

**DELEGATED REPORT**

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| <b>Report by</b> Jane Langan    | <b>Date of report:</b> 05/05/2023 | <b>Ref:</b> 69284/FUL          |
| <b>Registration:</b> 13/02/2023 | <b>LDfC:</b> 11/03/2023           | <b>Expiry Date:</b> 10/04/2023 |
| <b>Site Visit:</b> 12/10/2022   | <b>Site Notice:</b> N/A           | <b>Press Date:</b> N/A         |
| <b>Objections:</b> 3            | <b>Con Area:</b> N/A              | <b>Adv Type:</b> NONE          |
| <b>Reason for Delay:</b><br>N/A |                                   | <b>EIA:</b> NA                 |
|                                 |                                   | <b>Dec Level:</b> DEL          |
|                                 |                                   | <b>Stat Class:</b> HOUS        |

**Proposal:** Raised garden level at rear with stepped access and retaining boundary wall

**Location:** 51 Sheepfoot Lane, Prestwich, Manchester, M25 0DN

**Description**

The property is two storey semi detached house. It has been extended two storey at the side up to the boundary and single storey at the rear. The adjoining property to the east side is No.52 and to the opposite side is No.50. To the rear, the site has a lawned garden which drops down to a lower level towards the rear and there is a block retaining wall to the boundaries. The garden borders the rear gardens to 5,7& 9 Watkins Drive.

The application is a revised scheme following refusal of application 68673, a proposal to infill the rear/ lower garden area to create one level. This application now proposes to infill to a lower level. The proposal includes the existing block wall to remain and a new retaining boundary wall constructed 200mm within the site and then infilled with hardcore to 1.1m. From the existing garden level would be steps down. The garden section plan indicates the ground would be raised/infilled by up to 1.1m from the existing level. The site plan notes there would be a 1.6m high timber fence to the new retaining wall along all the boundary. The section through plan still notes a higher infill level to 1.8m and a 1.1m high hand rail.

**Relevant Planning History**

68673 - Raise the level of part of rear garden including installation of retaining wall structure (to enable the full rear garden to be one useable level) - Refused 05/12/2022.

35701 - First floor side extension and front porch canopy - AC 16/11/99.

**Publicity**

Surrounding neighbours were notified by letter and 3 responses have been received from a nearby neighbours. Their concerns in summary are :-

- Water runoff likely to damage neighbouring properties
- No drainage assessment provided. Reason for refusal on previous application not addressed.
- Wall could collapse.
- Planting at rear could be lost from water damage.
- Drawings show land at rear as level. It falls by well over 1m
- Loss of privacy to neighbouring gardens
- Conversion of this land to a private area should not have been done without consultation and planning permission. Building block walls around land that does not belong to you is not valid title as we understand the law.
- Development would bring nuisance and noise levels closer to houses on Watkins Drive

**Statutory/Non-Statutory Consultations**

None.

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

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

H2/3 Extensions and Alterations

SPD6 Supplementary Planning Document 6: Alterations & Extensions

### **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.

**Visual amenity and design** - Located to the rear the proposal would not have impact on

the main street view. It would be visible only from neighbouring gardens. The application detail regarding materials notes the surfacing would be concrete slab although the site plan does note a lawn. In terms of the visual amenity of the area the proposal would be acceptable.

**Residential amenity** - SPD 6 and UDP Policy H2/3 seek to reduce the impact of proposals on the residential amenity of neighbouring properties.

The proposal would raise the levels of the site by 1.1m and a timber panel fence at 1.6m in height is proposed to provide screening. No.7 is directly to the rear, screened by tall hedges along the boundary, and is at a lower level to the site.

No.9 is also to the rear and located at a lower level with its rear garden also running along the east side of the site. It has timber panel fencing along the boundary with trellis above. To the west side is an area of land overgrown that sits between the site and 5 Watkins Drive.

No.7 is currently screened with planting. The proposal would see the raised site level screened by a 1.6m high fence. Should the planting be lost this would provide a level of screening however generally 1.7m would be considered more acceptable. It is the case that No.7 is at a lower level than the plans indicate and the resulting development would be a solid boundary in excess of the 2.7m with the proposed raising of the site level and addition of fencing. There would be a similar situation to 9 and 5 which have less screening and the levels do need to be considered. Without appropriate screening there would be serious overlooking of the neighbouring gardens. The proposed increased levels and addition fencing would then result in an extremely oppressive and dominant development when viewed from the neighbouring gardens. No information with regard to levels has been provided which could further impact on the amenity of the neighbouring properties.

In conclusion it is considered that the proposal to raise the garden levels would be unacceptable and an un neighbourly and unduly intrusive addition to the site garden area and as such is seriously detrimental to the amenity of the adjacent neighbouring properties contrary to UDP Policy H2/3 and SPD6 - Alterations and Extensions to Residential Properties.

**Drainage** - The section through plan notes that there would be a drain. Comments submitted from the agent note *We are only raising existing levels and so there is no change to how the area drains which relies upon percolation into the ground. In any event, the drainage potential will be enhanced because dependent upon the material we use to raise the levels we could use a granular material which has limited fines such that there is say 30% voids ratio.* This is considered insufficient and a full drainage scheme was requested to explain how the drainage would work and to demonstrate that there would not be a impact from water on the gardens to the neighbouring properties. This has not been received. As such there is insufficient information with regard to the drainage of the proposed development to enable the application to be properly assessed

### **Response to objections**

The concerns regarding privacy, overlooking and drainage are addressed in the above report.

The application has included Certificate A to state the applicant is the owner of the land. Any issues regarding noise would be dealt with, where appropriate, via the relevant environmental legislation.

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

The proposal would not improve the economic, social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise

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sustainable development. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

**Recommendation:** Refuse

**Conditions and Reasons:**

- 1 The proposed raising of the garden level and addition of boundary fencing would be seriously detrimental to the amenities of the adjacent properties that share a boundary with the site (in particular 5, 7 & 9 Watkins Drive) by reason of the height, size and position. The proposed development therefore conflicts with the following policy(ies) of the Bury Unitary Development Plan: H2/3 - Alterations and Extensions and associated Supplementary Planning Document 6: Alterations and Extensions to Residential Properties.
- 2 The application and submitted plans contain insufficient information with regard to the land levels to enable them to be properly assessed with regard to the impact on the amenity of the neighbouring properties at 5,7 & 9 Watkins Drive.
- 3 The application and submitted plans contain insufficient information with regard to the drainage of the proposed development to enable them to be properly assessed.

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|---------------------|-------------|-------------------------|-------------|
| <u>Case Officer</u> | <u>Date</u> | <u>Sign off Officer</u> | <u>Date</u> |
| JL                  | 05/05/23    | DM                      | 05/05/23    |