

## **DELEGATED REPORT**

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|----------------------------------|-----------------------------------|--------------------------------|
| <b>Report by</b> Jennie Townsend | <b>Date of report:</b> 18/10/2023 | <b>Ref:</b> 69975/FUL          |
| <b>Registration:</b> 08/08/2023  | <b>LDFC:</b> 18/10/2023           | <b>Expiry Date:</b> 03/10/2023 |
| <b>Site Visit:</b> 27/09/2023    | <b>Site Notice:</b> 27/09/2023    | <b>Press Date:</b> N/A         |
| <b>Objections:</b> 0             | <b>Con Area:</b> N/A              | <b>Adv Type:</b> PI            |
| <b>Reason for Delay:</b><br>N/A  |                                   | <b>EIA:</b> NA                 |
|                                  |                                   | <b>Dec Level:</b> DEL          |
|                                  |                                   | <b>Stat Class:</b> MIDW        |

**Proposal:** Removal of condition 6 (removed permitted development rights) on planning permission ref. 66467

**Location:** The Bungalow, Ainsworth Nursing Home, Knowsley Road, Ainsworth, Radcliffe, Bolton, BL2 5PT

### **Description**

The site relates to a dwelling located within a site which had previously been the former Ainsworth Nursing Home. The site is accessed via a private lane which is formed from the top of Knowsley Road. The site is located in the Green Belt, Special Landscape Area and West Pennine Moors and is on the Council's Draft local list as a Non-Designated Heritage Asset. The site is covered by a blanket TPO.

By way of background, the site was sold off as separate plots and planning permissions have been granted for the conversion of some of the buildings to residential dwellings with alterations and extensions and 1 no. new dwelling.

This application relates to one such building which was granted planning permission in 2020 to convert to a single residential dwelling with extensions and alterations. The property is known as the Bungalow but now has a postal address of 7 Knowsley View. This property is located at the entrance of the site adjacent to the southern boundary and has views of the open land to the south.

On granting planning consent to convert and extend the building to create a residential dwelling, permitted development (pd) rights were removed from the dwelling by the implementation of a condition (Condition 7 of planning reference 65626) to restrict any development to be carried out within Classes A to G of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This was to ensure that future inappropriate alterations did not occur pursuant to the planning policies which were considered for the development.

Since the original consent was granted for the conversion and extension of the building, the applicant applied for and was granted permission to add a porch under a variation of condition application to vary the approved plans (ref 66467). This consent was implemented and the condition to restrict permitted development within Classes A to G was similarly included but as condition 6 of the consent.

Following that, a first floor side/rear extension was approved in August 2023 (ref 69713).

This application seeks to remove condition 6 on planning ref 66467 which removed permitted development rights.

The applicant states that the condition is not necessary to make the development acceptable and is an unreasonable planning condition.

### **Relevant Planning History**

02424/E - Proposed two storey rear extension/porch to front elevation and increase ridge height to provide 4 bed home in the place of existing 3 bed bungalow - Enquiry completed 08/04/2020

02825/E - Single storey side extension; Convert balcony to internal bedroom - Enquiry completed 12/06/2023

65626 - Conversion of property to 1 no. residential building; increase to the roof height, two storey extension and associated parking and landscaping, change of use of land to residential garden - Approve with Conditions 23/09/2020

66467 - Variation of conditions following approval of 65626- Amendment to approved plans with the addition of a porch - Approve with Conditions 30/03/2021

69713 - First floor side/rear extension - Approve with Conditions 03/08/2023

23/0058 - Erection of outbuilding in rear garden - 10/05/2023

### **Publicity**

Letters sent on 26/9/23 to 5 properties.

Site notice posted 29/9/23.

One objection received -

- The property occupies a prominent corner plot, with the Access Road running both to the west and north of it. An extension to any side of the building would be visible from the Access Road, and impact further on the open views of one or more neighbouring properties.
- The owner has already completed work on the Bungalow that has given it a large size increase from its original built state, and a subsequent further extension has been granted.
- All other buildings on this Non-Designated Heritage Asset (NDHA) site are the original buildings or attempt to match with the Edwardian character of the original buildings. The Bungalow is out of character with the rest of the NDHA site. Therefore any further extension of The Bungalow will negatively impact on this NDHA.

### **Statutory/Non-Statutory Consultations**

Conservation officer - Recommend refusal for impacts on the NDHA.

**Pre-start Conditions** - Not relevant

### **Unitary Development Plan and Policies**

|       |                                                             |
|-------|-------------------------------------------------------------|
| NPPF  | National Planning Policy Framework                          |
| H2/1  | The Form of New Residential Development                     |
| H2/2  | The Layout of New Residential Development                   |
| H2/4  | Conversions                                                 |
| EN1/1 | Visual Amenity                                              |
| EN1/2 | Townscape and Built Design                                  |
| EN1/3 | Landscaping Provision                                       |
| EN2/3 | Listed Buildings                                            |
| EN5/1 | New Development and Flood Risk                              |
| EN6   | Conservation of the Natural Environment                     |
| EN6/3 | Features of Ecological Value                                |
| EN9/1 | Special Landscape Areas                                     |
| OL1/2 | New Buildings in the Green Belt                             |
| OL1/4 | Conversion and Re-use of Buildings in the Green Belt        |
| OL7/2 | West Pennine Moors                                          |
| HT2/4 | Car Parking and New Development                             |
| HT6/2 | Pedestrian/Vehicular Conflict                               |
| SPD8  | DC Policy Guidance Note 8 - New Buildings in the Green Belt |
| SPD 9 | Conversion and Re-use of Buildings in the Green Belt        |
| SPD11 | Parking Standards in Bury                                   |

## 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.

## Policies

In Chapter 13 - Protecting Green Belt Land, Paragraphs 147 and 148 state that inappropriate development in the Green Belt is by definition, harmful and should not be approved except in Very Special Circumstances (VSC). Planning Authorities should ensure that substantial weight is given to any harm in the Green Belt. VSC will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Paragraph 149 c) allows for an extension or alteration of a building provided that it would not result in disproportionate additions over and above the size of the original buildings.

OL1/2 - UDP Policy OL1/2 - New Buildings in the Green Belt states that the construction of new buildings in the Green Belt is inappropriate development unless -

- for agriculture and forestry,
- essential facilities for outdoor sports and recreation,
- limited extension, alteration or replacement dwelling provided it would not result in disproportionate additions over and above the size of the original dwelling or not materially larger than the one it is to replace;
- limited infilling in existing villages as set out under Policy OL1/3.

UDP Policy OL1/4 - Conversion and Re-use of Buildings in the Green Belt is not inappropriate development and would be permitted provided that:  
it would not have a materially greater impact than the present use on openness;  
any extensions of re-used buildings and any associated uses of land surrounding the building do not conflict with the openness of the green belt;  
the buildings would be capable of conversion without major or complete reconstruction;  
form, bulk and design would be in keeping with the surroundings;  
suitable access and traffic can be accommodated;  
necessary services can be provided;  
no damage to habitats or protected species.

UDP Policy OL7/2 - West Pennine Moors ensures the important character of the area is protected and focuses not only on the control of development but measures to enhance the environment.

SPD8 - New Buildings and Associated Development in the Green Belt and SPD9 - Conversion of Buildings in the Green Belt and provides additional advice and guidance, particularly with reference to siting, design, materials, scale and form of a development.

UDP Policy EN1/1 - Visual Amenity - Development should not be permitted where proposals would have a detrimental effect on the visual amenity both within, or viewed from, areas of environmental interest such as the Green Belt, Special Landscape Area or the river valleys. The wider consideration of the effect on visual amenity is necessary in sensitive areas to ensure that developments are not inappropriate by reason of their siting, materials or design.

UDP Policy EN9/1 - Area of Special Landscape seeks to strictly control development and is required to be sympathetic to its surroundings in terms of visual impact. High standards of design, siting and landscaping will be expected and unduly obtrusive development will not be permitted in such areas.

Paragraph 203 of the National Planning Policy Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

The applicant states that the condition is not necessary to make the development acceptable and is an unreasonable planning condition.

The applicant states that the site is located in the Green Belt but there are no other constraints identified in regards to the application site or wider nursing home area. This is incorrect as the site is within a Special Landscape Area, West Pennine Moors and is a Non-Designated Heritage Asset.

## **Assessment**

Para 54 of the NPPF states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so.

Para 55 of the NPPF states that 'Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

Para 56 of the NPPF states that 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 other respects.

(NPPG Paragraph 001 (21a-001-20140306) states that -  
'One of the reasons conditions are imposed on an application is to mitigate adverse effects and it is important to ensure conditions are tailored to tackle specific problems rather than impose broad unnecessary controls'.

Paragraph: 017 Reference ID: 21a-017-20190723 of the NPPG states that:  
Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

### **Green Belt**

Removal of pd rights in consideration of Green Belt issues.

Policy OL1/2 and SPD8 states that extensions should be subsidiary to the original building achieved by keeping the extension small scale, simple and unobtrusive. Extensions should also be proportionate to the size of the original dwelling and generally may allow an extension of up to a third of the volume of the original dwelling, although each proposal is considered on its own merits and even a third increase may not be appropriate.

The original application to convert the building proposed extensions which equated to a 30% increase in volume and increase in height of 1.1m.

The extensions to the build were assessed as acceptable, being of a design and construction which was considered to be appropriate in this setting. However, as the proposal added circa a third additional volume which is the maximum advised in H2/3 and SPD8, anything more than a third could reasonably be considered as disproportionate to the original house and therefore it was considered perfectly reasonable to restrict pd rights.

Since then, a porch has been added to the dwelling and planning permission was recently granted for a 1st floor extension (69713). Prior to and during the process of this application there were a series of negotiations between the LPA and applicant to amend the design and to a point the LPA were able to support the application. The development was justified on the basis that the design was in keeping with the dwelling and as an infill extension within the first floor, it was on balance considered acceptable.

The General Development Permitted Order does not restrict pd rights in the Green Belt. Development in the Green Belt would need to be a site by site basis - each setting and application is different. A development on one property in the Green Belt may be acceptable whereas a similar development in a different Green Belt setting may not be appropriate.

As stated in Paragraph 001 of the NPPG, conditions are added to mitigate against adverse effects and harm which can be caused. In this case, extending the building further or

adding buildings within the curtilage of the property without controls in place may cause harm to the openness of the Green Belt.

It is therefore considered the removal of permitted development rights for this property is justified in terms of the NPPG and Green Belt policy and in terms of para 149 c) of the NPPF.

### **Heritage**

Removal of pd rights in consideration of heritage issues.

The bungalow was built in the 1970s as residential accommodation for the manager of the former nursing home site which is now a Non-Designated Heritage Asset (NDHA). The non-historic bungalow is of a modern design and together with its plot forms part of the former nursing home site and as such does have an impact on its setting. Planning permission (65626) was granted in 2020 to convert the bungalow to residential dwellinghouse with a change of use of land to domestic garden, an increase in the roof height, two storey extension and a further permission (69713) for a first floor side and rear extension.

Paragraph 203 of the National Planning Policy Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Planning application 67368 for the demolition of the main central building of the former nursing home to be replaced with two detached two storey dwellings was refused by the Council and dismissed on appeal (APP/T4210/W/22/3298500) because of the harm caused by the loss of the building on the wider significance of the NDHA site and the failure in the quality of design of the two proposed dwellings to mitigate against that loss.

The permitted development rights detailed in the condition for The Bungalow have been removed in order to prevent uncontrolled inappropriate extensions and alterations to it causing harm to the heritage significance of the wider NDHA of the former nursing home for the same reason the inspector dismissed the appeal against the refusal of application 67368, that is to prevent the slow transition through permitted development rights of The Bungalow, which has already been extensively altered and extended, becoming a building of inappropriate design, size and scale that would cause an unacceptable level of harm to the setting of the wider NDHA site causing an unacceptable loss of heritage significance.

It is therefore considered the proposal to remove pd rights would be contrary to the principles of the NPPF and the NPPG.

### **Conclusion**

The site is located in a sensitive area in terms of its environmental setting and historic status. The LPA have taken the consistent approach in removing pd rights for all the developments which have come forward for this site. This is to ensure that any future development would be subject to considerations of the relevant planning policies given the sensitive landscape character and historic setting.

In terms of asking the question, is it appropriate to use conditions to restrict the future use of permitted development rights or changes of use, then the LPA maintain that in the case the answer is yes.

Restricting development on a site in the Green Belt, Special Landscape Area and as an NDHA and site of local interest is both reasonable and necessary to ensure the character of the site and its setting within a sensitive landscape area are not harmed to a significant degree.

The condition restricted development under Classes A to G of Part 1 of Schedule 2 of the Order did not result in the blanket removal of freedoms and specified exactly which classes the restriction related to.

The applicant cites examples of 3 appeal decision where the Inspector found that conditions to restrict pd were unreasonable and unnecessary. The LPA do not know the circumstances of each of these appeal situations, they do not relate to the same type of development nor the same setting. Each application would be considered on its own merits.

If the LPA took the same approach to not restrict pd rights for the other buildings and developments on the site, any number of different types of development could be carried out to each building, and by do so, may on their own or cumulatively, have an adverse impact on the special character of the landscape area and the Green Belt and the character and historic importance of the NDHA.

The condition is therefore considered necessary and reasonable to make the original development acceptable and any subsequent proposals to develop this site.

### **Response to objection**

Issues raised have been covered in the above report

**Recommendation:** Refuse

### **Conditions and Reasons:**

The proposal to remove the restriction to carry out development which is permitted under Classes A to G of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) would lead to development which would have an adverse and significantly detrimental impact on the importance and character of the Non-Designated Heritage Asset and the special character and openness of the Green Belt. The proposal would therefore be contrary to the principles of the NPPF and NPPG.

|                     |             |                         |             |
|---------------------|-------------|-------------------------|-------------|
| <u>Case Officer</u> | <u>Date</u> | <u>Sign off Officer</u> | <u>Date</u> |
| JT                  | 18/10/23    |                         |             |