

Agenda Item 5.4

Planning and EP Committee 12 June 2018

Application Ref: 18/00503/FUL

Proposal: Change of use from public open space to private garden and construction of 2m wall on two sides and creating an opening to rear

Site: 62 Bamber Street, Millfield, Peterborough, PE1 2HN

Applicant: Mr Mohammed Bashir

Referred by: Director of Growth and Regeneration

Reason: A member of the applicant's family is employed by the Local Planning Authority

Site visit: 13.04.2018

Case officer: Mr Jack Gandy
Telephone No. 01733 452595
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Recommendation: **REFUSAL**

1 **Description of the site and surroundings and Summary of the proposal**

Sites and Surroundings

The application site comprises a parcel of public open space to the south of Bamber Street. The space measures approximately 300 square metres in area and contains four trees. A footpath / cycle way runs adjacent to the west boundary of the site, adjacent to Bourges Boulevard but separated from it by a grassed verge. To the south is a car park accessed from Hankey Street. The immediate surrounding area is predominantly residential.

Proposal

Permission is sought to change the use of the public open space to a private garden, as well as permission to construct a two metre high boundary wall to the south and west boundaries of the public open space. The proposed wall would connect to the existing wall on the west boundary, with the chamfered wall demolished to create an opening into the application site.

2 **Planning History**

Reference	Proposal	Decision	Date
14/01795/HHFUL	Proposed house extension, loft and internal re-design to existing residence	Permitted	28/11/2014
12/01275/HHFUL	Proposed house extension, loft and internal re-design to existing residence	Refused	05/10/2012
03/01315/FUL	Use of public open space as private garden - resubmission	Refused	21/01/2004
03/00830/FUL	Use of public landscape area as private garden	Refused	04/08/2003

3 Planning Policy

Decisions must be taken in accordance with the development plan policies below, unless material considerations indicate otherwise.

National Planning Policy Framework (2012)

Section 8 - Open Space

Existing open space, sports and recreational buildings/land (including playing fields) should not be built on unless an assessment has been undertaken which clearly shows the open space is surplus to requirements; the open space would be replaced by an equivalent or better provision; or the development is for alternative sports and recreation provision, the needs for which clearly outweigh the loss.

Peterborough Core Strategy DPD (2011)

CS16 - Urban Design and the Public Realm

Design should be of high quality, appropriate to the site and area, improve the public realm, address vulnerability to crime, be accessible to all users and not result in any unacceptable impact upon the amenities of neighbouring residents.

CS19 - Open Space and Green Infrastructure

New residential development should make provision for/improve public green space, sports and play facilities. Loss of open space will only be permitted if no deficiency would result.

CS21 - Biodiversity and Geological Conservation

Development should conserve and enhance biodiversity/ geological interests unless no alternative sites are available and there are demonstrable reasons for the development.

Peterborough Planning Policies DPD (2012)

PP02 - Design Quality

Permission will only be granted for development which makes a positive contribution to the built and natural environment; does not have a detrimental effect on the character of the area; is sufficiently robust to withstand/adapt to climate change; and is designed for longevity.

PP03 - Impacts of New Development

Permission will not be granted for development which would result in an unacceptable loss of privacy, public and/or private green space or natural daylight; be overbearing or cause noise or other disturbance, odour or other pollution; fail to minimise opportunities for crime and disorder.

PP12 - The Transport Implications of Development

Permission will only be granted if appropriate provision has been made for safe access by all user groups and there would not be any unacceptable impact on the transportation network including highway safety.

PP16 - The Landscaping and Biodiversity Implications of Development

Permission will only be granted for development which makes provision for the retention of trees and natural features which contribute significantly to the local landscape or biodiversity.

Peterborough Local Plan 2016 to 2036 (Submission)

This document sets out the planning policies against which development will be assessed. It will bring together all the current Development Plan Documents into a single document. Consultation on this Proposed Submission version of the Local Plan took place in January and February 2018. The Local Plan was submitted to the Secretary of State on 26 March 2018 who will appoint a Planning Inspector to examine the Local Plan to establish whether it is 'sound', taking all the representations into consideration.

Paragraph 216 of the National Planning states that decision makers may give weight to relevant policies in an emerging plan according to:-

- the stage of the Plan (the more advanced the plan, the more weight which can be given)
- the extent to which there are unresolved objections to the policies
- the degree of consistency between emerging policies and the framework.

The policies can be used alongside adopted policies in the decision making process, especially where the plan contains new policies. The amount of weight to be given to the emerging plan policies is a matter for the decision maker. At this final stage the weight to be given to the emerging plan is more substantial than at the earlier stages although the 'starting point' for decision making remains the adopted Local Plan.

LP13 - Transport

LP13a) New development should ensure that appropriate provision is made for the transport needs that it will create including reducing the need to travel by car, prioritisation of bus use, improved walking and cycling routes and facilities.

LP13b) The Transport Implications of Development- Permission will only be granted where appropriate provision has been made for safe access for all user groups and subject to appropriate mitigation.

LP13c) Parking Standards- permission will only be granted if appropriate parking provision for all modes of transport is made in accordance with standards.

LP16 - Urban Design and the Public Realm

Development proposals would contribute positively to the character and distinctiveness of the area. They should make effective and efficient use of land and buildings, be durable and flexible, use appropriate high quality materials, maximise pedestrian permeability and legibility, improve the public realm, address vulnerability to crime, and be accessible to all.

LP17 - Amenity Provision

LP17a) Part A Amenity of Existing Occupiers- Permission will not be granted for development which would result in an unacceptable loss of privacy, public and/or private green space or natural daylight; be overbearing or cause noise or other disturbance, odour or other pollution; fail to minimise opportunities for crime and disorder.

LP17b) Part B Amenity of Future Occupiers- Proposals for new residential development should be designed and located to ensure that they provide for the needs of the future residents.

LP23 - Local Green Space, Protected Green Space and Existing Open Space

Local Green Space will be protected in line with the NPPF. Development will only be permitted if in addition to the requirements of the NPPF there would be no significant detrimental impact on the character and appearance of the surrounding areas, ecology and heritage assets.

4 Consultations/Representations

PCC Peterborough Highways Services

No comments to make regarding this application.

PCC Property Services

No comments received

PCC Senior Landscape Technical Officer

Objection:- It would appear that there is an intention to dispose of Public Open Space maintained and owned by Peterborough City Council.

As the site is dedicated Public Open Space maintained by the Council, adhering to policy within the Peterborough Local Plan, it should be protected and not released for disposal.

Allowing the disposal for this Public Open Space would also set a precedent which could make it difficult for the Authority to defend against allowing further disposals of all the Public Open Space that fronts onto the footpath/cycleway along Bourges Boulevard.

PCC Tree Officer

The land is owned and maintained by Peterborough City Council (PCC) and there are four trees on site.

The trees have good public amenity and are of a quality to potentially merit a Tree Preservation Order (TPO). The trees complement the Bourges Boulevard corridor and have the potential to be long lived. Therefore, their removal is to be avoided.

It is recommended that all the trees onsite are retained. It is acknowledged that one tree is close to any potential boundary but without any further information it appears likely that the tree could be worked around. Therefore, the change of use does not necessarily require tree loss.

If the change of use was undertaken and all of the trees were retained there would be no objection. However, a TPO would likely to be served.

Police Architectural Liaison Officer (PALO)

Objection:- The comments from the applicant in regards to crime within the surrounding area have been noted. This area, with high density housing, has always been an area that is a Police priority and is regularly patrolled. The local Sergeant and Police Community Support Officer (PCSO) have advised that Bamber Street is no more of a risk of high crime than another part of the City.

Whilst accepting that there are high levels of assaults in the Millfield area, many of them are domestic-related. There are incidents from time to time of fly-tipping and graffiti. The Safer Peterborough Partnership are keen to reinforce the message that they will clean and clear up areas once reported to them and their Prevention and Enforcement Service (PES) regularly patrol and issue fixed penalty notices when offenders are seen.

The footpath along Bourges Boulevard is well used by both pedestrians and cyclists. A Police Incident and Crime check has been applied for the area around the open space in particular. Whilst there are some incidents of crime, the Police Architectural Liaison Officer is not convinced that the removal of the open space would improve this position.

As such, the Police Architectural Liaison Officer advises that they are not in a position to support the proposal.

Local Residents/Interested Parties

Initial consultations: 5

Total number of responses: 4

Total number of objections: 2

Total number in support: 0

Four representations have been received from two neighbours objecting to the proposal on the following grounds:

- The green space is "half the size of a playing field". Why should the land be given to one family to benefit from a back garden, when the land backs onto a number of neighbouring properties?

- The applicants have extended their property previously, losing their garden deliberately to gain the additional land for further building uses, such as another house or businesses.
- The loss of trees would affect bird nests. In addition, lots of trees have been lost within the surrounding area, including Limetree Avenue and Cromwell Road, which has impacted upon the surrounding area.
- The application site is probably the cleanest/safest place where children can play as it is in full visibility. There are issues with other spaces (for example, Russell Street child's play area), where drugs and alcohol are used.
- The proposed wall will close the back garden of No 65 Hankey Street. Neighbour would look at a wall or a dwelling that may be proposed at a later date.
- The proposed wall will also "darken" the car park in the winter months
- Information about crime discussed in the first planning statement impacts upon the residents of Hankey Street more than Bamber Street. The applicants have a private CCTV camera, so they should be reporting any crime to the police.
- The application site has no issues such as drug needles or dog fouling. The shrubs were removed on site to make this a clean place.
- Amey maintain the public open space at present. It is incorrect of the applicants to state that the open space is not maintained.
- Following meetings with Hankey Street Residents Association and MANERP group meetings, neighbours have previously contacted the council to provide funding to remove overgrown shrubs. Two to three years ago, a decision was made to remove the shrubs from this green land, alongside other spaces within the surrounding area, with funding provided from the Council and Councillor Jamil. The land was not tidied up to be used as private residential garden. The applicants should provide a garden within their existing site at No. 62 Bamber Street.
- If the green land is lost, alongside the little amount of green space there is, the Council would be denying children the chance to play on clean open space.
- Even if the space isn't used everyday, this does not mean it is not used.
- We were informed that no public land would be up for sale in this area as a result of green space being protected in Central Ward.
- The applicant has history in taking public land without consulting the Council.
- This land will be built upon in permission is passed.
- The applicants have previously taken approximately two metres of land west of the property, erecting a wall and a gate.

Six photographs of the public open space were also submitted by a resident objecting to the application. These photographs have been considered alongside photographs taken by the Case Officer.

5 Assessment of the planning issues

The main considerations are:

- Principle of development
- Design and impact to the character and appearance of the site and the surrounding area
- Impact to trees
- Neighbour amenity
- Highway safety

a) Principle of development

The application site comprises a parcel of public open space to the south of Bamber Street. The proposal to change the use of land to private garden would therefore represent a loss of public open space.

Policy CS19 of the Peterborough Core Strategy DPD (2011), the emerging Policy LP23 of the Peterborough Local Plan (Submission Stage) (2018) (which can be given weight) and paragraph 74 of the National Planning Policy Framework (NPPF) seek to protect and retain existing areas of open space as they are acknowledged as being vital to the quality of the environment serving

communities. The emerging Policy LP23 requires that the *“open space does not make an important contribution to the green infrastructure network; and that the proposal can be accommodated without causing significant detrimental impact to the character and appearance of the area, ecology or to any heritage assets”*.

Paragraph 74 of the NPPF states *“Existing open space shall not be built upon unless: an assessment has been undertaken which has clearly shown the open space to be surplus to requirements; the loss resulting from the proposed development would be replaced by a equivalent or better provision in terms of quantity and quality in a suitable location; or the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss”*

The application site is located within Central Ward. Under the Peterborough Open Space Strategy (2016), the application site is categorised as a ‘neighbourhood park’. The Strategy sets out that Central Ward has a surplus of approximately 8.62ha of neighbourhood parks. However, Central Ward covers a wide and diverse geographical area. It has also increased in size in recent years as a result of ward boundary alterations in 2016. The increased area of the ward now captures large areas such as Thorpe Meadows, which is to the south-west of the ward and to the East Coast railway line.

Following the ward boundary changes, Central Ward now has a number of distinct residential areas and open spaces within it. As such, it is not appropriate to consider the acceptability of this application on the basis of the open space provision for the ward as a whole. Rather the proposal has to be assessed in a more localised context, in terms of what each area of open space provides and whether the loss of any open space would be harmful within this context.

The application site is located within a specific part of Central Ward, characterised by high density Victorian terraces with a tight urban form. As such, Officers do not consider that the surplus figure is a true reflection of public open space provision for the locality of the application site.

Within the local context of the site, there are small areas of open space that help to soften and break up the hard landscaped form. Their importance is emphasized as they provide visual greenery and amenity to the built form, providing areas where informal play and recreation can take place. These areas provide accessible, informal open spaces to the surrounding hard landscapes and become valued by local residents.

The applicant has identified other open spaces within the surrounding area. However, the applicant has not demonstrated why this open space would be surplus to the provision within this surrounding locality. Officers consider that the open space within the application site provides useable public benefits to local residents, given its size which allows a range of activities to occur upon it, along with this space being readily accessible to local residents given its position adjacent to the footway/cycle path as well as being directly linked to Bamber Street and Hankey Street.

Officers consider that the loss of this space would be unacceptably harmful given the visual and amenity value it provides and particularly given its close proximity to the surrounding dense urban form. Local open space is valued by local residents given the number of ways that the land is used, whether that be, for example, sitting down and relaxing, dog-walking, for play, for sport or any recreational activity. Open space also positively contributes to the health and wellbeing of its users. It is considered that the loss of this space to a private garden would require local residents to travel further to access and use other existing, larger areas of open space. Within the context of this high density residential area, each open space has higher value to local residents, especially with the benefits described above. It is not considered that the loss of public open space proposed would provide wider public benefits other than to the occupiers of No. 62 Bamber Street.

The proposal would result in the loss of open space that is considered to be unacceptable given the visual and amenity benefits it currently provides to the surrounding locality and residents. Alongside the loss of the public benefits, no alternative provision is proposed and therefore Officers consider that the proposal is unacceptable.

The proposed use of the site is for a private garden to serve No. 62 Bamber Street. Given the scale and proportions of the application site compared to residential properties, the proposal is considered to be unacceptably harmful to the character and appearance of the site and the surrounding area, explained in Section B) "Design and impact to the character and appearance". As such, the proposal is not considered to accord with Policy LP23 paragraph b), which can be afforded some weight.

The applicant has made comments about an ongoing consultation in relation to an area of public open space to the south of the site, near to Dyson Close. The Landscape Officer has advised that this consultation relates to the enhancement of open space near Dyson Close and does not propose the loss of open space within the surrounding area.

In light of the above, the principle of the change of use is considered to be unacceptable and it is not considered to be in accordance with paragraph 74 of the National Planning Policy Framework (2012), Policy CS19 of the Peterborough Planning Policies DPD (2012) and Policy LP23 of the Peterborough Local Plan (Submission Stage) DPD (2018), which can be afforded some weight. The proposal is also considered to be unacceptable given the matters below:

b) Design and impact to the character and appearance of the site and the surrounding area

The proposed area of public open space to be changed into residential garden is located to the rear of the gardens of No. 56, 58, 60, and 62 Bamber Street. All of these dwellings are of a similar size, with similar sized, linear rear gardens.

The original, rear outdoor area serving No. 62 Bamber Street, which has been hard-surfaced, measures approximately 125 sqm (18m x 7m) in area. The proposed addition of land that measures 300 sqm in area would therefore result in a plot which is significantly larger in size than the original rear garden.

The increase in residential land to serve No. 62 Bamber Street would result in a garden that is unduly large and wraps around the rear garden areas of the adjacent four properties, as well as abutting to No. 50 Bamber Street and No. 65 Hankey Street. It is considered that it would be out of proportion with the scale and size of the existing residential plot as well as other surrounding residential plots. In addition, the proposed land would not follow the linear garden shape to residential properties and as such, it would be out of keeping with the layout, character and housing pattern of the surrounding area.

The proposed brick boundary treatment, to enclose the area, would screen the existing boundary treatments to the rear of the residential properties that are adjacent to the application site. Given the poor condition of some of these treatments, it is considered that the proposed brick screening would be an improvement to this matter. As such, this particular element of the proposal is considered to be acceptable. However, the benefit would be limited and would not address or make the principle of development acceptable.

On the basis of the above, given the unacceptable visual and amenity harm that would be caused from the proposed change of use of land, the proposal is considered to be contrary to Policy CS16 of the Peterborough Core Strategy DPD (2011), Policy PP2 of the Peterborough Planning Policy DPD (2012) and Policy LP16 of the Peterborough Local Plan (Submission Stage) DPD (2018).

c) Impact to trees

The application site is not located within a conservation area and there are no Tree Preservation Orders (TPOs) on the trees within the site as they are maintained and owned by the Council. The Tree Officer has advised that the trees on the site have good public amenity value and they are also a quality to potentially merit a TPO. This is because the trees complement the Bourges

Boulevard corridor and they have the potential to be long-lived. As such, Officers recommend that the removal of any tree should be avoided.

The application proposes two possible locations for the proposed boundary treatment, which are to the west and south borders of the application site. Given the above comments, one of these positions is considered to be unacceptable by the Tree Officer because it would result in a tree having to be removed.

To address the above tree issue, the applicant confirmed that a revised boundary line could be considered. This proposes a realignment of the wall to avoid the removal of any trees. As no trees are proposed to be removed under this option, the Tree Officer has no objection to the planning application. However, if approval of the whole application was sought, details in terms of how the tree would be protected from, and withstand, the wall construction would need to be submitted via a suitably worded condition.

On the basis of the alternative boundary proposal, the application is considered to accord with Policy CS21 of the Peterborough Core Strategy DPD (2011) and Policy PP16 of the Peterborough Planning Policies DPD (2012).

d) Neighbour amenity

The only physical works proposed are the proposed brick boundary walls. However, given that the boundary wall would predominantly wrap around the west boundary of the application site, parallel to the footpath/cycleway, and the south boundary to the Hankey Street car park, it is not considered that this would cause unacceptable impacts or overbearing or overshadowing to surrounding residents. In addition, the long, linear gardens would allow surrounding residents to retain a sufficient level of amenity from the proposed works.

Whilst neighbours of the application site are not considered to be unacceptably affected by the proposed development, the proposal does affect the use of the open space for the public, as discussed in "Section A) Principle of Development", as well as the loss of the visual and amenity benefits.

On the basis of the above, the proposal is considered to accord with Policy CS16 of the Peterborough Core Strategy DPD (2011), Policy PP3 of the Peterborough Planning Policies DPD (2012) and Policy LP17 of the Peterborough Local Plan (Submission Stage) DPD (2018).

e) Highway safety

There is a footpath/cycleway located to the west of the application site. Given that the proposed boundary wall would not encroach onto the footway, it is not considered that the proposal would adversely upon the use of this path, nor impede upon any visibility splays to users of this path. As such, no objection was raised by the Local Highway Authority. In light of this, the proposal is considered to accord with Policy PP12 of the Peterborough Planning Policies DPD (2012) and Policy LP13 of the Peterborough Local Plan (Submission Stage) DPD (2018).

Other Matters

- Maintenance of land and saving the Council money:- This is not a material planning consideration that can be taken into consideration in the determination of this planning application.

- Removal of Permitted Development rights:- The applicant advises they would accept the removal of permitted development rights on this land if the change of use was approved. However, given the impacts to the character and appearance of the site and the surrounding area, as well as the loss of the Public Open Space, such removal of permitted development rights would not make the application acceptable.

- Previous encroachment of existing boundary wall:- This matter was previously investigated by Planning Enforcement. Alterations were made to the encroachment, including the chamfered wall on the south-west corner. Therefore, this case was closed and no further action was required.

- Future development of site: Comments have been raised relating to the construction of buildings in the long term. This proposal can only be assessed on the information submitted. Any future development would have to be assessed under subsequent applications.

- Disposal of land:- The Landscape Officer has advised that even if the planning permission is granted, it is his view that the land would not be released for sale by Peterborough City Council. However, the sale, transfer and disposal of this land is not a material planning consideration.

6 Recommendation

The Case Officer recommends that Planning Permission is **REFUSED** for the following reasons:

- R 1 The proposed change of use, to serve as a private garden to No. 62 Bamber Street, would result in the loss of existing, useable public open space within the Central Ward and to the specific locality of Bamber Street. The proposed use of the land is for private garden rather than public open space and the scheme proposes no alternative re-provision of the public open space within the surrounding area. In addition, no wider public benefit would be gained from the loss of the public open space to private residential garden. Accordingly, the proposal is considered to be contrary to paragraph 74 of the National Planning Policy Framework (2012), Policy CS19 of the Peterborough Planning Policies DPD (2012) and LP23 of the Peterborough Local Plan (Submission Stage) DPD (2018).
- R 2 The proposal, by nature of its size, scale and position would unacceptably impact upon the character and appearance of the site and the surrounding area. The enclosure of this land for additional garden for one of the adjacent residential plots would fail to respect the established layout character of surrounding residential plots and the linear garden forms associated with these neighbouring dwellings. The loss of this open area of green space would have an adverse visual impact upon the character and appearance of the surrounding area. As such, the proposal is considered to be contrary to Policy CS16 of the Peterborough Core Strategy DPD (2011), Policy PP2 of the Peterborough Planning Policy DPD (2012) and Policy LP16 of the Peterborough Local Plan (Submission Stage) DPD (2018).

Copy to Cllrs Hussain, Iqbal and Jamil

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