

**DELEGATED REPORT**

**Report by** Amanda

**Date of report:** 12/10/2023

**Ref:**70029/FUL

Uhunmwagho

**Registration:** 22/08/2023

**LDfC:** 28/09/2023

**Expiry Date:** 17/10/2023

**Site Visit:** 27/09/2023

**Site Notice:** N/A

**Press Date:** N/A

**Objections:** 2

**Con Area:** N/A

**Adv Type:** N/A

**Reason for Delay:**

**EIA:** NA

N/A

**Dec Level:** DEL

**Stat Class:** HOUS

**Proposal:** Variation of condition no. 2 (approved drawings) following approval of planning permission 68503 - Amend side elevation window from fixed window to top hung opening light with an opening restrictor to allow for emergency escape

**Location:** 12 Cliff Avenue, Summerseat, Ramsbottom, Bury, BL9 5NT

**Description**

The application relates to a previously extended detached dormer bungalow. There is a garden to the front with parking available on site for several vehicles and a more private garden to the rear. There are hedges to all boundaries at the front and to the rear there are fences to both side boundaries and planting along the rear. Given the way the land falls the site is slightly lower compared to no.10 Cliff Avenue to the east and higher than no.12a Cliff Avenue and no.s 1 and 3 Crag House to the west.

Planning permission has been previously granted (68503) for a loft conversion with dormers to both sides of the dwelling and it is now occupied. The current application seeks to vary condition no.2 (approved drawings) of that application by amending two windows to the west side dormer which were approved as unopenable up to an internal height of 1.7m as well as being obscurely glazed, to obscure glazed windows which would be fitted with a restrictor or so that the windows would be openable up to a maximum of 100mm for ventilation, but the restrictors could be released in the event of an emergency.

The plans also show that the dormer windows on the east side would be unopenable up to a height of 1.7m from the internal floor level, with opening lights to the top. There would be no other changes to what has been previously approved.

**Relevant Planning History**

68042 - Loft conversion with side dormers - Refuse/Refused 13/04/2022

68207 - Detached garage to front of property - Withdrawn by Applicant 23/05/2022

68503 - Loft conversion with dormer extensions on both sides - Approve with Conditions 22/08/2022

68504 - Single storey extension at rear (retrospective) - Approve with Conditions 22/08/2022

22/0177 - Single storey rear extension - 09/06/2022

23/0013 - Breach of condition no. 2 of planning permission 68503 - not built in accordance with approved plans (windows) - 22/08/2023

**Publicity**

8 neighbours notified on 06/09/2023 - Two objections received.

**Objection 1** -

- Our objections to planning applications 8042 and 68503 remain; the windows have

resulted in a significant reduction in our privacy, to date necessitating the installation of temporary partial window obscuring shutters to our rear windows.

- The regularity and duration of the applicants opening of the obscured windows, last noted 09/09/23, strongly indicates the applicants' disregard for the terms and ethos of their planning consent and current application. This is exacerbated by the applicants' comments 'we're not interested in looking' and 'our other house is overlooked, and we aren't bothered by this'. Further, the applicants have also erected a garden building with windows and a CCTV camera directly overlooking the rear bedroom and bathroom windows of our house.
- We understand that the proposal regarding restrictors is based upon fire safety conditions. Conditions which we assume can be met via use of the window on the front of the house and by a doorway through the stud wall to the second rear bedroom, which has a window that does not overlook our property or some other means.

#### **Objection 2 -**

When the original planning application (8042) was determined in February 2022 the application was refused. The Case Officer's report stated:

1. .. the impact of the extensions is significant and
2. 'the position of the proposed side dormer windows in relation to adjacent residential properties would result in an unacceptable reduction in the level of privacy presently enjoyed'.

The clarity of these comments would suggest that no application that included side dormer windows should have ever been considered but a subsequent planning application (68503) did just that.

In February 2023 windows were fitted in a flagrant abuse of the stipulated conditions of 68503 ie the windows should be fixed panes not openers.

During the past 7 months there have been many, many occasions when these windows have been open notably in the past weeks (after planning application 70029 was submitted!).

My view is that any opener is a breach of my right to privacy and as stated above 'would result in an unacceptable reduction in privacy'. In several conversations with the Planning Enforcement Officer, I am well aware that there are other appropriate options to obviate the necessity to have an opening light to allow for emergency escape. I also understand from them that the Building Control Inspector also confirms this position.

The residents of 12 Cliff Avenue have, as far as I am concerned, demonstrated their approach to this matter by having no respect for our privacy whilst repeatedly defying the Council's planning decisions. My concern is that the residents will continue to ignore what are material planning considerations.

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

None

#### **Pre-start Conditions - Not relevant.**

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

|       |                                                             |
|-------|-------------------------------------------------------------|
| OL1   | Green Belt                                                  |
| OL5/2 | Development in River Valleys                                |
| EN1/2 | Townscape and Built Design                                  |
| EN2/2 | Conservation Area Control                                   |
| EN9/1 | Special Landscape Areas                                     |
| H2/3  | Extensions and Alterations                                  |
| SPD6  | Supplementary Planning Document 6: Alterations & Extensions |
| SPD8  | DC Policy Guidance Note 8 - New Buildings in the Green Belt |
| 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.

The main considerations of this application are the impact of the proposal on visual and residential amenity.

#### **Visual Amenity -**

SPD 6 and UDP Policy H2/3 seek to achieve a high standard of design that compliments the original building, and does not have a detrimental impact on the character and appearance of neighbouring properties and the general street scene.

The size, materials and location of the windows on both dormers would not change and they would all remain obscurely glazed. The addition of restrictors to the windows on the

west side would not have any significant detrimental effect on the existing streetscene and as such would still conform to Bury UDP Policy H2/3 - Extensions and Alterations and the guidance in Supplementary Planning Document 6 – Alterations and Extensions to Residential Properties in terms of visual amenity.

**Residential Amenity -**

Both windows on the east side dormer would be fixed, unopenable and obscurely glazed below a height of 1.7m from floor level. As such there would be no significant detrimental impact on privacy levels between the application dwelling and no.10 Cliff Avenue.

On the west side the windows which were approved would have been obscurely glazed and unopenable below a height of 1.7m from the internal floor level. However, the applicant installed opening windows below 1.7m. The addition of a restrictor would only allow users of the bedrooms to open the window up to 100mm for ventilation, but there would be the ability to release the restrictors in the event of an emergency.

The restrictors would ensure that there would be no direct overlooking of properties to the west, particularly at 3 Crag House which is directly adjacent to the west dormer, at a much lower level. With the restrictors in place the windows on the dormer would be considered acceptable in terms of SPD 6 and there would not be any significant detrimental effect on residential amenity at properties to the west. Therefore, the proposal conforms to UDP Policy H2/3 - Extensions and Alterations and the requirements of Supplementary Planning Document 6 – Alterations and Extensions to Residential Properties

**Parking** - As there are no changes to the size of the previously approved extension parking to the front of the site would not be affected by the proposed changes. There is existing parking to the front of the site for several vehicles therefore SPD 11 Parking Standards need not be considered.

**Response to neighbour objections -**

One of the neighbours' objections is that the applicant opens the west dormer windows regularly. This may be the case, but this application has been submitted in order to rectify the issue of the opening windows by way of adding restrictors to the two bedroom windows on the west elevation.

As assessed in the residential amenity section of this report the window restrictors would prevent the applicant from opening the windows on the west side dormer more than 100mm. This would prevent any direct overlooking of the neighbouring properties, ensuring privacy levels are maintained between the application property and neighbouring homes and gardens to the west.

In the interest of Building Regulations there could be alternative arrangements the applicant could make regards fire safety, as the neighbours have suggested, but they have opted to install restrictors to the windows on this occasion. This would satisfy Building Regulations requirements, whilst also ensuring privacy is retained between the application property and neighbouring properties.

If the applicant continues to open the windows, more than 100mm in the future then they would be subject to enforcement action as they would be in breach of the approved proposal.

The windows are currently obscurely glazed upto a height of 1.7m which does satisfy the requirements in that respect.

## **DELEGATED REPORT**

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 This decision relates to drawings numbered 22-01 01C, 22-01 02D, 22-01 07D and 22-01 08C received on 11/10/2023 as modified by the email from TECH:D Ltd dated 11/10/2023. The development shall not be carried out except in accordance with the details hereby approved.  
Reason. For the avoidance of doubt and to ensure a satisfactory standard of design pursuant to the policies of the Bury UDP Policy H2/3 - Extensions and Alterations and the guidance in Supplementary Planning Document 6 – Alterations and Extensions to Residential Properties.
- 2 Within one month of this decision notice, the first floor side/west elevation windows shall be fitted with obscured glazing (min obscurity level 3) to a minimum height of 1.7m from floor level and fitted with window opening restrictors (to allow a maximum opening of 100mm) and shall be permanently retained in that condition thereafter:  
Reason. To protect the privacy of adjoining occupiers and to accord with Policies H2/1 The Form of New Residential Development, H2/3 Extensions and Alterations of the Bury Unitary Development Plan and Supplementary Planning Document 6 Alterations and Extensions to Residential Properties.
- 3 Within one month of this decision notice, the first floor side/east elevation windows shall be fitted with obscured glazing (min obscurity level 3) and be unopenable to a minimum height of 1.7m from floor level and and shall be permanently retained in that condition thereafter:  
Reason. To protect the privacy of adjoining occupiers and to accord with Policies H2/1 The Form of New Residential Development, H2/3 Extensions and Alterations of the Bury Unitary Development Plan and Supplementary Planning Document 6 Alterations and Extensions to Residential Properties.

| <u>Case Officer</u> | <u>Date</u> | <u>Sign off Officer</u> | <u>Date</u> |
|---------------------|-------------|-------------------------|-------------|
| AU - 12/10/2023     |             | DM                      | 16/10/12    |