

DELEGATED REPORT

Report by Claire Booth	Date of report: 28/06/2024	Ref: 70099/FUL
Registration: 27/10/2023	LDfC: 17/11/2023	Expiry Date: 22/12/2023
Site Visit: 06/11/2023	Site Notice: N/A	Press Date: N/A
15:30:00		
Objections: 1	Con Area: N/A	Adv Type: NONE
Reason for Delay:		EIA: NA
N/A		Dec Level: DEL
		Stat Class: MIOT

Proposal: Erection of outbuilding at the rear to be used as a nursery (Retrospective)

Location: 8 Moss Lane, Whitefield, Manchester, M45 8DY

Description

The application relates to a detached two storey property situated at the junction of Moss Lane with Albert Close and Furness Avenue. The property is in use as a nursery, approved by application 27085 in December 2000. The nursery is called Bright Starts. The property to which the application relates was previously called Bridge House.

The property is located in an area of mixed uses. To the north are residential dwellings along Moss Lane, to the east along Albert Close there are industrial buildings, to the south of the junction exists Furness Avenue with more housing beyond.

The property has a Moss Lane address but has no access into the building from this road. Access to the reception of the nursery is on the elevation facing Albert Close. Within the area to the side of the property, which historically formed a driveway, is a detached timber outbuilding used as a play house and a fake garden which forms an outside play area. Attached to part of the gable end of the property is a timber slate mono-pitched canopy which provides shelter when children are playing outside.

Retrospective planning permission is sought for the erection of a single storey grey upvc clad building within the yard area of the nursery to be used as a baby unit. The building has white coloured eaves, fascias, doors and windows. The building has approximate dimensions of 10m (length) x 3.6m (width). The building has a shallow sloping mono-pitch roof with a lower eaves height of 2.4m and a maximum height of 2.56m. The building is sited along the south-western boundary of the site which is shared with 10 Moss Road, a semi-detached residential dwelling. The building accommodates 10 babies who are looked after by 4 members of staff. The opening hours of the nursery are 07:30 - 18:00 hours Monday to Friday.

During the course of the application, the gutters on the rear of the building have been changed so that they do not project over the shared boundary of the neighbouring property, no. 10 Moss Lane.

Prior to the proposed building being installed on the site, the area towards the end of the neighbours garden, within the application site contained a number of outbuildings. These buildings were demolished to make way for the retrospective proposal.

Relevant Planning History

39599 – Two storey side extension – Approved with Conditions, 27/11/2002

38588 – Alterations to windows and doors to front/ side elevations – Approved with

Conditions, 24/01/2002

37085 – Change of use from retail shop (Class Ad) to Children's Nursery (Class De) – Approved with Conditions, 22/12/2000

26184 – Two shop units (Class Ad) with first floor office accommodation (Class Be) – Refused, 05/09/1991

Publicity

10 nearby neighbours were also consulted by letter on the 27/10/2023. One representation has been received which raises the following objections:

1. Gutters of outbuilding "over hang" meaning that fence panels are not able to be lifted out and replaced.
2. Building's proximity to property line has created an inaccessible space that is being used by vermin. They advise Vermin at number 8 is an ongoing issue that has been brought to the Council's attention on numerous occasions.
3. State they were not notified about the plans for the building and believe it's an eyesore. It blocks sunlight and we have been informed it is higher than the height allowed by law.
4. Gutters are creating a flood into the garden
5. Noise - The outbuilding has created excess noise which is extremely inconvenient.

The matters above are discussed under the 'Response to Representations' section of this report.

Statutory/Non-Statutory Consultations

Electricity North West Ltd - No comments or observations received.

Traffic Section - Raises objections due to the proposed intensification in use of the property and no off-street parking provision to support this proposal.

Children's Centres & Early Years - No comments or observations received.

Pre-start Conditions - Not relevant as the proposal seeks retrospective permission

Unitary Development Plan and Policies

CF1	Proposals for New and Improved Community Facilities
CF1/1	Location of New Community Facilities
CF4	Healthcare Facilities
HT2/4	Car Parking and New Development
CF5/1	Childcare Facilities in New Developments
JP-P6	Health
JP-P5	Education, Skills and Knowledge

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, including relevant policies in the emerging Places for Everyone Joint Development Plan.

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.

Procedural Matters - The proposed outbuilding abuts the shared boundary with this neighbouring property and thus, at the Council's request for an amended Ownership Certificate B during the course of the application due to encroachment. Now the rear guttering on the building has been changed so it now does not overhang the shared boundary with no. 10 Moss Lane. The correct Ownership Certificate which only serves notice on the owner of the application site therefore accompanies this application and as such the Council is able to determine the application.

Principle of Development - Policy CF1/1 states that proposals for new and improved community facilities will be considered with regard to the impact on residential amenity, traffic generation and parking provision, scale and size of the development, access to shops and other services, accessibility by public transport and the needs and requirements of the disabled.

Policy CF5/1: Childcare Facilities in New Developments supports proposals for childcare facilities, as does PFE Policy Policy JP-P5: Education, Skills and Knowledge.

The use of the property has been established through the granting of planning permission, 37085/00. The application site is located within the Besses Ward. In the 2021 census, this ward was identified as being one of the neighbourhoods most affected by deprivation.

Due to the current nursery being at full capacity, and having to turn young children away the retrospective proposal was erected to provide a separate baby unit to hold 10 babies. The baby unit is currently full and has a waiting list for the nursery, which includes the baby unit

with new starters booked in until April 2025. As such, the proposed development would meet a need within the local area.

The baby care has been moved in to the building to accommodate more children, so the nursery can accommodate more children in the main building, particularly important due to the introduction of new entitlements for eligible working parents of:

- From April 2024, the 15 hour entitlement for children aged 2 years of eligible working parents
- From September 2024, the 15 hour entitlement for children aged 9 months of eligible working parents
- From September 2025, the 30 hour entitlement for children aged 9 months of eligible working parents

The nursery is a well used local facility by family's and the retrospective proposal provides an essential service. The report below will discuss the impacts upon residential amenity, traffic generation and accessibility. Notwithstanding this, the proposed development would be acceptable in principle and would be in accordance with Policies CF1/1 and CF5 of the Bury Unitary Development Plan and Policy JP-P5 of the Places for Everyone Joint Development Plan.

Design and Visual Amenity

The yard area extends to the side and rear of the property. The building erected extends from the rear boundary of the application site, along the shared boundary with no. 10 Moss Lane, a semi-detached residential property.

The building for which retrospective permission is sought, is a pre-fabricated building constructed in dark grey upvc with a white fascia and eaves.

Due to the boundary fencing along Moss Lane and Albert Close, the building is not visible from Moss Lane or Albert Close. The building erected is partly visible from the unadopted land to the rear of the properties which also provides access to Albert Trading Estate, however, it does not cause demonstrable harm to the visual amenity of the locality and is therefore acceptable in this regard. The proposal thus accords with UDP Policy EN1/2: Townscape and Built Design.

Parking and Highway Safety

The property lacks off street car parking provision and on this basis the local highway authority has raised objections based on the intensification of use of the application site and its impact on highway safety.

The new building has generated more spaces for children/ babies, however this has not created any parking issues as parents are dropping off and collecting children at varying times, not all at the same time. Drop offs and collecting times are also very short and not in very confined /concentrated times so any parents are not parked up for long periods of time. Moreover, the applicant advises that a portion of the parents using the nursery live in walking distance of the site and do not have a car. therefore dropping children off on foot. Moss Lane is in one of the boroughs most deprived Wards and therefore it is reasonable that a lot of parents walk to and from the nursery. Moreover, the building has been operating as a baby care unit as part of the existing nursery business since the beginning of June 2023. The Local Highway Authority have received no complaints to the intensification of use of the business occupying the property and therefore there seems no sound planning grounds on which to resist this application on highway safety grounds.

Residential Amenity

The application site shares a boundary, at its rear, with a semi-detached dwelling, no. 10 Moss Lane. The application site appears to be on slightly higher land than the majority of the garden of this neighbouring property, 10 Moss Lane, part of which drops down from the

application site. The neighbouring garden faces southeastwards. The building is broadly south of the neighbour's property.

In terms of the bulk and massing of the proposed building, the proposed building extends along the side boundary within the rear garden area of the majority of the boundary of the neighbour's garden. The building's eaves and roof only just sit above the height of the fence. The neighbour considers that the presence has resulted in an undue sense of enclosure not previously experienced by the existing occupiers of no. 10 Moss Lane, which will also have resulted in a loss of a degree of sunlight to the neighbour's garden. However, due to the building's height, which is only circa 6cm higher than a detached outbuilding where a residential property could lawfully erect within its rear garden without permission. This provides a useful yardstick of the height of buildings which the Government considers do not cause such demonstrable harmful conditions in terms of loss of sunlight and other residential amenity issues. For these reasons, it is considered that the LPA would be unjustified to refuse the application on the residential amenity grounds described above.

In respect of the use of the proposed building as a baby unit for up to 10 babies at the nursery, noise pollution is a material planning consideration. The LPA has visited the application site unannounced over the last 12 months at least 5 times, at different times of the day and has listened for noise from the nursery, from the unadopted lane at the rear of Moss Lane and from Albert Close, outside the gate into the rear yard area of the application site. At no times have babies been heard crying. In addition, the nursery closes at 6pm in the evenings (opening at 07:30) and is closed at weekends. The case officer has heard children playing in the yard area, however, these are obviously older children who attend the nursery. For this reason, Officers consider that the proposed baby unit does not lead to conditions demonstrably worse than the neighbour's experienced previously experienced. Therefore, there are no grounds on which to resist the application on this ground.

Response to Representation

The matters raised by the objector are discussed below:

1) Gutters of outbuilding "over hang" meaning that fence panels are not able to be lifted out and replaced.

Encroachment of a proposal on to a resident's property is a civil matter and the neighbour needs to seek their own independent legal advice in this respect.

The Council is satisfied that as a result of the replacement gutters that have been installed on the rear of the building subject to this application, the Ownership Certificate accompanying the application is correct, as the rear gutters no longer extend over the shared boundary.

2) Building's proximity to property line has created an inaccessible space that is being used by vermin.

They advise Vermin at number 8 is an ongoing issue that has been brought to the Council's attention on numerous occasions.

Whilst the LPA sympathise with the neighbour having Vermin issues, issues with vermin are not dealt with under planning legislation. The neighbour is advised to speak to the Council's Environmental Health section to see if the legislation they work too can assist in resolving this issue.

3) Concerned they were not notified about the plans for the building

The property to which the representation came from was notified by letter at the same time as other neighbours, on the 27/10/2023. The Council's Enforcement Team also let the neighbours know that the LPA was in receipt of a planning application.

4) Believe it's an eyesore and that it blocks sunlight and believe it is higher than the height

allowed by law.

The matters raised above have been addressed in the report above.

5) Gutters are creating a flood into the garden

Due to the lower nature of the neighbouring property to the application site water does flow downhill.

The LPA contacted the applicant about this issue of the surface water running off the sloping roof into the middle of the neighbouring garden area, who has sought to resolve this issue by relocating the drainpipe to the rear end of the building and has tucked it around the rear corner of the building. The building now drains on to soft landscaping adjacent to the site within the unadopted back street.

It is considered that the amount of surface water generated from the roof of the building would not be so significant to cause flooding and for this reason is considered to be satisfactory.

6) Noise - The out building has created excess noise which is extremely inconvenient.

The planning consideration of noise has been discussed under the Residential Amenity section of this report.

Conclusion

For the reasons explained in the report above, the development would not have significant harmful impacts upon visual or residential amenity. As such, the proposal would comply with the above policies of the Local Plan and the NPPF. Therefore, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act, the proposal is recommended for approval.

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

The Local Planning Authority worked positively and proactively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Approve with Conditions

Conditions and Reasons:

- 1 The development must be begun not later than three years beginning with the date of this permission.

Reason. Required to be imposed by Section 91 Town & Country Planning Act 1990.

- 2 Subject to the requirements of the subsequent conditions, the development hereby permitted shall be carried out in accordance with the following approved drawings:

Drawings

Drawing no. 2: Location Plan and Proposed Site Plan; and,
Drawing no.3: Proposed Front, Rear and Side Views.

Reason. For the avoidance of doubt and to ensure a satisfactory standard of design pursuant to the policies of the Bury Unitary Development Plan listed.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
CB 28/6/24		DM 28/6/24	