

**Application Number 17/00732/FUL**

<b>Proposal</b>	Change of use of open land to private garden area and parking (resubmission of 16/00995/FUL)
<b>Site</b>	Land adjacent to 143 Manchester Road, Mossley OL5 9AA
<b>Applicant</b>	Mr S Leach
<b>Recommendation</b>	Approve
<b>Reason for report</b>	A Speakers Panel decision is required as the Head of Planning considers that determination of the application by Members would be in the public interest.

**UPDATE REPORT**

This application was first presented to the Speakers Panel meeting in December 2017. Members resolved to defer the application in light of concerns expressed by the objector who addressed the meeting, requiring officers to clarify a number of matters. The minutes of the meeting recorded the following concerns, expressed by the objector, which were to be investigated further:

- The incomplete nature of the plans
- The status of Bury Street in terms of whether it is adopted or unadopted highway
- The status of a long standing parking area adjacent to the turning head at the end of Bury Street
- The consideration of legal issues raised by the residents. (these being the permissions required from neighbouring properties to allow access along Bury Street to the proposed parking spaces and implications in terms of private right of access along Bury Street)

These matters are addressed in the revised report below, which is an updated version of the report presented to the Speakers Panel meeting in December 2017

**MAIN REPORT****1. APPLICATION DESCRIPTION**

- 1.1 The applicant seeks full planning permission for the change of use of open space to private garden and the installation of 3 car parking spaces on land adjacent to 143 Manchester Road, Mossley.

**2. SITE & SURROUNDINGS**

- 2.1 The application site is located at the southern end of a triangular shaped area of open space which is bound by Waggon Road to the west and Bury Street to the east. The southern boundary of the site forms the common boundary with the property at 143 Manchester Road. There are a number of mature trees on the land, which slopes relatively steeply downwards from west to east. There is a turning head at the southern end of Bury Street, located in the south eastern corner of the piece of land.

**3. PLANNING HISTORY**

- 3.1 16/00319/FUL - Erection of 1.6m railings in front of the property to provide private parking area – Approved

- 3.2 14/00709/FUL - Change of use from public house to 2no dwellings – Approved

#### **4. RELEVANT PLANNING POLICIES**

##### **4.1 Tameside Unitary Development Plan (UDP) Allocation**

Unallocated

##### **4.2 Part 1 Policies**

1.3: Creating a Cleaner and Greener Environment.

1.4: Providing More Choice and Quality Homes.

1.5: Following the Principles of Sustainable Development

1.6 Securing Urban Regeneration

1.12: Ensuring an Accessible, Safe and Healthy Environment

##### **4.3 Part 2 Policies**

OL4: Protected Green Space

OL10: Landscape Quality and Character

T1: Highway Improvement and Traffic Management.

C1: Townscape and Urban Form

N4: Trees and Woodland.

N5: Trees Within Development Sites.

##### **4.4 Other Policies**

Greater Manchester Spatial Framework - Publication Draft October 2016

Residential Design Supplementary Planning Document

Trees and Landscaping on Development Sites SPD adopted in March 2007.

##### **4.5 National Planning Policy Framework (NPPF)**

Section 2: Achieving sustainable development

Section 8 Promoting healthy communities

Section 12: Achieving well-designed places

Section 15: Conserving and enhancing the natural environment

Section 16: Conserving and enhancing the historic environment

##### **4.6 Planning Practice Guidance (PPG)**

This is intended to complement the NPPF and to provide a single resource for planning guidance, whilst rationalising and streamlining the material. Almost all previous planning Circulars and advice notes have been cancelled. Specific reference will be made to the PPG or other national advice in the Analysis section of the report, where appropriate.

#### **5. PUBLICITY CARRIED OUT**

- 5.1 Neighbour notification letters were issued in accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

#### **6. RESPONSES FROM CONSULTEES**

- 6.1 Local Highway Authority – no objections to the proposals, subject to conditions.
- 6.2 Borough Tree Officer – the trees within the application site are considered to be of relatively low value and in poor condition. There are trees adjacent to the site, within the wider area of open space, which are worthy of protection and therefore measures should be introduced during the construction phase of the development to prevent damage to those trees, including a significant sycamore on the corner of Manchester Road and Waggon Road – a no dig method should be employed for works within the route protection area of that tree.

## **7. SUMMARY OF THIRD PARTY RESPONSES RECEIVED**

- 7.1 11 letters of objection (2 received following the re-consultation exercise undertaken in relation to the additional plans – letter sent out on 28 September 2018) and a petition of 10 signatures have been received from neighbouring residents, raising the following concerns (summarised):
- The applicant has already erected railings within the publicly owned footpath to the front of his property and now proposes to build on open space, this is unacceptable.
  - The open space is valued by the community – residents of Bury Street and Waggon Road use this area as recreation space.
  - There is free parking on the opposite side of Waggon Road and so the additional space is not required.
  - Any access made for vehicle use from Waggon Road or Manchester Road would cause a significant risk to other road users and pedestrians.
  - The applicant has already fenced off a part of pedestrian pavement on Manchester Road and is using that space to park his 2 vehicles. Therefore he already has got 2 parking spaces and therefore incorrectly completed the relevant section of the application form.
  - The proposed parking would be a big inconvenience to the residents of Bury Street. If the application is approved, the property at 143 Manchester Road will end up having 5 parking spaces but will result in difficulties for neighbouring residents to access their properties.
  - The applicant already has 2 parking spaces, why are more spaces required?
  - A number of properties in the area do not have private gardens and therefore rely on the open space to provide amenity space for the occupants and therefore should not be developed.
  - The planning application appears to show that there will still be access to the turning hammerhead at the end of Bury Street. This seems to be included within the application however, there is no clarity to how this will work. The turning head is required to allow safe access by existing residents to their properties. The loss of this space will result in a highway safety hazard.
  - Why is the access which is in front of 66A Bury Street and the hammerhead included within the application site? Access to the hammerhead for turning is for all users. There is no reason why it should be incorporated within the application site.
  - The property at 143 Manchester Road already benefits from significant private garden space and so there is no need to extend into the public open space.
  - There is concern that there are a number of trees within the area which it is assumed will be removed to make the change of use to a garden and parking. These trees enhance the area and attract wildlife.
  - Bury St is an unadopted Road that already experiences a traffic volume that far exceeds its capacity. The additional traffic on that road generated by this proposal will exacerbate that situation further.
  - Tameside MBC highways engineers have already identified the potential dangers of conflict between pedestrian and motor vehicles at the narrow point in Bury Street, a danger that would be realised as a consequence of the proposed development.
  - The proposal would involve using publicly owned highway as private garden – this is not acceptable when at the same time the applicant is selling off other parts of the private amenity space associated with the property.
  - The enclosure of the land by fencing would be detrimental to the open character of the amenity space.

## **8. ANALYSIS**

- 8.1 The key issues to be assessed in the determination of this planning application are:
- 1) The principle of development,

- 2) The impact of the proposals on highway safety
- 3) The impact of the development on the residential amenity of neighbouring properties
- 4) The impact of the development on the character of the site and the surrounding area.

## 9. PRINCIPLE OF DEVELOPMENT

- 9.1 Section 38 of the Planning and Compulsory Purchase Act 2004 states that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Consideration will also be necessary to determine the appropriate weight to be afforded to the development plan following the publication of the National Planning Policy Framework. Paragraphs 212 - 217 of the NPPF set out how its policies should be implemented and the weight which should be attributed to the UDP policies.
- 9.2 Paragraph 213 confirms that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. At the heart of the NPPF is the presumption in favour of sustainable development.
- 9.3 Policy OL4 of the UDP seeks to retain areas of protected green space, including not only designated spaces (this site is not designated in this regard) but also 'areas of land in similar use but which are too small to be shown as Protected Green Spaces on the Proposals Map'.
- 9.4 Criterion (d) of the policy states that an exception to the policy requirement to retain green space can be made where the retention of a site or facilities for sport or recreational use is not necessary and the site has no special significance to the interests of sport and recreation. Tameside has recently produced a Playing Pitch Strategy and Action Plan report which does not identify the application site as being necessary to deliver the Council's aspirations to develop leisure space in the long term (next 6 years+).
- 9.5 There are two large areas of protected open space within 10 minutes walking distance of the proposed development sites, which is the recommended walking distance threshold for Tameside. These are the recreation ground and open space associated with the King George Fields to the south east, accessed via Egmont Street and Mossley Park to the north-west, accessed via Old Brow. These areas of protected space are significantly larger than the application site and include equipped play space.
- 9.6 Paragraph 100 of the NPPF states that Local Green Space designation will not be appropriate for most green areas or open space and that the designation should only be used where the following criteria apply:
  - Where the green space is in reasonably close proximity to the community it serves;
  - Where the green space is demonstrably special to a local community and hold particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife;

and

  - Where the green area is local in character and does not apply to an extensive tract of land.

Whilst the land would comply with criterion 1 and 3, it is considered that the land does not hold the value required by criterion 2.
- 9.7 A number of the neighbour representations received in objection to the proposals refer to the positive contribution that the green space makes to the character of the area and that is not disputed. The land forms a visual break in the line of development which fronts Manchester Road and the trees in the northern portion of the site provide screening of the development on Bury Street to the east of the land. The drop in land levels eastwards from

the main road also emphasises the character of this land as space in an otherwise relatively high density streetscene.

- 9.8 However, the relatively small scale nature of the land and the close proximity of residential properties and Manchester Road reduce the sense of tranquillity. The site is not designated as a site of ecological or historic significance (either nationally or locally.) Due to the combination of these factors, whilst it is considered that the land would comply with criterion 1 and 3, it is considered that the land does not hold the value required by criterion 2 to warrant protection, in line with the guidance contained within paragraph 100 of the NPPF.
- 9.9 In determining this planning application, it must also be considered that the majority of the area of open space would be unaffected by the proposals, remaining outside of the application site boundary. The enclosure of the land between the turning head and the existing railings on the boundary of the site with Manchester Road would clearly reduce the amount of open space. However, the amenity value of the overall piece of land as an undeveloped gap between a densely lined streetscene would still be apparent. It would be possible to maintain the existing trees in the northern portion of the site and those immediately north of the land to be enclosed as part of this application, ensuring that the amenity value of the majority of the site on the streetscene would be retained.
- 9.10 Overall, whilst the proposal would result in the loss of part of the open space, the land is not designated to be protected for this purpose, does not meet the requirements of the NPPF in terms of designation and is not subject to any natural or historic environment designations. Whilst there is a stepped pathway through the site, the end of which would meet the proposed parking area, this is not a designated Public right of Way and could still be used to access the open space from Manchester Road.
- 9.11 On the basis of the above assessment, the principle of development is considered to be acceptable.

## **10. HIGHWAY SAFETY**

- 10.1 The neighbouring objector has made reference to an appeal decision from June 1992, relating to development at 66A Bury Street. The appeal was allowed and reference is made in one of the informatives attached to the planning permission to the need to gain the consent of the other properties along Bury Street before undertaking work within the highway. This, the neighbouring objector asserts, suggests that the entirety of Bury Street is adopted highway.
- 10.2 The matter of relevance to determining this planning application is the current status of Bury Street. The Local Highway Authority has confirmed that the section of Bury Street beyond the property at no. 66, the section of the highway that is included in the application site, is unadopted, a situation which officers have sought further information on since the December 2017 Panel meeting. Officers can confirm that Bury Street is adopted from its junction with Waggon Road up to the end of no. 66 Bury Street, but beyond that point it is not.
- 10.3 The applicant has confirmed that the only part of the application site to be enclosed is the grassed area in the western part of the site, with the area between that enclosed land and the western edge of the existing turning head to be given over to providing the 3 car parking spaces that form part of the proposed development.
- 10.4 Whilst the concerns of neighbouring residents about the safe use of the existing turning head are noted, the depth of the existing turning head itself would be unaffected by the proposals, as the parking area would be beyond this. The southern end of Bury Street narrows, due to the projection forward of the plot at 66a, into the highway. The usability of

this part of the highway is therefore limited to single file traffic turning in the turning head. At 7.6 metres wide and 5 metres long, the area beyond the turning head is considered to be sufficient in size to ensure that 3 cars could be parked in that space without overhanging the highway.

- 10.5 The existing turning head would not be reduced in size from the existing situation. The proposals would therefore not result in a constraint to users of the highway over and above the existing situation. A plan has been submitted by the application, showing the proposed access and parking arrangements in detail, which demonstrates this point. The details shown have been reviewed by Council Engineers and are considered acceptable, subject to the provision of a retaining wall at the southern edge of the site, which can be secured by condition. The volume of traffic using the proposed spaces is also physically restricted by the width of the road. Given these factors, it is considered that the proposal would not result in a severe impact on highway safety, as evidenced by the lack of objection from the Local Highway Authority.
- 10.6 The existing parking area associated with the property, off Manchester Road, as approved under application ref. 16/00319/FUL is extremely narrow in depth and does not allow sufficient space for a vehicle to exit the site facing the highway at 90 degrees, severely limiting visibility. The proposal would allow a car to manoeuvre within the adjacent turning head and along Bury Street to connect to Manchester Road via the existing junction, which is a far safer solution. In this respect the proposals would be an improvement on the existing situation.
- 10.7 The neighbouring objector contends that the proposals will result in an obstruction of vehicles associated with the property at 66a Bury Street, which park adjacent to the turning head at the southern end of Bury Street. The fact is that the dimensions of the turning head would remain unaffected by the proposals. As that part of the highway is not adopted, any obstruction is a civil matter and not a material planning consideration. The key point is that because the development would not restrict the usable space within the highway, there is no evidence to suggest that the proposal would lead to an adverse impact on the ability to connect to or from the adopted part of Bury Street in relation to the existing situation.
- 10.8 The Local Highway Authority has not raised any objections to the proposals, subject to a condition requiring a retaining wall structure being built on the southern boundary of the proposed car parking spaces to ensure that the topography of the land does not restrict the width of the 3 parking spaces.
- 10.9 Following the above assessment, it is considered that the proposals would not result in an unacceptable impact on highway safety and in accordance with the guidance in paragraph 109 of the NPPF, planning permission should not be refused on that basis.

## **11. RESIDENTIAL AMENITY**

- 11.1 The proposals would not result in an adverse impact on any of the neighbouring properties through overlooking or overshadowing. The dwelling within the plot at no.66a Bury Street to the east of the site has an oblique relationship with the application site. Given this situation, any unreasonable overlooking into the amenity space associated with that property would be mitigated by the separation distance to be retained, the presence of the highway in the intervening space and the installation of appropriate treatment to the boundaries of the area to be enclosed. The exact details of this boundary treatment can be secured by condition.
- 11.2 The separation distance and the activity on Manchester Road ensure that there would be no opportunities for unreasonable overlooking of the neighbouring properties on the western side of Manchester Road and would avoid unreasonable overshadowing subject to the details of the boundary treatment being approved.

## **12. CHARACTER OF THE AREA**

- 12.1 Subject to the details of the means of enclosure to be secured by condition, the proposals would not result in an adverse impact on the character of the surrounding area. The majority of the green space would retain its open character and the enclosed space would be immediately adjacent to the property to the south and the highway to the east, ensuring that the proposal would not appear incongruous with the character of the surrounding area.

## **13. TREES**

- 13.1 The Tree Officer has raised no objections to the proposals, subject to the use of a no dig method of constructing the boundary treatment on the northern boundary of the site, to ensure that the trees adjacent to the site would not be detrimentally affected by the development. Details of landscaping within the application site can be secured by condition.

## **14. OTHER MATTERS**

- 14.1 In relation to the extent of the land shown within the red line site area, the applicant served notice on the Council on 22 August 2017 as the owner of the land to which the application relates. The red line area includes the section of Bury Street required to access the application site and which therefore relates to the development proposed. The applicant has stated that the means of enclosure to be erected would not extend into the turning head. The details of the boundary treatment, including location, shall be secured by condition to ensure that the development does not result in an obstruction of the highway.
- 14.2 One of the neighbouring objectors has questioned reference to a petition being received in objection to the application. The neighbouring objector suggests that the document is not a petition, but a 'unanimous formal notice from the residents and frontagers (properties on Bury Street) stating that they do not consent to the proposals.' The submission does raise concerns in addition to the highway safety implications, including the impact on trees and the loss of open space and has been signed by a number of people. It is for that reason that the collective response has been treated as a petition.
- 14.3 As stated previously, officers are satisfied that the section of Bury Street where development is proposed is not adopted, but the highway in front of all of the properties with the exception of 66a is adopted. Private access rights and any proposed changes to them fall to be determined under civil law as opposed to under planning legislation. As such, the serving of a 'formal notice' stating that consent will not be given by the neighbouring properties for the proposed development to proceed is not relevant to the determination of the planning application. In any event, the proposed development does not include any works on Bury Street itself.
- 14.4 Officers are satisfied that the applicant has provided sufficient information for the Local planning Authority to assess and determine the planning application, which has included the submission of additional plans clarifying the extent of the proposals. There is no evidence before the Local Planning Authority to suggest that the applicant has not served the correct certificates of ownership. How the proposals would affect access to neighbouring land or parking areas associated with neighbouring properties are civil matters and are not material considerations in the determination of this planning application.
- 14.5 The objector who addressed the meeting in December 2017 wrote to the Chair of speakers Panel, raising a number of concerns in relation to the proposals. The Head of Planning wrote in response to those matters in advance of the publication of the agenda for this

meeting. A copy of this letter is appended to this report as **Appendix 1**. The material planning considerations raised in the correspondence have been assessed in this report.

## **15. CONCLUSION**

- 15.1 Given that the proposal would not result in the loss of the majority of the open space and that this is not designated as Protected Open Space in the UDP, it is considered that the harm arising from the enclosure of this section of the space would not result in substantial harm. The fact that the turning head would remain unchanged as a result of the development would ensure that the proposals would not result in any adverse impact on highway safety, subject to a condition requiring the provision of a retaining wall on the southern boundary of the site. The proposed development would not result in an adverse impact on the amenity of neighbouring properties or the character of the surrounding area, subject to appropriate means of enclosure of the green space, which can be secured by condition. The proposals would therefore comply with the relevant national and local planning policies quoted above.

## **16. RECOMMENDATION**

Grant planning permission, subject to the following conditions:

1. The development must be begun not later than the expiration of three years beginning with the date of this permission.
2. The development hereby approved shall be carried out in accordance with the following approved plans: 1:1250 and 1:250 site plan (drwg. no. 3284/05A), 1:250 swept path analysis (Drawing no. 10694-001).
3. No development shall commence until details of a retaining wall to be erected on the southern boundary of the car parking spaces that form part of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The details shall include scaled plans showing the exact location, extent and height of the wall (including section views across the site) and the materials to be used in the construction of the wall. The development shall be carried out in accordance with the approved details and shall be retained as such thereafter.
4. No development shall commence until details of a hard and soft landscaping to be installed as part of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The details shall include scaled plans indicating the location, species, density and height on planting of new trees to be planted, details of the trees to be retained (to include mature Sycamore on the corner of Manchester Road and Waggon Road) and details of the means of protection of those trees (meeting the requirements of BS3857 and including a specification for 'no-dig' construction within the root protection area of the aforementioned Sycamore tree.) Such details shall include the type, colour and texture of the materials to be used in the hard landscaping scheme, including the surfacing of the car parking spaces. Development shall be carried out in accordance with the approved details.
5. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme approved in writing by the Local Planning Authority prior to the occupation of any part of the development. Any newly planted trees or plants forming part of the approved landscaping scheme which, within a period of 5 years from the completion of the planting, are removed, damaged, destroyed or die shall be replaced in the next appropriate planting season with others of

similar size and species by the developer unless the local planning authority gives written consent to any variation.

6. Prior to the first occupation of the land for the use hereby approved, details of the boundary treatment to be installed as part of the development shall be submitted to and approved in writing by the Local Planning Authority. The details shall include scaled plans showing the locations where boundary treatments are to be installed within the site, elevation plans of the type of boundary treatment to be installed and details of the construction material and colour/finish to be applied. The boundary treatment shall be erected in accordance with the approved details, prior to the first occupation of the land for the use hereby approved.
7. No development shall commence until a strategy for sampling, assessing and remediating any potential sources of contamination within the soil on the land to be enclosed as private garden space as part of the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include results of the analysis and appropriate soils risk assessments and where necessary, a scheme of remediation to remove any unacceptable risks to human health from soils at the site. The scheme shall be implemented in accordance with the approved details and a completion / validation report submitted to the Local Planning Authority and approved in writing prior to the use of the land as domestic garden. The development shall be carried out in accordance with the approved details.

Reasons for conditions:

1. Required to be imposed by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt.
3. To ensure that the surfacing of the driveway is constructed from a material and on a level which respects the character of the site and surrounding area.
4. In the interests of visual amenity and so ensure the protection of the existing trees to be retained.
5. To protect the newly created local environment in order to allow for maturity.
6. In the interests of visual amenity and security
7. To ensure that the site is suitable for its intended end use and to remove any unacceptable risk to people/buildings/environment from contaminated land and land stability as per paragraph 178 of the National Planning Policy Framework