

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 15/08/2022	Ref: 68331/FUL
Registration: 25/05/2022	LDFC: 01/07/2022	Expiry Date: 20/07/2022
Site Visit: 10/06/2022	Site Notice: N/A	Press Date: N/A
Objections: 1	Con Area: N/A	Adv Type: PI
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Change of Use from Training Centre (Class E) to 6 no. HMO's comprising 23 bedrooms (single occupancy)

Location: Heaton House, Brierley Street, Bury, BL9 9HN

Description

The site relates to a vacant 2 storey building, Heaton House, which was formally used as a D1 training centre. The site is located on a road of predominantly residential properties, although directly adjacent to the north is a commercial building comprising units and workshops, together with its car park directly behind Heaton House to the west. Bury Football club and stadium is located to the south approximately 100m away.

Associated with the building is a vacant piece of triangular land to the south west of Heaton House which is bounded by a brick wall and mesh fencing and accessed via a set of double gates off Back Brierley Street.

Heaton House itself is an attractive red brick building, the front elevation being the more important with original features and a bay fronted window on the ground floor. The main entrance is via a set of steps at the front off Brierley Street and there are 2 emergency access doors on the north elevation and emergency stepped access at the rear to the first floor. It is a Non-Designated Heritage Asset on the Council's draft local list.

The site has a complicated planning background.

Planning permission was granted in 2018 for the conversion of the building to 6 no. residential flats (Class C3) in a mix of 1, 2,3 and 4 bed. Each flat had living accommodation comprising a living room/lounge and kitchen/dining area with shared bathroom and some en-suite facilities. Total number of bedrooms in the building equalled 16.

The triangular piece of land at the rear was included in the application and proposed as a car park for 9 cars with an area for bin storage. External alterations to the building comprised changes to the windows.

The changes to implement the external alterations and works to form the car park commenced, and some works to the internal layout were carried out but these did not accord with the approved plans. The use of the building as C3 dwellings was also not implemented as the flats were never occupied.

The Applicant however, contended that as operational development had been started/implemented, the planning permission per se had been implemented.

The Applicant subsequently submitted a planning application for a Variation of Condition (ref 66603) seeking alterations to the internal layout of the flats including additional bedrooms and bathrooms and some external changes to window openings.

The application was submitted as - 'Variation of condition no. 2 (approved plans) of planning permission 63186 (Change of use from training centre (Class D1) to 6 no. flats (Class C3) and associated car park) -

'Alterations to internal layout of flats including additional bedroom to flats 1-6 inclusive (7 no. additional bedrooms in total) ; 11 no. total additional en suite bathrooms; external alterations including the omission of 1 windows to flats 2 & 4 and the omission of 2 windows to flat 3'

Total number of bedrooms equalled 24 with limited shared living accommodation.

The LPA concluded that the proposed amendments would go beyond the scope and character of the approved scheme, and as such the application could not be considered as a Section 73.

A section 73 application allows for a minor material amendment to an approved scheme. Section 73 applications cannot be used to change the description of the development and therefore in turn, cannot be used to change the character, nature or scale of a development.

The LPA refused the application for two reasons -

- The proposed development cannot be considered as a section 73 application as the development would go beyond the scope and the character of the originally approved scheme under planning reference 63186. The proposed development would therefore be contrary to The Town and Country Planning Act 1990.
- The applicant has failed to demonstrate that the development has been lawfully implemented and therefore, cannot benefit from any permitted development rights to lawfully change the building from a Class C3 dwellinghouse to a Class C4 House of Multiple Occupation. The proposed development would therefore be contrary to The Town and Country Planning Act 1990.

As the LPA maintain the originally approved scheme for the conversion of the building to form 6 no flats has not been lawfully implemented, the building and site still fall within the use as a training centre.

This planning application seeks to regularise works which have previously been carried out and proposes a change of use of the existing building as a training centre to 6 no. HMO's comprising 23 bedrooms (single occupancy).

The associated land at the rear would provide 9 no. parking spaces, cycle storage and bin storage.

Relevant Planning History

63186 - Change of use from training centre (Class D1) to 6 no. flats (Class C3) and associated car park - Approve with Conditions 15/11/2018

66603 - Variation of condition no. 2 (approved plans) of planning permission 63186 (Change of use from training centre (Class D1) to 6 no. flats (Class C3) and associated car park) - Alterations to internal layout of flats including additional bedroom to flats 1-6 inclusive (7 no. additional bedrooms in total) ; 11 no. total additional en suite bathrooms; external alterations including the omission of 1 windows to flats 2 & 4 and the omission of 2 windows to flat 3 - Refused 14/05/2021

66913 - Non material amendment following approval of planning permission 63186- Retention of vehicular access gate not in compliance with condition no.06 - Approve 13/05/2021

Publicity

Letters sent to 35 adjacent properties on 9/6/22.

One objection received with the following comment:

The volume of parked vehicles during a normal working week is horrendous. It can only get

worse by converting this building into 23 dwellings. Where is everyone going to park? Could someone from the council please take time during a standard working day to assess the parking conditions in Brierley Street and then justify converting this building into flats that need MORE parking space.

Statutory/Non-Statutory Consultations

Highways - No objection subject to conditions

Waste management - No objection and advise the applicant contact waste management team regarding the operation of refuse collection.

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

NPPF	National Planning Policy Framework
H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
H2/4	Conversions
EN1/2	Townscape and Built Design
EN7/2	Noise Pollution
HT2/4	Car Parking and New Development
HT6/2	Pedestrian/Vehicular Conflict
SPD11	Parking Standards in Bury
EN7/2	Noise Pollution

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 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 principle of the conversion of the proposed building for a residential development was approved under planning reference 63186. On assessment of this application, it was considered that the proposed development would be located within a sustainable urban area, predominantly characterised by established residential uses and therefore would not conflict with the local environment in terms of character and surrounding land uses. The development would also bring back into use a vacant building and contribute to the local housing stock in the area.

There have been no changes to planning policy since this approval and no changes to the site which would reasonably justify a refusal of a residential development at this site and property.

The principle of a residential development is therefore considered to be acceptable and would be in compliance with the NPPF and UDP Policies H1/2, H2/1, H2/2 and H2/4.

The issues of the scale of development and for the change of use to 6 no. HMO's comprising 23 bedrooms as single occupancy are considered below.

Policies

UDP Policies H2/1 - The Form of New Residential Development and H2/2 - The Layout of New Residential Development takes into consideration factors relating to the height and roof type of adjacent buildings, the impact of developments on residential amenity, the density and character of the surrounding area and the position and proximity of neighbouring properties. Regard is also given to parking provision and access, landscaping and protection of trees/hedgerows and external areas.

UDP Policy H2/4 - Conversions, has regard to factors including effect on the amenity of neighbouring properties, impact on the general character of the area and existing concentration of flats, amenity of occupants, effect on the street scene of any changes to the external appearance and car parking and servicing requirements.

Scale of development - The application proposes a development of 6 separate HMO's for a total of 23 bedrooms (single occupancy) within one building.

There is a triangular piece of land at the back of the site which is accessed via a set of gates from the Back Brierley Street which is proposed as a car park for the development and which would provide 9 spaces in total. The car park would also be used to store bins.

Scope of the proposed scheme:

- 1 x 2no bed
- 1 x 3no bed
- 2 x 4no bed
- 2 x 5no bed

Total occupancy = 23

There would be shared facilities of a kitchen/living room. All bedrooms would be en-suite.

In terms of accommodation, each bedroom and shared facility would comply with the minimum space standards for HMO's and as such the level of accommodation would be considered acceptable. There would be a secure cycle store within the building and the rear yard area would provide cycle stands and bin storage facilities for household waste and recycling which would be commensurate to the number of residents.

There would be limited outdoor space provided for amenity use as the building does not have much in the way of associated land apart from an area at the front. However, future residents would be aware of this prior to occupation and very often, HMO or flatted development either in town centre location or converted properties do not come with private outdoor space. There are communal playing fields and sport and recreation facilities a short distance away, and as such it is considered that this aspect of the development would be acceptable.

The internal arrangement would result in some habitable rooms located on the north and west elevations which would be adjacent to the boundary of the commercial unit and its car park. There are already windows on these elevations and already some overlooking between the two sites which could occur. However, as a residential use, occupiers would expect there to be a degree of privacy which would be commensurate with such a use, and particularly to flats on the ground floor. That said, future occupiers of the development would be aware of the layout of the flats and the relationship to the adjacent site.

There are certain solutions to protect the privacy of residents, for example etched glass to the lower/upper half of a window which can be acceptable. It is therefore considered reasonable, and in the interests of both the future occupiers and occupiers of the adjacent site, that a condition be included that windows on the side elevations be partly obscure glazed.

The applicant would be required to obtain a separate HMO license from the Local Planning Authority and in doing so demonstrate that proper standards would be applied at the property and that the HMO would be reasonably suitable for occupation for the number of tenants proposed, with at the very least, the minimum prescribed standards of amenity and facilities.

Fallback position

There are PD rights which allow a change of use of a building from a dwellinghouse (C3) to a small HMO for up to six people (C4). This is set out in Class L, Part 3 of Schedule 2 of the GPDO.

In the interpretation section of the GPDO there is a definition of "dwellinghouse" which is "except in Part 3 of Schedule 2 of this Order (changes of use), does not include a building containing one or more flats, or a flat contained within such a building".

It follows that where the term "dwellinghouse" is used in Part 3 it can include a flat contained within a building and the definition of "building" includes any part of a building.

Therefore, a flat contained in a building in C3 use can change to a small HMO for up to six people without permission. Class L sets out that development is not permitted if it would result in the use as two or more separate dwellinghouses falling within Class C4 of any building previously used as a single dwellinghouse (C3). This is aimed at preventing sub-division but if the number of units is to remain the same (i.e. 6 flats to 6 small HMOs), this would be permitted.

The fall back position for this application is that the permission ref 63186 for the conversion of the building to 6no. flats could be fully implemented and thereon, the premises would be

afforded lawful permitted rights to become Class C4, an HMO, without the need for further grant of planning consent.

To clarify the scope of the approved scheme:

- 1 x 1no bed
- 1 x 2no bed
- 3 x 3no bed
- 1 x 4 no bed

Comparing the occupancy of the proposed scheme and the previously approved development, it is more than likely some of the approved flats, especially the 3 and 4 bed, could have been occupied by couples and/or families, rather than as single occupancy flats. Weighing up this proposal for 6 no HMO's for a total occupancy of 23, it is considered that there could potentially be little difference in the number of people who could be accommodated within the building as a whole.

There is also the consideration that the building could continue to operate as a training facility which in itself could accommodate a number of employees/staff, plus those attending the facility which in itself would draw a certain number of people to the site.

It is therefore considered that the scale of development for 6 no. HMO's (23 person occupancy) would be acceptable for this site and building and would comply with UDP Policies H2/1, H2/2 and H2/4.

Impact on residential amenity - There are residential properties to the south and opposite the site and there would be no external alterations or extensions proposed which would affect the amenity of these occupiers. The closest neighbour would be the commercial units to the north.

The area is predominately characterised by residential dwellings and given the location it is considered the proposed residential use would not be out of character within the area.

There are two existing fire escape doors which open out onto an existing ramp which is located directly adjacent to the yard area of the commercial property, Phoenix House. It is proposed to block off these escape doors and replace these with windows which would be partly obscure glazed. (In terms of fire safety, this would not be an issue from a planning perspective and would be a matter under Building Regulations).

In terms of intensification of use, occupancy as 6 no. HMO's would not be significantly more than that as a development for 6 no separate residential flats, as discussed above, and as such it is considered that additional noise and activity associated with the proposed use would not be intensified to a greater degree.

It is therefore considered that the proposed development would not have an adverse impact on any of the neighbouring properties and as such would comply with UDP Policies H2/1, H2/2 and H2/4.

External alterations - There would be little intervention to the external facade of the building apart from new windows inserted in the south elevation which would face Back Brierley Street and one window in the north elevation and the blocking up of the lower part of the 2 emergency access doors on the north elevation, to create window openings. The front elevation which faces Brierley Street and which is the most important in terms of its architectural design, value and importance would not be altered.

It is considered that overall, the external alterations would not be significant and would not be detrimental in terms of their impact on the appearance of the building, particularly as they would be on elevations not overly visible to public views.

Parking - There are no specific car parking standards for an HMO in SPD11.

The development proposes to provide 9 parking spaces which would be in the yard area behind the property and on an area of land directly across the access road which is also in the ownership of the applicant. There would also be provision for bicycle storage in the yard area and inside the building.

It is generally found that HMO's use tend to have a lower level of car usage than residential dwellings and it is often accepted that dedicated parking for these schemes are not provided. Future occupiers would be aware of this before taking up residency.

The site is located 200m from one of the main routes through the Borough and a route which has a regular bus service. It is also not far from Bury Town centre and easily accessible by cycle.

It must also be remembered that a training facility or similar such use could in itself generate significantly higher levels of parking needs than the proposed use.

As such, it is considered that given the emphasis on sustainable development and location of the site, the proposed level of parking would be acceptable for this use.

Waste management - The proposed development would provide bin storage facilities within the yard area. The waste management team have confirmed this level of provision would be acceptable.

Heritage - Paragraph 203 of the NPPF states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

The application is accompanied by a Heritage Statement. If the building were to be considered a Non-Designated Heritage Asset. It is concluded that the main architectural interest of the front elevation and the internal decoration of the front rooms which are considered to be of medium significance, but the rest of the building not more than low/neutral significance due to the degree of alteration.

Although there would be some changes made to the external part of the building, these would be relatively minimal. The main front elevation would remain unchanged. Overall, there would be little intervention to the fabric of the building. The proposed development and use of the building would help to preserve it for the future.

As such, the conclusion is that the proposals would have minimal impact on the significance of the building and the proposed development would comply with the principles of the NPPF.

Statement in accordance with Article 35(2) Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2015

The Local Planning Authority worked positively and proactively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Approve with Conditions

Conditions and Reasons:

- 1 The development must be begun not later than three years beginning with the date of this permission.
Reason. Required to be imposed by Section 91 Town & Country Planning Act 1990.
- 2 This decision relates to drawings - Revised car park plan 18.1823.8 E; Proposed ground floor plan 18.1823.4 E; Proposed first floor plan 18.1823.5 D; Proposed elevation 18.1823.7 C; red edge site plan received 9/6/22; Proposed site plan 18.1823.9 and the development shall not be carried out except in accordance with the drawings hereby approved.
Reason. For the avoidance of doubt and to ensure a satisfactory standard of design pursuant to the policies of the Bury Unitary Development Plan listed.
- 3 The car and cycle parking facilities indicated on approved plan reference 18.1823.8 Revision E shall be surfaced, demarcated and/or made available for use prior to the use hereby approved commencing and thereafter maintained at all times.
Reason. To ensure adequate off street car parking provision in the interests of road safety pursuant to policies HT2/4 - Car Parking and New Development, H2/2 - The Layout of New Residential Development and H2/4 - Conversions of the Bury Unitary Development Plan.
- 4 The bin storage facilities indicated on approved plan reference 18.1823.8 Revision E shall be implemented prior to the use hereby approved commencing and maintained thereafter and shall be provided in accordance with Waste Management's 'Guide to Refuse Collection Requirements & Storage Methods for New Developments'.
Reason. To ensure that adequate bin storage arrangements are provided within the curtilage of the site pursuant to policies EN1/2 - Townscape and Built Design, H2/2 - The Layout of New Residential Development and H2/4 - Conversions of the Bury Unitary Development Plan.
- 5 Before the first occupation of the development hereby approved, the windows on the side elevations shall be fitted with part obscured glazing and shall be permanently retained in that condition thereafter.
Reason. To protect the privacy of the future and adjoining occupiers and to accord with Policies H2/1 - The Form of New Residential Development and H2/4 - Conversions.
- 6 Levels of sound insulation to the individual flats shall be provided in accordance with the minimal standards deemed to be acceptable in current Building Regulations prior to the first occupation of the development hereby approved.
Reason. To reduce nuisance from noise to the occupiers of the adjoining units in the interests of the amenity of the future occupiers pursuant to the NPPF and UDP Policies H2/4 and EN7/2 Noise Pollution.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	15/8/22		