

DELEGATED REPORT

Report by Helen

Date of report: 05/11/2020

Ref:65911/FUL

Goldsbrough

Registration: 24/09/2020

LDfC: 15/10/2020

Expiry Date: 19/11/2020

Site Visit: 01/10/2020

Site Notice: N/A

Press Date: N/A

Objections: 0

Con Area: N/A

Adv Type: N/A

Reason for Delay:

EIA: NA

N/A

Dec Level: DEL

Stat Class: COUS

Proposal: Change of use from betting office to hot food takeaway (Sui Generis) with extraction flue at rear

Location: 319 Bolton Road, Bury, BL8 2PD

Description

The application relates to a ground floor betting shop on Bolton Road. The premises is located within a row of terraced shops that are set back from Bolton Road. The area is mixed use in character with shops and businesses located at the ground floor of the row, residential properties at first floor, residential properties to the rear and a public house facing the site.

Planning permission is sought to convert the ground floor into a hot food takeaway. The first floor accommodation will be retained residential with a separate entrance. A flue is proposed to the rear of the premises, located above an existing flat roof single storey rear extension. The hours proposed are 10:00 - 23:00 Monday-Sunday.

Relevant Planning History

47801 - Internally illuminated fascia and projecting signs - Approve with Conditions 08/05/2007

47847 - Single storey extension and external staircase at rear and new shop front - Approve with Conditions 23/05/2007

Publicity

Neighbour letters sent 25/09/2020. No representations received.

Statutory/Non-Statutory Consultations

Traffic Section - No objection subject to a condition in relation to the storage of bins.

Waste Management - No response

Environmental Health - Commercial Section - no response

Environmental Health - Pollution Control - request pre-commencement condition in relation to the submission of a scheme for treating, diluting and dispersing fumes and odours

Pre-start Conditions - Applicant/Agent [Not relevant/has/has not] agreed with pre-start conditions

Unitary Development Plan and Policies

EC2/1 Employment Generating Areas

S1/5 Neighbourhood Centres and Local Shops

EN1/2 Townscape and Built Design

HT2/4 Car Parking and New Development

S2/6 Food and Drink
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 victimization;

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.

Policy

Policy S2/6 - Food and Drink and states that in considering proposals, regard be given to the following factors:

- the amenity of nearby residents by reason of noise, smell, litter and opening hours;
- whether or not the proposal would result in an over concentration of these types of uses;
- parking and servicing provision and traffic generation;

- provision for the storage and disposal of refuse and customer litter;
- environmental impact of any ventilation flues and/or ducting.

Policy S1/5 - Neighbourhood Centres and Local Shops seeks to retain retailing (Class A1), as the predominant use in small neighbourhood centres and in new or existing local shops, to cater primarily for the day to day needs of residents and businesses.

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.

Policy HT2/4 - Car Parking and New Development requires all applications for development to make adequate provision for their car parking and servicing requirements.

Principle

Whilst there are other hot food takeaways in the Local Shopping Centre (No. 315 and 321). In terms of shop frontage, 75% of the 12 units would be maintained within the E use class, with the remaining 25% in take away (sui generis) use. As such, it is considered there would not be an over concentration of take away uses and would comply with Policy S2/6 - Food and Drink.

Residential amenity

Although there may be some residential accommodation above the adjacent shops, the row is commercial in character and fronts onto a busy carriageway into Bury Town Centre. It is therefore considered that there is already background activity in and around the area. There are other takeaways and uses in the locality which are open late in the evening and as such the addition of one other premises with evening opening hours is considered not to have a significant impact on amenity in the area. The application is therefore considered to comply with Policy S2/6 - Food and Drink in this respect.

There is an existing flat above the ground floor unit, namely No. 319a Bolton Road. This flat is accessed from the rear of the site via an external stair case, and through a door at first floor. The flue associated with the proposal would exit through the roof a flat roof single storey extension to the rear of the ground floor unit, sited adjacent to the first floor side wall of the flat. The plans show that the flue would be attached to this side wall with brackets. The existing and proposed elevations however fail to show a side window within this wall associated with the flat at No. 319a that appears to relate to the bathroom of the first floor flat. The proposed flue would be located directly to the front of this window and it is therefore considered to be unacceptable. The omission of this window from the proposed elevation also prevents the application from being assessed adequately in terms of residential amenity.

The proposed flue is also sited to the front of a rear window that appears to relate to the bedroom of the first floor flat. The proposed flue would be located approximately 1.1 metres from this window. There are no adopted aspect standards for relationships between commercial and residential properties however, Supplementary Planning Document 6 provides guidance on aspect standards between residential properties in relation to householder extensions and as such, would be a reasonable guide in this case. SPD 6 aspect standards require a minimum distance of 6.5 metres between ground floor habitable room windows, and single storey blank elevations and it is considered that this aspect standard can be used as a baseline. The proposed flue would obscure approximately half of the first floor rear window of No. 319a and as such is likely to have an impact in terms of outlook. As stated above, the flue would be located approximately 1.1 metres from this window which is far below the 6.5 metres required by SPD 6. In this instance it is considered that the size and location of the flue in relation to rear first floor bedroom window would have a seriously detrimental impact on the outlook of this window, and as such would have an adverse impact on the amenities of the occupiers of this residential unit.

Given the conflicting plans, that do not provide sufficient information to assess the location of the flue in relation to existing windows of the flat at No. 319a and the proximity of the flue to a rear first floor habitable room window it is considered that the proposal would fail to comply with UDP Policy S2/6 - Food and Drink.

Visual amenity

The flue would be located to the rear of the premises where other flues, air conditioning units and similar paraphernalia associated with commercial properties are clearly visible. As such the introduction of a flue in this location is considered to be in keeping with the character of the area. The front elevation remains relatively unchanged with the shopfront maintained, with an area of signage identified above the windows. There would be no other physical alterations to the building which would affect the visual amenity of the area.

In this instance therefore the application is considered to comply with Policy EN1/2 - Townscape and Built Design.

Parking

There is already restricted parking along the entire row of shops fronting the Bolton Road Shopping Centre. A hot food takeaway is a use where customers tend to park for short periods of time in order to pick up food. There are a number of side streets in the locality where there is short stay parking and no objections have been raised from the Traffic Section in relation to the proposal. As such, in this locality and given the existing situation, the proposal is considered to be acceptable and complies with Policy S2/6 - Food and Drink and Policy HT2/4 - Car Parking and New Development.

Bin storage and servicing

There would be a dedicated bin store area to the rear of the shop which would be accessed via Albion Court for waste collection. The application is therefore considered to comply with Policy S2/6 - Food and Drink in this respect.

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 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 development would be seriously detrimental to the residential amenities currently enjoyed by the occupier(s) of No. 319a Bolton Road, by reason of the size and position of the proposed flue in relation to habitable room windows of this property. The proposed development therefore conflicts with the Policy S2/6 - Food and Drink of the Bury Unitary Development Plan:
- 2 The application and submitted plans do not accurately show the location of the windows associated within No. 319a Bolton Road. The application and submitted plans contain insufficient information to enable them to be properly assessed in terms of residential amenity and are therefore conflicts with Unitary Development Plan Policy S2/6 - Food and Drink.

DELEGATED REPORT

<u>Case Officer</u> <u>Date</u> Helen Goldsbrough 5/11/2020	<u>Sign off Officer</u> <u>Date</u>
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