at the back of my house 204 and 202 as the roots were lifting my garage and neighbours shed ! The trees have been since mostly removed but when this ground is going to be excavated this could cause major damage to our garage and shed
4. Privacy is going to be a problem as the property is too close to the fence
5. The height of the property cannot be guaranteed due to the amount of very large Tree stumps that still remain

6. There is a gravestone in the garden
7. View will become restricted
8. The property will be able to see into our houses because of its proximity

The majority of the points raised will be addressed in the following report. However, points 6 and 7 above, are not material planning considerations. Any grave stone in the application site would likely need to be removed along with any remains. The applicant should contact the Council's Birth, Deaths and Marriages section of the Council for advice in this regard, as this is not a material planning consideration.

Statutory/Non-Statutory Consultations

Traffic Section - Object to proposals due to substandard access and turning arrangements, the loss of parking provision for the existing property and the car parking provision being inadequate.

Borough Engineer - Drainage Section - No comments or observations received

Environmental Health - Contaminated Land - No objections, subject to conditions requiring intrusive site investigations, any necessary remediation and verification to be undertaken prior to occupation.

Waste Management - No observations or comments received.

United Utilities (Water and waste) - Raise concerns due to insufficient information accompanying the application relating to the public sewer that runs through the site and its necessary standoff distances, however, they recommend a planning condition to overcome this.

Pre-start Conditions - No applicable.

Unitary Development Plan and Policies

H1/2	Further Housing Development
H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
H2/6	Garden and Backland Development
EN1/1	Visual Amenity
EN1/2	Townscape and Built Design
H2/4	Conversions
HT6/2	Pedestrian/Vehicular Conflict
SPD11	Parking Standards in Bury
NPPF	National Planning Policy Framework

Issues and Analysis

The following report includes analysis of the merits of the application against the relevant policies of both the National Planning Policy Framework (NPPF) and the adopted Bury Unitary Development Plan (UDP) together with other relevant material planning considerations. The policies of the UDP that have been used to assess this application are considered to be in accordance with the NPPF and as such are material planning considerations. For simplicity, just the UDP Policy will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

- The elimination of discrimination, harassment and victimisation;
- The advancement of equality of opportunity between persons who share a relevant

- protected characteristic and person who do not share it;
- The fostering of good relations between persons who share a relevant protected characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Principle of Development

UDP Policy H1/2 states that the Council will have regard to various factors when assessing a proposal for residential development, including whether the proposal is within the urban area, the availability of infrastructure and the suitability of the site, with regard to amenity, the nature of the local environment and the surrounding land uses.

UDP Policies H2/1 - The Form of New Residential Development and H2/2 - The Layout of New Residential Development takes into consideration factors relating to the height and roof type of adjacent buildings, the impact of developments on residential amenity, the density and character of the surrounding area and the position and proximity of neighbouring properties. Regard is also given to parking provision and access, landscaping and protection of trees/hedgerows and external areas.

The site is located within a sustainable and established residential area and would therefore reflect the residential uses predominant in this locality. In land use terms therefore, the proposed development for a residential property would be acceptable.

The issues of layout, design, impacts on the surrounding area and highways issues are discussed in the sections below.

Design and Layout

Paragraph 124 d) of the NPPF states, planning policies and decisions should support development that makes efficient use of land, taking into account, amongst other things:

c) the availability and capacity of infrastructure and services – both existing and proposed –

as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;

d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and

e) the importance of securing well-designed, attractive and healthy places.

UDP Policy H2/6 - Garden and Backland Development - would not support proposals which would result in the loss of private gardens and backland for infill development unless such proposals do not adversely affect the character and amenity of the area. Regard is given to factors including:

- the concentration of such development in the surrounding area;
- the relative density of the proposal to that of the surrounding area;
- the impact on neighbouring properties and the local environment;
- access arrangements.

UDP Policy H2/1 - The Form of New Residential Development states that all new residential development will be expected to make a positive contribution to the form and quality of the surrounding area. Factors to be considered when assessing proposals will include:

- the height and roof type of adjacent buildings;
- the impact of developments on residential amenity;
- the density and character of the surrounding area;
- the position and proximity of neighbouring properties;
- the materials to be used in proposed developments, especially their colour and texture.

UDP Policy H2/2 - The Layout of New Residential Development - requires new residential development will be required to demonstrate acceptable standards of layout Factors to be considered when assessing proposals will include:

- car parking provision;
- access for both vehicles and pedestrians, and provision for public transport;
- the possible need for traffic calming measures;
- density;
- space about and between dwellings;
- landscaping and screening;
- protection/provision of trees and hedgerows;
- open space/children's play areas;
- design for safety and security;
- access/facilities for the disabled;
- the existence of any public rights of way.

The character of this locality is semi-detached properties, with large triangular shaped gardens for those properties located at the head of the cul-de-sacs. The proposed development would appear wholly discordant to the established layout of development on this and the adjoining cul-de-sac and detract from the inherent character of the locality and would appear discordant to the established layout of the locality.

When viewing the site from the lane to the rear of nos. 190 to 208 Parr Lane, and the garden areas of these terraced dwellings the proposed dwelling would appear uncomfortably close to the lane at the rear of the properties on Parr Lane and when occupiers of Parr Lane are within their rear yard and their garden areas which abut the boundary of the application site.

In viewing the site from neighbouring garden areas, and the lane running to the rear of properties of Parr Lane, the proposal would conflict with the established density and character of the locality would represent an incongruous and cramped development to the

detriment of the street scene and locality due to its scale, design, massing and setting, which would cause visual harm to the locality, contrary to policies H2/1 and H2/6 of the UDP and the National Planning Policy Framework.

The proposal also fails to demonstrate that sufficient space exists for refuse storage bins to be located at the side or rear of both the existing and proposed dwellings and that refuse bins could be pulled to the edge of the plot on refuse collection days without needing to move cars, or restricting access to both the existing and proposed dwelling. This demonstrates the proposal development would not constitute good design, as required by both the NPPF and National Design Guide (2021).

Residential Amenity

The proposed dwelling would border three properties, nos. 7 and 9 Elland Close and the garden areas of nos. 200 - 208 (even) Parr Lane.

No. 7 Elland Close - The main habitable room windows for this property are located to the front and rear of the property. On the gable of the property, is an obscure glazed bathroom window and a conservatory.

The existing flat roof garages situated parallel with the shared boundary currently provide privacy to the occupiers of no. 7 when sitting within their conservatory. The removal of the existing garages would enable clear views into the conservatory, a room where residents would normally expect reasonable levels of privacy and relaxation, as defined within the adopted SPD: Extensions and Alterations. The proposed habitable room windows serving bedrooms would be within 12m and 14m of proposed bedrooms 1 and 2 and directly look into this neighbours conservatory. The proposal would therefore conflict with policies H2/1 and H2/6 of the UDP.

No. 9 Elland Close - The proposed dwelling has been designed to not overlook occupiers of this dwelling.

Nos. 200 - 208 Parr Lane - The proposed dwelling would have its main habitable room windows looking towards the boundary of the site with the rear garden areas of dwellings on Parr Lane. At its closest, the proposed dwelling would be within 2.5 metres of the boundary of the site with these garden areas, with the bi-fold doors being just less than 5m away from these neighbours private amenity spaces. The proposals would therefore adversely impact on the amenity of occupiers on Parr Lane.

In respect of the proposals impact on habitable rooms, the proposed dwelling, at its closest, would be located approximately 14 metres from habitable room windows. However, all the rear yard areas of properties on Parr Lane have rear boundary walls and gate and consequently, these would prevent direct overlooking from the dwelling occurring.

Taking into account all of the above, the proposals fail to protect the amenity of surrounding residents and as such, they fail to accord with the requirements of policies H2/1 and H2/6 of the UDP, and the NPPF.

Parking Provision and Highway Safety

UDP policies H2/4 and HT/6 of the UDP requires any car parking provision lost to be suitably replaced, and for any new developments to provide adequate provision for their servicing needs.

Elland Close is a cul-de-sac of near identical properties, all of which have a driveway that can accommodate at least one car. Other cars park on the cul-de-sac, in the areas between driveways.

The space in front of the application site has restricted access, as it accessed from the north-eastern corner of the hammer head. The existing driveway to the property therefore

has a narrow frontage on to the cul-de-sac that is constrained by neighbouring land; a difference in levels between the application site and no.7 Elland Close and a boundary wall delineating the boundary between the application site and the semi-detached bungalow to which the existing property is attached.

It appears that the current occupiers of the existing dwelling drive straightly on to their drive and park with the nose of their cars facing the front elevation of the dwelling and its garages, thereby having two off road parking spaces.

The proposal seeks to re-jig the parking for the existing dwelling, having one space at the side of the existing property and parking one across the frontage of the dwelling. Having visited the site the space feels very constrained. The Highway Authority consider the parking spaces provided to not meet the Council's adopted parking standards, which reflects what I experienced when visiting the site, and as such the proposal would result in the loss of car parking facilities for the existing dwelling. This would lead to vehicles parking and carrying out manoeuvres on the highway to the detriment of the free flow of traffic and road safety. This would also affect the amenity of neighbouring properties.

In respect of the parking provision proposed for the new dwelling the proposed shared access arrangements and turning facilities indicated on the submitted plans are considered to be sub-standard and the parking provisions shown would not work practically. This would be detrimental to road safety and maintaining the free flow of traffic on the adjacent highways, contrary to policies H2/2, H2/6, HT2/4 of the UDP.

Overall, the proposals would cause conflict between occupiers of the existing dwelling, and occupiers of the proposed dwelling, due to the constrained nature of the application site preventing a satisfactory standard of development that meets the parking and service needs of existing and future occupiers. This substantiates the Council's concerns relating to the proposed development.

Trees and Biodiversity

Aerial Imagery and Google Street View imagery shows the whole extent of the garden area of the application site was densely covered by a group of trees that provided an ecological corridor between the green areas and trees that extend from the green spaces extending from Bury and Whitefield Jewish Primary School, to Sunnybank Primary School, up to Sunnybank Road.

All these trees have been felled prior to submission of this application with a couple of tree stumps still being present in the garden of the application site. Whilst these trees were not protected by Tree Preservation Order, and the property is not within a Conservation Area, the baseline for biodiversity would be as the site was prior to the removal of these trees.

The NPPF requires development to not harm biodiversity and para. 174 d) of the NPPF requires net-gains to be made to biodiversity. The application fails to illustrate how the harm to biodiversity would be mitigated now nor how biodiversity net gains would be achievable. It is also recommended the application be resisted on this basis.

The representation received, raises concerns with the height of the dwelling, as tree stumps, remain in the garden area. Whilst the LPA could not directly access the site, in views of the rear boundary fence, it was clear that the tree stumps that remain in the garden area would not be in the area of the proposed dwelling. In addition, the land levels are noted on both the existing and proposed Floor Plans/ Site Plans which indicate the land levels within the site would not change. A planning condition, could be imposed to control this.

Conclusion

To conclude;

- The proposed dwelling would result in an incongruous and cramped development to the

detriment of the street scene and locality due to its siting, scale and massing, which would cause visual harm to the detriment of visual amenity and the established character and layout of the locality.

- The proposed dwelling would directly overlook habitable room windows and private garden amenity space, contrary to Policy H2/1 of the UDP.
- The application site is severely constrained by its narrow access off a shared hammerhead and the proposal would provide insufficient parking provision, turning and servicing facilities for both the existing dwelling, no. 9 Elland Close, and the proposed dwelling to the detriment of the free flow of traffic and road safety and fails to achieve a satisfactory standard of design.
- The proposal would result in the loss of useable off street car parking provision for the existing dwelling, leading to vehicles parking and carrying out manoeuvres on the public highway to the detriment of road safety and the free flow of traffic.
- Insufficient information relating to the proposals impact on the Public Sewer and the necessary standoff distances to ensure the public sewer could be accessed for maintenance and renewal purposes has been submitted, to ensure this proposal would not be detrimental to public sanitary, safety and amenity.
- Insufficient information has been submitted to illustrate that the development would mitigate the loss to biodiversity caused by the removal of trees and that the proposal would lead to net-gains to biodiversity.

Due to the above reasons, it is recommended that the application be refused.

Statement in accordance with Article 35(2) Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2015

The proposal would not improve the economic, social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Refuse

Conditions and Reasons:

- 1 The proposed dwelling would result in an incongruous and cramped development to the detriment of the street scene and locality due to its siting, scale and massing, which would cause visual harm to visual amenity and the established character and layout of the locality. The proposal therefore fails to accord with policies H2/1 - The Form of New Residential Development and Policy H2/2 - The Layout of New Residential Development of the Bury Unitary Development Plan, and the National Planning Policy Framework.
- 2 The proposed development would result in an unacceptable reduction in the level of privacy currently enjoyed by the occupiers of neighbouring dwellings. by reason of the sub-standard distances between habitable windows on the proposed dwelling and existing habitable room windows on the side of no. 7 Elland Close and the rear garden areas and private amenity space of dwellings on Parr Lane. The proposed development therefore conflicts with Unitary Development Plan Policy H2/1 - The Form of New Residential Development, Policy H2/2 - The Layout of New Residential Development and associated Supplementary Planning Document 6: Alterations and Extensions to Residential Properties.

- 3 The proposal would provide insufficient parking provision, turning and servicing facilities for both the existing dwelling, no. 9 Elland Close, and the proposed dwelling to the detriment of the free flow of traffic and road safety and fails to achieve a satisfactory standard of design, contrary to Policy H2/2 - The Layout of New Residential Development, HT2/4 - Car Parking and New Development, HT2/6 - Replacement Car Parking and the National Planning Policy Framework and National Design Guide.
- 4 The proposal would result in the loss of useable off-street car parking provision for the existing dwelling, leading to vehicles parking and carrying out manoeuvres on the public highway to the detriment of road safety and the free flow of traffic, contrary to Policy H2/2 - The Layout of New Residential Development, HT2/4 - Car Parking and New Development, HT2/6 - Replacement Car Parking, the National Planning Policy Framework and National Design Guide.
- 5 Insufficient information relating to the proposals impact on the Public Sewer and the necessary standoff distances to ensure the public sewer could be accessed for maintenance and renewal purposes has been submitted, to ensure this proposal would not be detrimental to public safety and amenity, contrary to the requirements of the National Planning Policy Framework.
- 6 Insufficient information has been submitted to illustrate that the development would mitigate the loss to biodiversity caused by the removal of trees and that the proposal would lead to net-gains to biodiversity, contrary to the requirements of the National Planning Policy Framework.

<u>Case Officer</u> CB 26/5/23	<u>Date</u>	<u>Sign off Officer</u> DM 26/5/23	<u>Date</u>
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