

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 06/03/2025	Ref: 71587/P3JPA
Registration: 13/01/2025	LDfC: 24/02/2025	Expiry Date: 10/03/2025
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections: 1	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Prior approval for proposed change of use from commercial to 20 No. Flats

Location: Albion Mill Industrial Estate, Albion Street, Bury, BL8 2AD

Description

The application relates to a mill building, Albion Mill and Albion House on Albion Street which is located to the west of Bury Town Centre and is within Bury Bridge/Daisyfield Employment Generating Area defined under Policy EC2/1/6. Albion Street comprises similar mill type buildings, other industrial units and workshops and to the south west is the Royal Mail depot on Wellington Street.

The site is located at the end of Albion Street which leads from a major junction serving routes to and from the town centre.

Albion Mill is a rectangular 4 storey building with a basement area. The building is split internally into different unit types, comprising storage, warehouse (Class B8) and 'back of house Class E' in the main part of the mill on the ground floor.

The rear part of the building is used as car servicing (Class B2. The applicant notes it as Class E) and retail (showrooms) with associated offices and storage at the upper floors. The mill is an early example of a brick industrial building with important detailing and is on the Council's Non-Designated Heritage Asset (NDHA) draft local list

Albion House is located opposite the mill and is built in a similar style with similar features as the mill and is also an NDHA. It is two storeys in height and comprises a basement used for storage, retail shop and offices at the ground floor and storage and offices at the first floor.

Planning permission (71220) has been granted for external alterations to both Albion Mill and Albion House including replacement of windows with aluminium frames and change some of the door and window openings.

Prior approval is sought for the change of use of part of Albion Mill and the whole of Albion House from commercial to 20 no flats in total under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class MA.

Proposal

Albion Mill

- Ground floor - retain the main part of the Mill as B8 storage at the ground floor with lobby to access the upper floors.
- First floor - 4 x 2 bed flats
- Second floor - 4 x 2 bed flats
- Third floor - 2 x 2 bed and 2 x 1 bed flats

Albion Mill - rear

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- Ground floor - 1 x 1 bed flat and change the use of the car servicing area to associated residential use for a bike and bin store and lobby to serve the proposed units in Albion Mill.
- First floor - 1 x 1 bed flat and 1 x 2 bed flat

Albion house

- Ground floor - 1 x 1 bed flat and 1 x 2 bed flat. Bin and bike store, communal room and gym.
- First floor - 1 x 1 bed and 2 x 2 bed
- Second floor - Storage room

The application also proposes to provide 21 parking spaces (including 2 accessible spaces and 7 EV chargepoints) which would be located in the existing yard area to Albion Mill.

Relevant Planning History

70306 - Alteration to fenestration; Replace existing windows; Replace existing roof with hidden valley gutter removed - Approved 8/5/24

70789 - Prior approval for proposed change of use from commercial to 42 no. flats - Withdrawn by Applicant 09/07/2024

71220 - Alterations to fenestration, replace existing windows and add additional windows, demolition of car port, replace existing roof with hidden valley gutter removed, reconfiguration of the car park - Approved

Publicity

Letters sent to 57 properties on 31/1/25.

One objection received from an adjacent business which raises the following issues -

- The introduction of residential development in such close proximity is of significant concern as this use potentially gives rise to future amenity issues and challenges which could restrict or ultimately prevent operations at that site.
- We are a responsible operator and operate effectively from within the communities it serves, and are concerned about potential noise complaints from new residents who will reside in the residential development adjoining our operational site where the developer has failed to adequately take into account and mitigate for our operations in the design and construction of the housing.
- Operationally, our site is run from 05:00 to 20:00 Monday to Friday, 05:00 to 15:00 on Saturdays and 08:00 to 16:00 on Sundays and generates a significant amount of noise and high numbers of two-way vehicular movements per day. There are specific peak periods when the business is busiest, typically around 05:00 and 08:00, on 4.5 and 18 tonne vehicles and outside of these times there remains a steady stream of vehicular movements to and from the site. The hours of operation and traffic, naturally increase at various points in the year (e.g., Christmas), which coincides with holiday periods.
- The proposed residential dwellings are located adjacent to the business with approximately 7m retained between the application site and the service yard, where the greatest levels of noise and disturbance is generated. The potential impact and effect of existing noise generated by our business on the proposed residential development is therefore considered to be a significant and severe concern.
- It is noted a Noise Impact Assessment has been submitted to the Council to support the application. However, it is considered that the Noise Impact Assessment submitted fails to robustly assess our presence and the impact operations at the site.
- The first concern relates to the dates in which the survey was undertaken. The automatic surveys were placed at the site over a weekend, when operations are less busy. The findings indicate that the maximum noise levels at the site were around 23:00 and 07:00 on the weekdays, which would coincide with peak operational hours.

- In regard to the attended noise surveys, these surveys were recorded over a 2-hour period on a Friday, when operations would generally be less intensive. These attended surveys undertaken at the position closest to operations are not considered to robustly assess the potential impact of the activities in the service yard on future occupiers of the development.
- There is no confirmation of whether trickle vents are already installed or whether the applicant is committed to implementing this mitigation. In addition, we consider that other mitigation measures such as acoustic fencing along the boundary and/or other forms of landscaping could be used to mitigate any potential noise impacts.
- We therefore request that the applicant is required to submit a further Noise Impact Assessment prior to the determination of the application, which will provide a robust and reliable assessment of the proposed development against the ambient noise level, the potential impact on future occupants, and to identify any additional noise mitigation measures required.
- Please note the importance of protecting existing businesses and operations from unreasonable restrictions as a result of development permitted after they were established. This approach would be in accordance with the 'agent of change' principle.

Statutory/Non-Statutory Consultations

Traffic Section - Object on the grounds of inadequate parking and resulting highway safety impacts and insufficient information regarding bin store arrangements.

Environmental Health - Pollution Control - No objection

Environmental Health - Contaminated Land - No objection subject to conditions

Pre-start Conditions - Not relevant

Development Plan and Policies

H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
EN1/2	Townscape and Built Design
EN7/2	Noise Pollution
HT2/4	Car Parking and New Development
JP-P1	Sustainable Places
JP-C5	Streets For All
JP-C6	Walking and Cycling
H3/1	Assessing Non-Conforming Uses

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), the adopted Places for Everyone Joint Development Plan Document (PfE) and the saved policies within 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 and PfE Policies will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

The elimination of discrimination, harassment and victimisation;

The advancement of equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

The fostering of good relations between persons who share a relevant protected

characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Principle

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class MA states -

MA.1. - (1) Development is not permitted by Class MA -

(a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;

(b) unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

(b) if land covered by, or within the curtilage of, the building—

(i) is or forms part of a site of special scientific interest;

(ii) is or forms part of a listed building or land within its curtilage;

(iii) is or forms part of a scheduled monument or land within its curtilage;

(iv) is or forms part of a safety hazard area; or

(v) is or forms part of a military explosives storage area;

(e) if the building is within—

(i) an area of outstanding natural beauty;

(ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981

(iii) the Broads;

(iv) a National Park; or

(v) a World Heritage Site;

(c) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

(d) before 1 August 2022, if—

(i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and

(ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

(2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—

(a) the following classes of the Schedule as it had effect before 1st September 2020—

(i) Class A1 (shops);

(ii) Class A2 (financial and professional services);

(iii) Class A3 (food and drink);

(iv) Class B1 (business);

(v) Class D1(a) (non-residential institutions – medical or health services);

(vi) Class D1(b) (non-residential institutions – crèche, day nursery or day centre);

(vii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;

(b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

The proposal would not comply with sub-paragraph 1(b) as part of the building (rear of the ground floor) which is subject of this Prior Approval and which is proposed as the entrance, bin store and bike store in association with the residential flats (and as such would be considered as residential in use), is in use as a car servicing unit which would fall within a Class B2 use and not Class E as it involves servicing and associated repair work that would be detrimental to residential amenity in terms of noise, fumes and smells.

Class MA changes of use apply to land falling in the above category of Classes which does not include a B2 use.

The proposal would therefore fail to comply with the limitations set out in Class MA.1.(b) and as such could not be considered under the Prior Approval process.

Other provisions under Class MA

Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

(a) transport impacts of the development, particularly to ensure safe site access

The Traffic Section have objected to the proposal on two grounds -

- The proposal would result in the intensification of the use of site with inadequate off-street parking facilities, which is highly likely to lead to vehicles parking and carrying out manoeuvres on the surrounding highways where on-street parking facilities are at a premium at all times of day, which would have a significant impact on access to and parking facilities for existing commercial businesses/operations located off Albion Street and would therefore be detrimental to the free flow of traffic and road safety.
- The application and submitted plans contain insufficient information to ensure that

adequate off-highway bin storage arrangements can be provided for the number of flats proposed within the curtilage of the site in order to ensure that the adjacent adopted highways are not used for refuse collection purposes or the storage of communal bins.

The development proposes 21 spaces for 20 apartments, 16 of which would be 2 bed/3 person occupancy, with the 5 remaining flats 1 bedroomed. Details have not been provided to show parking or servicing for the retained warehouse/storage units at the ground floor.

For the residential development, SPD11 would require a maximum of 28 spaces in a high access area with consideration given to providing visitor spaces.

Albion Street is a relatively short road and provides on street parking for the other businesses which are located on the street. It is regularly heavily parked on, on both sides of the road, and this was evidenced on several visits to the site and google street view over the years (August 2023, August 2022, July 2019, July 2017 and October 2014 as examples).

Any overspill parking from the development onto Albion Street would lead to increased pressure on the street parking which would result in conflicts on the highway with users and vehicles accessing and servicing the adjacent premises and conflicts from the vehicles accessing and servicing the retained warehouse/storage units which would be detrimental to highway safety.

The development should at worst provide adequate parking to meet the standards specified in SPD11 based on the proposed use and size of apartments proposed which should be fully audited by the applicant. The site and access constraints have not been addressed in the Transport Statement.

In terms of bin storage provision, the applicant has shown there would be two bin store areas, one in Albion Mill and one in Albion House. There are however, no details of the bin store provision for the remaining commercial areas of the building and this could potentially result in overspill of bins on the public highway which would be detrimental to highway safety and also cause conflicts between users of the site and waste collection vehicles and access to the sites.

(b) contamination risks in relation to the building;

There are no operational or engineering works proposed.

The EH contam land section have no objections subject to conditions

(c) flooding risks in relation to the building;

The site is not in a Flood Risk Zone.

(d) impacts of noise from commercial premises on the intended occupiers of the development;

The site is located in an area which is predominantly characterised by industrial, commercial and business development. It is also proposed to retain the ground floor of the mill building for warehouse/storage purposes (Class B8) which in itself would generate noise in terms of deliveries, servicing and occupation of these units.

The Pollution Control Section have been consulted on the application and have pointed to the noise report which concluded that calculations show the internal noise levels recommended in BS 8233 should be achieved with windows closed, irrespective of the type of glazing used, even if basic acoustic trickle vents are used to provide background ventilation.

That said, the noise report also states that the existing ground floor of the Mill was not currently occupied and as such this could not be factored into measuring noise from an existing or a potential future occupier of the ground floor, which could be noisy from constant deliveries, the loading and unloading of goods, revving of engines and machinery and other such nuisances and it is therefore considered that locating residential units above such a use would be harmful to future residents of the Albion Mill building.

The objection received raises the concern that their business would be at risk from complaints from future occupiers of the flats to the activities and noise which is generated from their business premises and which includes carrying out their operations in the early morning hours and late at night.

Paragraph 193 of the NPPF states that planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities and that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.

Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.

Located at the end of a street which comprises a mix of industrial and business uses, including a car repair and MOT garage, the site would not be a suitable location for a residential development, not just from the operations being carried out at the adjacent businesses but from servicing and deliveries to these businesses.

As such, the proposed development is considered to be inappropriate and unacceptable within this commercial and industrial setting which would be harmful to the future occupiers of the proposed development.

(e) where -

- (i) the building is located in a conservation area, and
- (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustain ability of the conservation area;

The site is not in a conservation area

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses:

There is adequate natural light to all habitable rooms.

(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;

The application site is located within an Employment Generating Area (EGA) under UDP Policy EC2/1 and specifically under EC2/1/6 Bury Bridge/Daisyfield Bury Employment Generating Area.

Within the EGA designated under EC2/1/6, the specified uses are for B1 (now falling under Class E(g)), B2 or B8 development.

As this is a prior approval application, comments relating to the principle of the development, including whether the proposal constitutes limited development or whether it would substantially detract from the area's value as an EGA, cannot be considered.

However, given the location of the site within an EGA and the continued focus for business and industrial uses within this area, it is considered that this would not only negatively impact on the potential future occupation of the ground floor of the Mill building by a commercial or industrial organisation but would also negatively impact on the surrounding neighbouring employment uses.

As such, it is considered that the location of the proposed development within the EGA would have an adverse impact on the occupiers of the future development within the EGA and would be harmful to the operations of the EGA.

(h) where the development involves the loss of services provided by -

(i) a registered nursery, or

(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost;

There would be no loss of such provisions.

(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

The development does not consist of two or more dwellings whilst also exceeding seven storeys in height.

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: Prior Approval Required and Refused

Conditions and Reasons:

- 1 The proposal would result in the intensification of the use of site with inadequate off-street parking facilities, which is highly likely to lead to vehicles parking and carrying out manoeuvres on the surrounding highways where on-street parking facilities are at a premium at all times of day, which would have a significant impact on access to and parking facilities for existing commercial businesses/operations located off Albion Street and would therefore be detrimental to the free flow of traffic and road safety.
The proposed development would therefore be contrary with the following Policies of the Bury Unitary Development Plan and the Places for Everyone Joint Development Plan:
Policy H2/2 - The Layout of New Residential Development
Policy EN1/2 - Townscape and Built Design
Policy HT2/4 - Car Parking and New Development
Policy JP-P1 - Sustainable Places
Policy JP-C5 - Streets for All
Policy JP-C6 - Walking and Cycling
- 2 The application and submitted plans contain insufficient information to ensure that adequate off-highway bin storage arrangements can be provided for the number of

flats proposed within the curtilage of the site in order to ensure that the adjacent adopted highways are not used for refuse collection purposes or the storage of communal bins.

The proposed development would therefore be contrary with the following Policies of the Bury Unitary Development Plan and the Places for Everyone Joint Development Plan:

Policy H2/2 - The Layout of New Residential Development

Policy EN1/2 - Townscape and Built Design

Policy JP-P1 - Sustainable Places

Policy JP-C8 - Transport Requirements of New Development.

- 3 The proposed development would introduce a non-conforming use within an Employment Generating Area which would be harmful to the future occupiers of the proposed development by virtue of the noise, activities, traffic and transport and servicing associated with the established EGA. The proposed development would therefore be contrary to the following Policies of the Bury Unitary Development Plan and the Places for Everyone Joint Development Plan:
- EC2/1 - Employment Generating Areas
Policy H2/2 - The Layout of New Residential Development
Policy EN1/2 - Townscape and Built Design
Policy EN7/2 - Noise Pollution
Policy JP-P1 - Sustainable Places
- 4 The existing use of the site does not wholly fall within one of the uses falling within Class E of Schedule 2 to the Use Classes Order. Therefore, the proposal does not comply with the statutory limitation in paragraph MA.1 (1)(b) of Schedule 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	6/3/25		