

## **Application Recommended for Approve with Conditions VAR/2021/0203 Cliviger With Worsthorne**

Town and Country Planning Act 1990

Removal of Condition 6 (Provision of community garden) pursuant to planning application APP/2016/0472

Plots 1 and 3 Lennox Street Worsthorne-with-Hurstwood Lancashire BB10 3LY

**Applicant:** Mr P Ashley

### **Background**

The application site is located off Lennox Street, Worsthorne and is within the settlement boundary as defined in Burnley's adopted Local Plan. The site is on the edge of the Worsthorne Conservation Area with properties to the rear (No's 250-276 Brownside Road) falling within the CA.

Permission was granted in 2014 as part of application APP/2014/0122 for outline for 3 dwellings with a reserved matters application approved in APP/2016/0472. A further non-material application was submitted and approved APP/2018/0588.

### **Related photos of the site**



**Photo 1:** view into the site from Gordon Street boundary

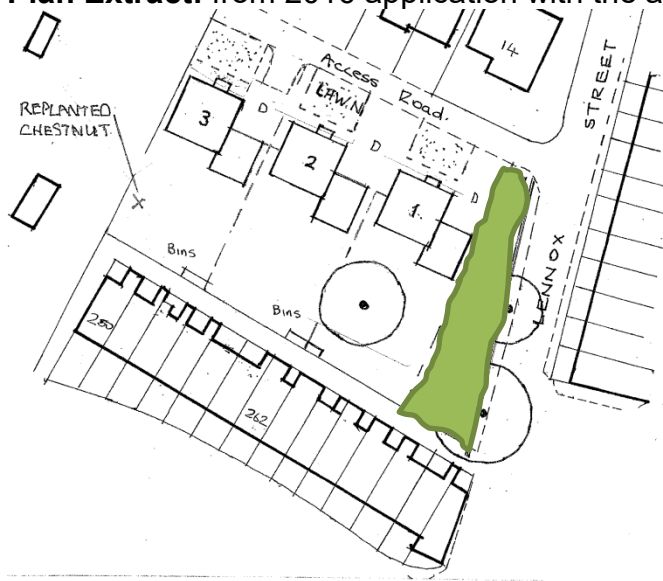


**Photo 2:** Plot no.1 with some of the fencing



**Photo 3:** view into the site

**Plan Extract:** from 2016 application with the area shaded green.



**PROPOSED ERECTION OF 3 no  
DETACHED DWELLINGS, ON LAND AT  
LENNOX STREET, WORSTHORNE.**

**Proposed Site Plan**      **Scale 1 ; 500**      DRAW REF PSA 2



Google extract plan: 'Community Garden Area' outlined in red.

### **Proposal**

This variation of condition under Section 73 of the Town and Country Planning Act



1990, seeks to remove condition 6 (see below) of the Reserved Matters application APP/2016/0472. Under this type of application, the council will look at all the existing conditions attached to the original consent and can either add or remove if conditions have been formally discharged.

#### Removal of condition 6 of APP/2016/0472

*6. The Community Garden shall be laid out as set out on the approved site layout plan and application details before any of the houses are occupied. It shall thereafter be maintained in accordance with good horticultural practice, to the satisfaction of the local planning authority.*

**Reason:** *To ensure that the long term future management of the community garden is secured in order to ensure that the site contributes to a satisfactory standard of completed development and the long term appearance of the site harmonises with its surroundings in accordance with policy GP6 of the Burnley Local Plan, Second Review.*

The applicant has provided a justification for the removal of the condition. The main points are summarized as follows:

- *the outline planning application in 2014 was intended that the community garden would be for the exclusive benefit of the neighbours immediately surrounding the site but issues arose from the management of the space especially when the parish council couldn't take on the management unless it was for all parish members*
  - *Lennox Street is a busy section of road and have become regularly used with the use of Fulledge Football Club for the football pitches.*
  - *surrounding properties would not welcome huge numbers of people using the space if it was open to everyone*
  - *plot number one would take over full ownership of the site and will continue to enhance the space which provides an attractive ecological space.*
  - *whilst not being accessible, the space will still provide a visual landscape buffer and continue to play a part of the character and appearance of the immediate area*
- Plan extract of the proposed garden area which will form part of No. 2 Lennox Street



**Plan Extract 1: Rec 26/11/21  
and landscaping**



**Photo showing the new kerb**

### **Relevant Planning History**

FUL/2019/0432 - Create pair of semi-detached houses in lieu of one detached dwelling Plot 3 Lennox Street Worsthorne-with-hurstwood Lancashire

APP/2018/0588 – NMA elevational changes approved 7/3/19

APP/2016/0472 - Application for approval of all reserved matters except access for the erection of 3no. detached dwellings together with provision of community garden (pursuant to outline planning permission APP/2014/0122).  
Approved 16/12/16

APP/2014/0122 – Outline Application for the erection of 3 detached dwellings - granted

APP/2007/0959 – Outline Application for 6 dwellings – refused and appeal dismissed.

APP/2006/0637 – Change of use of land to residential curtilage – refused.

APP/2007/0093 – Change of use of land to form extended residential curtilage – granted

### **Planning Policies:**

Burnley's Local Plan (July 2018)

SP1 – Achieving Sustainable Development

SP4 – Development Strategy

SP5 – Development Quality and Sustainability

HS4 – Housing development

NE4 – Trees, Hedgerows and Woodland

National Planning Policy Framework 2021

### **Consultation Responses**

LCC Highways

No objection. Should you wish to support the application we would look for the wall that runs along Lennox Street to be conditioned to remain at less than 0.95m in height for a length of at least 20m or to the rear of the surfaced drives whichever is the greater. Conditions are also recommended relating to hardstanding surface water drainage and visibility splays.

Worsthorne Parish Council

An initial objection was submitted to the application which has subsequently been withdrawn and the following comments made:

*'Mr Ashley attended our monthly Parish Council meeting last night and explained the reasoning behind his request for removal of the condition.*

*After discussion the Parish Council decided that having had the situation explained to us we would like to withdraw our objection subject to the following:*

1. *Any current owner of the land must maintain it as an green open space to a suitable level at all times.*
2. *Any current owner must provide the Parish and Borough Council with the name, address and contact telephone number of any person the ownership of the land is transferred/sold to in the future.*
3. *A condition is stipulated and included in any deeds to the land that it cannot be developed or built upon in the future. Article 4 Directive.*

#### Publicity

Two letters received from neighbours, making the following general points:

- There is an issue with tree no. 9 Silver Birch on the application plan/map. This tree is at the head of the cul-de-sac on Lennox St and has grown to become a hazard as vehicles and pedestrians can no longer be seen when you are exiting the cul-de-sac by car.
- The recreation ground is nearly completed to providing Fulfilled Colts a place for football matches and football training. This will cause increased traffic both vehicle and pedestrian on Lennox St which is a dead end.
- Concerned that lack of vision when exiting will cause an accident.
- The garden space as marked on the plan/map may need to be reduced as the road/head of the cul-de-sac needs to be widened by 1 metre as per planning approval for number 2 Lennox St ref APP2016-0472.
- The trees in the garden have grown so tall, they are now blocking the daylight to the houses numbered 1,3, 5 and 7 Lennox St and need cutting back. They will need to be cut back regularly to avoid this situation arising again.
- As that land was designated specifically for that purpose if it is decided that the garden does not go ahead I do feel that it should still be used to benefit the residents for another purpose eg widened rd area / passing place on the odd number portion of Lennox st.
- if it remains part of no 2's property then they should be solely responsible for the upkeep of the walled area and regular room for tree maintenance. The said trees are already at such a height that they are causing loss of light to odd numbered properties on Lennox st, specifically no's 1,3,5 & 7.
- Silver birch no.9 is also causing issues regarding visibility, this is a hazard to both vehicle & pedestrians alike. Due to its size and position on the corner of the entrance/exit to the even numbered cul-de-sac portion of Lennox Street it obstructs the views to and from Lennox st which is potentially dangerous. However as the road by properties 10, 12, 14 & 2 has been noted to be 1m less in width than agreed on plans and therefore once widened would require removal of tree number 9.

Two letters of support from neighbours, making the following points:

- Unsuitable location for community garden
- Potential for noise and disturbance
- Who would police the site if people are causing a nuisance
- Would be difficult to have for only immediate neighbours

- General rubbish and dog fouling which is already a problem
- Site is currently used for No. 2 Lennox Street and is better kept that way.

Two letters of objection, making the following points:

- the applicant has never even started to make a start on the community garden, despite it being on the original plans.
- Even more trees planted would decrease the already poor sunlight to numbers 1-7 inclusive.
- The statement that groups will gather is not factual at all, groups already use the through road to make their way to the recreation ground to play sports or meet in the youth shelter.
- The garden would only be of use by residents and through talking to neighbours, they have stated that any grass cutting required would be done by themselves or family members, so the applicant wouldn't need to worry about it becoming overgrown.
- The area where the garden was supposed to have been started is currently in a very poor state of repair and certainly not been kept in any form of update to make the area easy on the eye of residents.
- The original application was approved on condition that no houses would be lived in before the completion of the resident's community garden. Plot 1 has now been lived in for over 12 months without any penalties issued.
- none of the residents I've spoken to have not wanted the communal gardens but have been looking forward to it.
- it shouldn't cause any disturbance to residents as it is already a busy access road to the recreation field
- the extra traffic once the football pitches are in use shouldn't have an impact as they will be going straight past.
- as the green should be enclosed with fencing, as per the original application, there should be no encroachment of safety issues.
- we have seen trees being planted recently which may prevent make the garden being made. We already have little light at the front of our houses on Lennox Street as the existing trees are not maintained.
- the garden was meant to compensate for the loss of the green spaces we had before the houses were built. Hopefully the wildlife would return.
- a community garden would help the mental and physical health of the residents as quite a few of them are of the older generation or have a disability that prevents them enjoying the wider countryside.
- condition 6 of the original approval stated that the garden was to be set out before plot 1 was occupied but it has been occupied for over 12 months and the work on the garden has not commenced.
- the area where the garden was meant to be has been left in a poor state with overgrown weeds everywhere.
- the developer is encroaching onto the garden plot to begin building a driveway.

### **Planning and Environmental Considerations:**

The inclusion of a community garden within this small development has been discussed within previous applications. The following extract is taken from the Officer's report APP/2016/0472:

*'The Community Garden along the frontage with Lennox Street will remain largely a green open space. It already has a variety of trees and shrubs including beech, birch, horse chestnut and sycamore and these will remain and be protected during construction. A small seating area, a bench seat will be provided. The access to the garden will be from a new gated opening at the rear of 276 Brownside Road. The ranch style fencing to Lennox Street will be retained.'*

Furthermore the need for the community garden was discussed:

*'There is no policy requirement to provide open space on this site but the provision of the community garden fronting Lennox Street will to some extent compensate for the loss of the wider area of land and provide a community facility not available at present as the land is privately owned. The landscaping and treatment of the land are acceptable. The land will remain within the ownership of the developer and a condition requiring its future maintenance is suggested.'*

Currently the land has no formal designation ie. Protected open space, and there is no requirement from a Council open space requirement to create semi- private space for local residents.

There are several Tree Preservation Orders within the site area, and as can be seen from the photos above new trees have been added over the years. From an ecology and biodiversity point of view, I do not consider there will be a detrimental impact if the site was not a community garden as the trees and existing shrubs would remain and a condition can be placed to secure their retention and maintenance.

### Ownership

The proposal for the garden area would bring it into the curtilage and ownership of Plot 1. Given the small size of the piece of land this would be a more practical solution to the on-going maintenance and management of the area. In addition, confining use to only 'local residents' would be impractical and difficult to achieve.

### **Neighbour comments**

There has been a balance of comments made to the application, both in favour and against the proposed variation of condition. As can be seen from the site history there has been various amendments to the plans over the years and development has been carried out in a piecemeal manner.

When applying the relevant land use policies to the site, there has been no policy change and therefore it remains the case that there is no formal requirement to provide additional open space as part of this small development. The space clearly does,

however, provide some form of visual amenity and landscape buffer between Lennox Street frontage and plot No. 1. In line with Policy NE4 of the adopted Local Plan, the site will continue to provide a landscape buffer and continue to encourage biodiversity.

There is a separate application which has been submitted which deals with the existing access road (FUL/2021/0393).

The upkeep of the extended garden area will be the responsibility of the owner of Plot 1 registered as No. 2 Lennox Street.

In terms of boundary treatment this would consist of conifers to the western boundary with proposed No. 4 Lennox St; existing stone wall to the rear boundary (back street of properties along Brownsie Road); and part stone (existing) and part wooden fence along Lennox Street. As Lennox Street is a highway then no new boundary treatment should go above 1m high, anything above this would require planning permission.

### Conclusion

The requirement for the community garden was never established as a formal policy requirement in the original application. It is noted that the space could have had some positive impacts for local residents but the practicalities of this appears not to have been formally put in place. Whilst not for public use, the space will still remain as a green buffer offering a natural landscape break between Lennox Street and the new dwellings, and the established trees will remain. It should be noted that as this is a variation of condition application, any relevant conditions that are not discharged will form part of the decision. A new condition has been added to remove parts of permitted development classes A (extensions to the dwelling), E (building incidental to the enjoyment of the dwelling) and F (hard surfacing).

### **Recommendation: Approve subject to the following conditions**

1. The development shall be carried out in accordance with the details contained in the outline planning permission APP/2014/0122 together with the additional reserved matters set out in the application hereby approved, in accordance with the following plans: Site layout plan drawing Ref PJA2, received on 24 October 2016; amended drawing- Plan and elevations including the provision of stone quoins and changes to the window details received on 15 December 2016; and, revised plot 1 plan, received on 26 November 2021.

Reason: To ensure the development is implemented in accordance with the approved plans and to avoid ambiguity.

2. The tree protection measures for the trees to be retained on the site as set out in the application details shall be in place before any development starts and maintained for the duration of the development works to the satisfaction of the local planning authority.

Reason: In order to protect the existing trees on the site having regard to policy NE5 of Burnley's adopted Local Plan.



3. The recommendations of the Extended Phase 1 Habitat Survey and the Bat Habitat and Roost Assessment dated October 2016 by Quants environmental Limited shall be implemented in full as set out in the report, to the satisfaction of the local planning authority.

Reason: To ensure that species/habitats protected by the Wildlife and the Countryside Act 1981 are protected.

4. The scheme for the eradication of the Japanese knotweed (*Fallopia japonica*) present on the site, dated July 2016 shall be fully implemented as set out in the report, to the satisfaction of the local planning authority.

Reason: The scheme for the eradication of the Japanese knotweed (*Fallopia japonica*) present on the site, dated July 2016 shall be fully implemented as set out in the report, to the satisfaction of the local planning authority.

5. No construction work shall take place on the development hereby approved outside the hours of 8am to 6pm Monday to Friday, 8am to 1pm on Saturday and not at any time on Sundays and Bank Holidays.

Reason: No construction work shall take place on the development hereby approved outside the hours of 8am to 6pm Monday to Friday, 8am to 1pm on Saturday and not at any time on Sundays and Bank Holidays.

6. The widening of the access drive, provision of a service strip and a turning area as set out in the application shall be completed to the satisfaction of the Local Planning Authority before any of the houses are occupied.

Reason: The widening of the access drive, provision of a service strip and a turning area as set out in the application shall be completed to the satisfaction of the Local Planning Authority before any of the houses are occupied.

7. The 'granny annexes' to the dwellings indicated on the approved plans shall remain ancillary to the main dwelling and shall not be used as a separate dwelling for occupation by a separate household.

Reason: For the avoidance of doubt and to prevent the establishment of a separate dwelling having regard to the policies of Burnley's Local Plan in respect of car parking and any other material considerations.

8. Notwithstanding the provisions of Article 3 and Part 1 of the Second Schedule of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development as specified in Classes A, E and F shall be carried out without express planning permission first being obtained from the Local Planning Authority.

Reason: To enable the local planning authority to consider future development having regard to Policies SP5, HS5 and NE3 of Burnley's Local Plan.

9. The surface water from the approved driveway/hardstanding/car park should be

collected within the site and drained to a suitable internal outfall. Prior to commencement of the development details of the drainage strategy shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

Reason: In the interest of highway safety to prevent water from discharging onto the public highway.

10. Nothing shall be erected, retained, planted and / or allowed to grow at or above a height of 0.9 metres above the nearside carriageway level which would obstruct the visibility splay. The visibility splay shall be maintained free of obstruction at all times thereafter for the lifetime of the development.

Reason: To ensure adequate inter-visibility between highway users at the street junction or site access, in the interests of highway safety.

Paula Fitzgerald  
29 November 2021