

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 06/12/2023	Ref: 69195/FUL
Registration: 04/05/2023	LDfC: 12/06/2023	Expiry Date: 29/06/2023
Site Visit: 19/05/2023	Site Notice: 19/05/2023	Press Date: 18/05/2023
Objections: 0	Con Area: N/A	Adv Type: ASB
Reason for Delay: N/A		EIA: NA Dec Level: DEL Stat Class: MIOT

Proposal: Refurbishment of gardens including upgrading drainage and footpaths; New pedestrian ramp access; Rebuild stage area; Creation of terraces along the bank of the stream and Tree works across the site

Location: Whitehead Gardens, Chapel Street, Tottington, BL8 4AL

Description

The application relates to a park and public garden which is known as Whitehead Gardens located in the village of Tottington. Opposite the site is St Anne's Vicarage and Church, both Grade II Listed Buildings, and to the south is a small public car park and a restaurant which is locally listed.

The Gardens were created in 1950 by the Whitehead Family as a memorial to seven people who lost their lives on Christmas Eve 1944 in a World War 2 enemy air raid attack. A large stone tablet is inset into a wall at the rear of the gardens to commemorate those killed in the blast. The area to the north of Whitehead Gardens is known locally as the Alan Barton Memorial Garden which also contains a memorial plaque commemorating a former Ward Councillor and Mayor, William Johnson.

The site is considered to be a Non-Designated Heritage Asset.

The site is located in the Green Belt, River Valley, Special Landscape Area and West Pennine Moors.

The Gardens are set at a slightly lower level to the main road and are accessed by a set of stone steps at the southern end and a pathway at the northern end, with a series of pathways and routes which wind through the Gardens with some seating areas also provided. The Gardens are populated by trees of a mostly mature established species with the perimeter of the site fairly densely planted. There is also a Brook which runs through the site in a north/south direction.

At the back of the site in the western area is a stone dais or 'stage' which is where the stone tablet to commemorate the bombing is set. There are stone steps which lead to the stage platform and mostly self-seeded trees have populated the back of the stage. Areas of the 'stage' have also become overgrown with moss and vegetation.

The application seeks a scheme of improvement works with the intention of making the Gardens more accessible and 'usable' to the general public and extending and improving the dais or stage to make this more usable and safe for community events. The refurbishment of the works also include some tree removal and pruning works, upgrading the drainage and footpaths, planting and general maintenance works.

The extension to the dais or 'stage' would be constructed in stone and incorporate a ramped access and install handrails to the steps for safety purposes.

Relevant Planning History

N/a

Publicity

Letters sent to 17 properties on 11/5/23

Site notice posted 19/5/23

Press advert 18/5/23

Two letters of support received -

- Urge approval is given to the project to restore and improve Whitehead gardens
- Will be an asset to the community with sustainability in mind.
- Whitehead Gardens were gifted to the community by the Whitehead Family as a memorial to those who died as a result of the V1 attack on Xmas Eve 1944 to be a place of remembrance and leisure
- We have kept in touch with representatives of the Whitehead family who are very supportive of the works and intentions
- Initiated due to local primary school children identified the park as dreary and uninviting area of the village
- Grant funding and hard work have enabled the long boundary wall adjacent to Chapel street to be restored, paths cleared and signage erected
- Continue to work with children on the garden
- Working towards information boards and creating heritage trail around the village
- The point to be made is that Whitehead Gardens has been and will continue to be part of a community project and is intended to not only be a great asset but also to engage the interest and commitment of our future citizens.
- Furthermore we want the gardens to be an attractive place for the community to visit and to be available as a viable, attractive and safe centre for any community use on the future

Statutory/Non-Statutory Consultations

Traffic Section - No objection

Borough Engineer - Drainage Section - No response received.

Property & Technical Services - Estates Consultancy - No response received

Conservation Officer - No objection

United Utilities (Water and waste) - No response received

Greater Manchester Ecology Unit - no objection subject to conditions

Environmental Health - Contaminated Land - No objection subject to conditions.

Pre-start Conditions - Applicant/Agent has agreed with pre-start conditions

Unitary Development Plan and Policies

NPPF National Planning Policy Framework

OL1 Green Belt

OL5/2 Development in River Valleys

OL7/2 West Pennine Moors

EN1/2 Townscape and Built Design

EN2/3 Listed Buildings

EN9/1 Special Landscape Areas

EN1/3 Landscaping Provision

EN5/1 New Development and Flood Risk

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

The site is a public park and garden and in principle works to make the site accessible and usable for the public are welcomed.

Assessment of the impacts on heritage, trees and ecology are discussed below.

Heritage

Paragraph 203 of the NPPF 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.

A Heritage Statement has been submitted and further work has been carried out by the applicant which has concluded that no known surviving relatives of the V1 flying bomb explosion on Chapel Street, Tottington on the 24th December 1944 has or would have objected to the proposed works to Whitehead Gardens.

The memorial plaque commemorating those who died in the blast would be repositioned in the wall of the rebuilt stage.

As such it is considered the proposals including the stage extension would not harm the Gardens, identified as Non-Designated Heritage Asset, to an unacceptable level that would harm its heritage significance and would not harm the significance of the Grade II Listed Buildings to the east of the site.

Part of the proposal, annotated on the submitted plan is to re-surface the pathways throughout the site, subject to budget. No specific details have been submitted for the re-surfacing, as such a condition should be added to any consent to provide details of design and materials before any works to the pathways are commenced.

It is therefore considered the proposed development would accord with the principles of the NPPF and UDP Policy EN2/3.

Trees

It is proposed to remove 21 trees in total and carry out pruning/crownlift works to 17 trees.

The tree works are not required to facilitate the development or make the development acceptable and as a public park, these works could be carried out at any time. However the works have been included in the application as they are part of the overall improvement 'package'. None of the tree on site are TPO trees and there are some categorised as 'A' or 'B' in that they are in good health and a valuable species.

All trees proposed to be removed are categorised as 'U' in that they are poor species or in poor condition and their removal would benefit the site by opening parts of the gardens and also allow the remaining trees to grow and flourish without being constrained. Some of the pruning and crownlift would be to category A or B trees but this would ensure the trees would maintain good health and not hamper growth or health of trees around.

No trees would be removed which run along the front of the site and as such the pleasant vista to this part of Chapel Street would be maintained.

It is therefore considered that the proposed tree works would be acceptable and would not have a detrimental impact on the visual amenity of the area and would comply with EN1/2 and EN8.

Ecology

Summary

Further bat surveys would be recommended for works to trees of moderate risk for bat roosting potential which should occur prior to determination. Other ecological issues relating to nesting birds, invasive species, protection of the watercourse and biodiversity mitigation and enhancement can be dealt with via condition.

Bats

A valid bat assessment has been provided. Current best practice guidance is that trees assessed as moderate risk require further surveys prior to determination. Low risk trees can be felled under reasonable avoidance measures.

All the trees proposed for removal have been identified as low risk for bat roosting potential and non identified as moderate risk. As such, further bat surveys would not be required. Taking this into account and that the site is a public park where trees could be removed under permitted development, GMEU have no objection to the removal of the trees or the tree works.

A condition can be applied for reasonable avoidance methods for the felling of low risk trees.

Nesting Birds

Trees and shrubs will be removed potential bird nesting habitat. All British birds nests and eggs (with certain limited exceptions) are protected by Section 1 of the Wildlife & Countryside Act 1981, as amended. GMEU recommend a condition along the following lines be applied to any permission.

No works to trees or shrubs shall occur between the 1st March and 31st August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present which has been agreed in writing by the LPA.

Invasive Species

No invasive species information has been provided but the applicant has noted that Himalayan balsam and rhododendron are likely to be present. Eradication would be unreasonable for Himalayan balsam, assuming it is upstream of the site, rhododendron is likely part of the historic landscaping and therefore retention likely preferred for this site. GMEU therefore recommend a condition along the following lines is applied to any permission.

Prior to any earthworks a method statement detailing control and/or avoidance measures for Himalayan balsam, rhododendron and any other invasive species should be supplied to and agreed in writing to the LPA. The agreed method statement shall be adhered to and implemented in full unless otherwise agreed in writing by the LPA.

Proximity to a Watercourse

There are risks during construction of negative impacts to the watercourse from sediment washed in to the brook, pollution from machinery and during repairs to channel walls from chemicals and cement. Post development surface water is proposed to be discharged direct to the Brook, whilst likely as is, improved drainage may increase surface water flood risk down stream. These risk are however relatively minor given the scale of the works and can be dealt with through best practice being applied during works. GMEU therefore recommend conditions are applied to any permission for the submission of a method statement to protect the Brook from accidental spillages, sediment dust and debris and demonstrate there would not be a negative impact on the ecological potential of the Brook from the disposal of surface water post-development.

Contributing to and Enhancing the Natural Environment

Section 174 of the NPPF 2021 states that the planning policies and decisions should contribute to and enhance the natural and local environment. GMEU are satisfied that the proposed landscaping is likely to fully mitigate for any loss of trees and shrubs and can be conditioned. GMEU would also recommend provision of bird and bat boxes as mitigation for the loss of potential bat roosting features and bird nesting habitat.

The details can be conditioned.

Highways

The development does not propose any works which would affect the highway or the adjacent car park.

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 This decision relates to drawings Location plan 223/L01v1; Block plan 223/L02; Whitehead gardens proposals plan December 2023 v4; Proposed tree works matrix dated December 2023; Planting proposals matrix dated May 2023 and the development shall not be carried out except in accordance with the drawings hereby approved.
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.
- 3 Any soil or soil forming materials brought to site for use in garden areas, soft landscaping, filling and level raising shall be tested for contamination and suitability for use on site. Proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) and source material information shall be submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought onto site, and;
The approved contamination testing shall then be carried out and validatory evidence (soil descriptions, laboratory certificates, photographs etc) submitted to and approved in writing by the Local Planning Authority prior to the development being brought into use.
Reason. To secure the satisfactory development of the site in terms of human health, controlled waters and the wider environment and pursuant to National Planning Policy Framework Section 15 - Conserving and enhancing the natural environment.
- 4 Where during any works on site, unforeseen contamination is suspected or found, or contamination is caused, works on the site shall cease and the Local Planning Authority shall be notified immediately. The developer shall then produce a risk assessment and submit remediation proposals, if required, for approval to the Local Planning Authority. On approval of the remediation strategy, the development shall then be carried out in accordance with the approved details and process including any required timescales.
Reason. To secure the satisfactory development of the site in terms of human health and the wider environment and pursuant to National Planning Policy Framework Section 15 - Conserving and enhancing the natural environment.
- 5 No works to trees or shrubs shall occur between the 1st March and 31st August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present which has been agreed in writing by the Local Planning Authority.
Reason. In order to ensure that no harm is caused to a Protected Species pursuant to policies EN6 - Conservation of the Natural Environment and EN6/3 - Features of Ecological Value of the Bury Unitary Development Plan and National Planning Policy Framework Section 15 - Conserving and enhancing the natural environment.
- 6 Reasonable avoidance measures to ensure there are no impacts to bat roosting

potential shall be implemented for all trees proposed for removal and for all works to trees.

Reason. In order to ensure that no harm is caused to a Protected Species pursuant to policies EN6 – Conservation of the Natural Environment and EN6/3 – Features of Ecological Value of the Bury Unitary Development Plan and Section 11 of the National Planning Policy Framework.

- 7 Prior to any earthworks a method statement detailing control and/or avoidance measures for himalayan balsam, rhododendron and any other invasive species I should be supplied to and agreed in writing to the Local Planning Authority. The agreed method statement shall be adhered to and implemented in full unless otherwise agreed in writing by the Local Planning Authority.
Reason. The scheme does not provide full details of the actual extent of invasive species in the interest of UDP Policy EN9 - Landscape and pursuant to National Planning Policy Framework Section 15 - Conserving and enhancing the natural environment.
- 8 No development, site clearance, earth moving shall take place or material or machinery brought on site until a method statement to protect the Brook from accidental spillages, sediment dust and debris has been supplied to and agreed by the LPA. All measure will be implemented and maintained for the duration of the construction period in accordance with the approved details.
Reason. Information not submitted at application stage. To ensure a safe and satisfactory development of the site in relation to the protection of the Brook from any pollutants and construction disturbance which may cause risk, pursuant to chapter 15 - Conserving and enhancing the natural environment of the NPPF.
- 9 No development shall take place until it can be demonstrated that there will be no negative impacts on the ecological potential of the Brook resulting from the disposal of surface water post-development submitted to and approved in writing by the Local Planning Authority. The details, as approved, shall be implemented in full in accordance with a timetable which has first been agreed in writing by the Local Planning Authority.
Reason. Information not submitted at application stage. To ensure a safe and satisfactory development of the site in relation to the protection of the Brook from post development surface water which may cause risk, pursuant to chapter 15 - Conserving and enhancing the natural environment of the NPPF.
- 10 The development hereby approved shall be carried out in accordance with the proposed landscaping scheme indicate on the proposals plan December 2023 v4 and planting proposals matrix May 2023. Bird and bat boxes should also be provided in some trees to be retained on site. The approved scheme shall thereafter be implemented not later than 12 months from the date of the commencement of works on site or within the first available tree planting season. Any trees or shrubs removed, dying or becoming severely damaged or becoming severely diseased within five years of planting shall be replaced by trees or shrubs of a similar size or species to those originally required to be planted.
Reason. To secure the satisfactory development of the site and in the interests of visual amenity pursuant to Policies H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design and EN8/2 - Woodland and Tree Planting of the Bury Unitary Development Plan and chapter 15 - Conserving and enhancing the natural environment of the NPPF.
- 11 Prior to the commencement of works to the pathways, details of the surfacing material of the paths shall be provided to the Local Planning Authority for approval. The approved details only shall thereafter be implemented.
Reason. To preserve the setting and the special character of the Non-Designated

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Heritage Asset pursuant to chapter 16 - Conserving and Enhancing the historic environment of the NPPF.

- 12 The development hereby approved shall not be commenced unless and until facilities for the storage of construction materials have been provided within the curtilage of the site or on land within the applicant's control. The facilities shall be retained for the intended purpose and the area identified shall not be used for any other purposes other than the storage of construction materials for the duration of the construction period.

Reason. To maintain the integrity of the adopted highway and ensure adequate off highway materials storage arrangements are provided for the duration of the construction period, in the interests of highway safety pursuant to Bury Unitary Development Plan Policies EN1/2 - Townscape and Built Design and HT6/2 - Pedestrian/Vehicular Conflict.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	6/12/23	DM	08/12/23