

Description

The application relates to a semi-detached, two storey dwelling located on Bye Road. The property backs onto an area of Council owned land, that is now used as recreation space known locally as 'Top Mill Park'.

Planning Permission is sought for the construction of a single storey side extension that projects approximately 3940mm. A front porch that projects approximately 1970mm is also proposed. A flat roof dormer is proposed to the rear roof slope. To the rear and side of the proposed side extension it is proposed to construct an area of decking, that projects outside of the existing residential curtilage of the site and encroaches onto the Council owned land. It is proposed to change the use of this area to domestic curtilage.

Fencing is proposed along the rear and front boundary, with the rear boundary being depicted by a 1100mm high timber fence and the front boundary being depicted by a 1600mm high fence.

A new single car parking space is proposed to the side of the proposed extension.

The application is retrospective following an enforcement complaint in relation to a previous consent at the site. The proposal has not been built in accordance with the approved plans for 66585. The decking being enlarged resulting in the loss of the approved parking space, the approved glass balustrade has been replaced by a timber fence, the boundary fence is sited in a different location, the proposal now encroaches outside of the approved red edge onto Council owned land, external materials have been changed for the approved extensions and new windows have also been inserted. The dormer, and gable window shown on the plans also do not have planning permission.

Relevant Planning History

66585 - Single storey side extension; Front porch extension; Boundary fence; Decking in garden; Glass balustrade to decking area - Approve with Conditions 06/09/2021

22/0348 - Not being built in accordance with approved plans of planning permission 66585 -

Publicity

Neighbour letters sent 9/6/2023. No representations received.

Statutory/Non-Statutory Consultations

Property & Technical Services - Estates Consultancy - no response

Pre-start Conditions - Not relevant.

Unitary Development Plan and Policies

<SQLDCPolicyComRep>

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 (Green Belt)

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 of the NPPF regards the construction of new buildings in the Green Belt as inappropriate development. Exceptions to this are:

- a) buildings for agriculture and forestry;
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
- c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- e) limited infilling in villages;
- f) limited affordable housing for local community needs under policies set out in the

development plan (including policies for rural exception sites); and
g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
- not have a greater impact on the openness of the Green Belt than the existing development; or
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

Paragraph 150 of the NPPF also confirms that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

- a) mineral extraction;
- b) engineering operations;
- c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- d) the re-use of buildings provided that the buildings are of permanent and substantial construction;
- e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and
- f) development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order.

Policy OL1/2 - New Buildings in the Green Belt states that the construction of new buildings in the Green Belt is inappropriate unless it is for agriculture and forestry; essential facilities for outdoor sport and recreation; limited extension, alteration or replacement of existing dwellings provided that this would not result in disproportionate additions over and above the size of the original dwelling; and limited infilling in existing villages as set out under Policy OL1/3.

OL1/5 states that within the Green Belt, other development, not including buildings, will be inappropriate unless it maintains openness and does not conflict with the purposes of including land within the Green Belt. Any proposal considered to involve inappropriate development will only be permitted in very special circumstances.

This is further supported by Supplementary Planning Document 8 - New Buildings and Associated Development in the Green Belt which state that extensions of existing dwellings should not result in disproportionate additions over and above the size of the original dwelling. To assist in what can be considered to be disproportionate SPD 8 considers additions of up to a third (33%). However, that is not to say something larger, or smaller than 33%, would not be supported as each case is considered on its own merits.

Extensions

The applicant's agent was asked following validation to provide updated volume calculations in relation to the proposed extensions at ground floor and the dormer. The agent however has given floor space in square metres, and not the volumes requested.

During application 66585 it was stated by the agent that the volume of the existing dwelling was approximately 355 cubic metres. The proposed additions at that time (side extension and porch) would equate to an additional 59 cubic metres. From the drawings submitted, it appears that the dormer would add an additional 12.5 cubic metres (approximately) to the volume of the dwelling. Overall the additions would equate to an additional 20 % in volume which is below the third set out within SPD 8.

Change of Use

The proposal to extend the residential curtilage of the property does not fulfill any of the categories where development is considered acceptable and is therefore considered to be

inappropriate development in the Green Belt. The proposal would contravene two of the five purposes of including land in the Green Belt, namely to check the unrestricted sprawl of large built up areas and to assist in safeguarding the countryside from encroachment.

By encroaching into the adjacent park area, and introducing domestic paraphernalia, decking and close boarded fencing along the rear elevation the proposal would introduce a suburban character to the open landscape in this area and the openness would be further eroded by the proposed colour and materials of the fencing and the decking. As such, there would be a detrimental impact on the openness and character of the Green Belt.

Where proposals in the Green belt are considered inappropriate development, it is for the applicant to demonstrate very special circumstances to justify the award of planning permission. The applicant/agent was asked to assess the proposal against the relevant Green Belt planning policies during the application process. A Design and Access assessment in relation to the Green Belt was subsequently submitted.

The design and access statement confirms that the increased area of decking is a triangular 3sqm section, which oversails the rear boundary by a maximum of 1.2 metres. The applicant contends that the usable garden space for the site was small and considered insufficient for the owner's young family needs. The applicant considers that as an area of decking was previously approved the changes to the original scheme are relatively minor in comparison. The applicant states that they have an attachment to the locality and that the proposal is reasonable and in line with similar young family homeowner's requirements.

Other arguments within the statement reference an uncertainty in relation to boundaries, which is discussed in greater depth below, trees obscuring views, building costs and the applicant's being active in the local community and having the support of the neighbours.

Whilst an area of decking was approved previously, this was a much smaller area with a different lighter boundary treatment, did not involve encroachment outside of the existing established residential curtilage of the property and maintained the historic curved boundary of the site.

It is considered that the applicant's reasons put forward are insufficient in overcoming the in-principle harm and the additional harm which would be caused from the change of use of this parcel of land. The arguments put forward by the applicant fail to consider or reference the relevant planning policies and merely highlight that the proposal would bring forward personal benefits, rather than public benefits that may outweigh the in-principle harm.

As such, the proposal is considered to be inappropriate development and would have a detrimental impact on the character of the Green Belt by virtue of its suburban character and encroachment.

The proposal therefore contravenes UDP Policies OL1, OL1/5 and EN9/1.

Layout and Design

Policy EN1/2 - Townscape and Built Design seeks to ensure that any proposals would not have an adverse impact on the particular character and townscape of an area. Given that the proposal largely involves development associated with an existing dwelling, the existing householder policies have also been assessed. 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.

As well as these listed policy considerations, and the Green Belt policy considerations set out above the site is also located within a Special Landscape Area as identified under UDP Policy EN9/1 which requires high standards of design, siting and landscaping and confirms

that unduly obtrusive development will not be permitted in such areas.

The design of any new development needs to be carefully considered, especially when reviewing the most recent updates to the NPPF with its focus on design and the National Design Guide. The NPPF makes it clear that creating high quality buildings and places is fundamental with Paragraph 126 stating "The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities."

This is further supported by the National Design Guide. The National Design Guide, published by the Ministry of Housing, Communities and Local Government in 2019 states that well designed new development is influenced by "an appreciation and understanding of vernacular.....including existing built form, landscape and local architectural precedents." In terms of layout the Design Guide states that a well designed place is unlikely to be achieved by focusing just on appearance, materials and detailing of buildings and that layout, including the grain pattern of development, blocks and lots needs to be considered and relate to one another to create spaces, open spaces and buildings.

Character of locality

The historic use of the site is unclear. The property first appears on the 1893 map, with a reservoir and mill to the rear. The reference to a reservoir to the rear disappears on the 1930s mapping, however the mill is still shown on the C.1984 mapping. Residential use was granted in 1989 for the subdivision of the building and the planning permission for this references the former mill, and the Council owned land to the rear of the site. The first planning application for conversion (21750) was refused due to impact on green belt and over development of the site and clarifies that the previous use of the building is unclear, but any former residential use had lapsed.

The individual dwellings within the vicinity of the site are characterised by stone built, two storey cottage style properties many of which are terraced. The dwellings are simple, and traditional in form. Amenity space associated with the properties is limited given that there is a close knit urban grain with the area of open space to the rear of the site producing an area of significant character. The landscaping plan for the reserved matters application 23096 references building up and making good an existing rear stone boundary wall and denotes the area of residential amenity space for a 2 bedroom property that aligns with the amount of amenity space available for neighbouring residential properties, and one parking space to the side of the property. Following this approval the loft space appears to have also been utilised as a further bedroom intensifying the use of the site to create a 3 bedroom property.

It is considered the stone wall along the boundary of the park to the rear makes up part of the character of the locality. Stone walls for the former reservoir use are also still visible within the wider context of the park and reflect the former industrial and social history of the locality. The previously approved decking area would have led to posts that partially obscured the stone walling but due to the siting of the decking, that mirrored the historic boundary this stone wall and boundary would have been more legible than the development that has been built out without planning permission.

The appeal decision at 96 Watling Street, Affetside (Bury MBC reference 61641, Planning Inspectorate Reference APP/T4210/W/17/3187674) should also be taken into consideration when determining this application. Whilst the schemes are naturally different, this appeal decision reinforces section 16 of the NPPF which requires the LPA to have regard to the heritage value of properties, irrespective of whether they have been included, or not included on a local list. This appeal decision states that "there is disagreement between the parties with regard to the historic, communal and aesthetic value of the appeal dwelling and

whether it should be considered to form a non-designated heritage asset. Whilst the building is not on a 'local list' of non-designated heritage assets, this does not mean that it has no heritage value."

In consideration of the above therefore the proposal site, and the park area/former reservoir are considered to be a non-designated heritage asset. As such, it is necessary to assess the proposal in terms of paragraph 197 of the NPPF which states that "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."

Impact of proposals

No heritage assessment has been submitted as part of the application submission and as such it has not been possible to assess or have regard to the scale of any harm or loss of significance. It is noted that the previous application did not assess the impact of the proposal as a heritage asset, however this proposal is of a different scale and includes encroachment outside of the established residential curtilage creating an impact on the heritage asset when viewed as a whole.

The posts holding up decking are highly visible and detract from character of the locality. The introduction of fencing within this highly prominent position further highlights this alien feature and the materials used do little to enhance the character and setting of the locality. The previous application made an assessment in relation to the introduction of decking in this area and acknowledged that the glass balustrade to the decking would be visible from the park at the rear however the glass balustrade gives a level or permeability especially as it would be viewed from the public area at a lower level and as such was considered to be acceptable. It is considered that the extension of the decking area, that now encroaches on the park and land to the rear would interrupt the established urban grain and as such would now detract from the character of the area. It also appears that the applicant has aspirations to construct steps outside of their curtilage onto the park, through a doorway that has been added from the basement that is currently sited approximately 550mm metres above ground level. The materials used, and location of the decking and rear boundary treatment would have an adverse impact on the significance of the character of the locality

There is some screening of the decking with planting along the embankment however this screening will lessen within the winter months, and a partial soft landscaped screen should not be used to justify the introduction of a development that is at odds with the locality.

It is noted that the applicant considers the flat roof dormer to be permitted development however it has been included within the description of development and as such an assessment will be undertaken. SPD 6 states that flat dormer roofs should be avoided, unless considered more appropriate to the particular building or the street scene. Given the character of the buildings described above, and the lack of visible dormers within the vicinity of the site the proposed flat roof dormer is considered to not be in keeping with traditional stone built building. In addition the combination of this incongruous feature on a highly visible roofslope further highlights the urbanisation of the site that has been undertaken.

Similarly the front close boarded fencing, is likely to fall within the remits of permitted development appears strident when viewed against the dwellings and other boundary features visible. The design of the boundary enclosures does not enhance the setting or visual quality of the landscape and it is considered that the proposal would set an unwelcome precedence in the area.

No objections are raised to the amended materials used for the extensions and porch, which allow the extensions to be read as later additions. The proposed window alignment is

considered to be acceptable.

Overall, the proposal is neither appropriate to, nor sympathetic with the existing structure or historic character of the locality by reason of its size, position, design and materials. The proposal would be a prominent and intrusive feature in the street scene and would therefore, be seriously detrimental to the visual and historic amenities of the area. The proposed development therefore conflicts with the following policies of the Bury Unitary Development Plan: EN1/2, H2/3, SPD6, EN9/1 and the NPPF.

Residential Amenity

SPD 6 and H2/3 seek to reduce the impact of proposals on the residential amenity of neighbouring properties.

There are no dwellings directly to the rear of the site. The gardens of No. 41, 43 and No. 45 would be screened from the enlarged amenity area by the proposed 1.8 metre fencing.

The dwelling at No. 41 has a conservatory that faces the proposed side extension. As this is a later addition, aspect standards have been taken from the original rear wall. The proposed side extension would be located approximately 10 metres from this rear wall exceeding the 6.5 metres required by SPD 6 and therefore complying with aspect standards.

The new windows within the side extension facing towards No. 41 are obscure glazed and relate to a non-habitable room.

Due to the nature of rooflights no overlooking foreseen.

Proposed porch window/door faces towards shared access.

Parking

UDP Policy EN1/2 - Townscape and Built Design requires the consideration of the design and appearance of access, parking and service provision. SPD 6 states that all proposals should ensure that there is sufficient space to accommodate adequate parking spaces in relation to the number of bedrooms that a proposed extension would create. These parking spaces should be provided safely within the curtilage of the site. Supplementary Planning Document 11 – Parking Standards gives advice on the number of parking spaces required for residential developments. Applicants will need to provide justification for the loss of any existing parking.

The site previously had a single parking space adjacent to the gable of the house. A parking space was approved under application 66585 to the side of an area of decking and the side extension. The proposed site plan shows a parking space to be provided in the same spot as previously approved but this time it would appear to be located on the proposed decking area, with gates opening out onto the parking space of the neighbouring property. The gates should not open out onto land not under the control of the applicant and whilst an amended plan could be provided showing inward opening gates it seems unlikely that the applicant would utilise this area for parking given that they have stated within the Design and Access statement that they need a larger garden/area of amenity space as a reason for the proposal to be considered to be acceptable within the Green Belt.

It is considered insufficient information has been provided to adequately assess that appropriate parking can be provided safely within the curtilage of the site contrary to SPD 6.

Land Ownership/Boundary

The Design and Access Statement states that at the time of the works, it was unclear exactly where the boundary to the rear lay as this was not marked by any visible surface

features. They state that the original stone garden wall did not form the boundary, and there are multiple steps of stone walling hidden below the steeply sloping embankment.

The boundary of the site however was an issue that was raised within the previous application. The LPA at this time informed the applicant that the land to the rear was Council owned which the applicant initially disputed. The applicant was invited at this time to submit land registry documentation or a topographical plan to illustrate that this was not the case and this was never submitted. The applicant instead submitted an amended red edge site location plan for 66585 that shows the rear boundary of the site running parallel with the stone boundary wall, and inline with the Council's own land registry plans. The Council was clear in their responses within the previous application that the land to the rear of the site was outside of the applicant's ownership and that any development should not encroach beyond the red edge.

Reviewing historic mapping of the site, and the 1989 consents for the change of use of the main building into a residential units these also clearly indicate that the rear boundary of the site is curved, running in line with the retaining stone wall, and does not include the embankment area that appears to make up some form of retaining structure relating to the former reservoir use. It is therefore unclear why the applicant's extended beyond the approved red edge of application 66585 when they were aware of the issues relating to land ownership and boundaries in relation to the parcel of land to the rear.

Whilst noted that the applicant states that they have maintained and tended to the embankment to the rear of the site for 11 years, including the removal of Japanese Knotweed this application is intended to review the proposed land use, and development and not to establish or argue land ownership. Certificates have been signed and notice served in line with planning regulations.

The encroachment of the proposed decking onto Council owned land has been reported to the Council's property section.