

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 23/01/2023	Ref: 69083/FUL
Registration: 05/12/2022	LDfC: 29/12/2022	Expiry Date: 30/01/2023
Site Visit: 21/12/2022	Site Notice: N/A	Press Date: N/A
Objections: 2	Con Area: N/A	Adv Type: NONE
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: MIOT

Proposal: Single storey side extension

Location: Toto Ristorante, High Street, Walshaw, Bury, BL8 3AG

Description

The site relates to an existing restaurant which is located in the village setting of Walshaw and a Neighbourhood Shopping Centre under Policy S1/5. The area comprises a mix of residential and commercial uses.

Directly to the north is Victoria Mill, a 3 storey brick build which has consent for conversion to apartments. To the west are flats on Grassington Court and opposite the site to the east is a 'T' junction which is centred around a war memorial which defines the road junctions of Walshaw Road and High Street.

The restaurant is a single story building with rendered elevations and contemporary modern appearance and the building is set back into the site from Walshaw Road.

Prior to the erection of a single storey extension, which is the subject of this planning application, the front of the site was formally an open paved terrace with the boundary to Walshaw Road defined by a wall of brick pillars and railings, with a dwarf wall and planting also along part of the frontage. The restaurant is slightly elevated above the road and there are a set of steps up to the site from Walshaw Road. There is a car park to the south of the building which is accessed from Grassington Court.

The application is a resubmission for the retention of a single storey extension to the restaurant which had erected without the benefit of a planning permission in April 2021.

The extension is single storey and approx 13.5m in length and project 4.7m in depth from the east elevation towards Walshaw Road and the site boundary.

It would have a sloping roof with an eaves height of 2.9m and ridge height of 4m.

Elevations would comprise a grey clad stud wall with a plastic sheet roof.

The applicant originally applied for a Lawful Development Certificate in May 2021 for the extension under Part 7 - Non-domestic extensions, alterations etc of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which lays down permitted development rights for non domestic extensions/alterations. However there are no permitted development rights under Part 7 that allow extensions to restaurants. As such the existing extension would not be permitted development and would require planning permission and therefore the LDC was refused.

A planning application (ref 67614) was submitted in October 2021 and was refused for the following reasons:

- By reason of its size, position, design and materials the extension would be a discordant, prominent and intrusive feature in the street scene and would therefore be seriously detrimental to the visual amenities of the area.
- The extension and its surface water drainage arrangements results in an unacceptable

impact on the integrity of the adjacent adopted highway due to the unauthorised discharge of surface water onto the adopted footway on High Street

- Intensification of the use of the site for which there would be inadequate car parking provision which is likely to lead to vehicles parking and carrying out manoeuvres on the highway to the detriment of the free flow of traffic and road safety.

Following the refusal of the application, in order to work with the applicant, the applicant was advised to seek to address the reasons for refusal by way of a resubmission of an application or a pre-application enquiry.

The amendments to this application comprise a pitched detail added to 3 windows across the front elevation (east) of the extension and a site plan to show existing parking arrangements for the restaurant to include 4 proposed spaces to the rear of the restaurant.

Relevant Planning History

47564 - Internally illuminated fascia sign - Approve with Conditions 21/03/2007

50588 - Redevelopment of existing restaurant and adjacent mill to form a wine bar and restaurant with first floor open car park accessed from Grassington court - Refused 21/01/2009

67034 - Lawful Development certificate for existing single storey extension - Refused 15/7/21

67614 - Single storey side extension - Refused 14/02/2022

Publicity

Letters sent to 23 addresses on 7/12/22.

Two objections received with the following issues raised:

- The application is exactly the same application as the previous application which was refused so how can it be validated as a new application?
- The application shows parking on land owned Victoria Mill and included within the approved application for conversion of Victoria Mill. A check on the Councils own website shows the approved plans. It isn't that the restaurant applicant doesn't know what land they own it is a case of them knowing that their unlawful extension is an intensification of use and will therefore require additional parking provision or it will be a nuisance. They do not have any further land on which to provide additional parking. Their previous application showed parking on Housing Association land opposite until this was pointed out to the Council.
- In contrast the Victoria Mill site could not use parking owned by the restaurant.
- The facts of the matter are that this extension has been erected without planning permission, building regulation permission or licensing approval, yet has been in continuous use since being built in April 2021. The Council has a duty to control unlawful development and as such should have carried out enforcement action to ensure that the extension is removed and the streetscape reinstated. It is not reasonable for law abiding citizens to jump through all of the hoops that the planning system throws at us for these people to run roughshod over the lawful planning system and completely ignore the statutory approvals process.
- We would expect that the Council refuses this latest application for an abuse of process and enforces the removal of this unlawful extension.
- The proposals are not for a shed but an extension to the restaurant which is an intensification of the use without any consideration to providing additional car parking for the increased floor area and additional capacity, the parking issues associated with the property are well documented.
- The proposed drawings indicate parking to the rear yard area which is not in the ownership of the restaurant and in fact forms part of the adjacent Victoria Mill redevelopment. The blue edged plan is incorrect and shows land not in the ownership of the restaurant.
- The surface water drainage from the extension discharges directly onto the adopted

- footpath to High Street which increases the risk of flooding elsewhere.
- The materials do not match the local vernacular which are traditional materials as opposed to the composite cladding and polycarbonate roof used.
- This extension was erected without planning permission and this application is an exact replica to the previously refused application.

Statutory/Non-Statutory Consultations

Traffic Section - Recommend refusal due to impact on the integrity of the highway from the windows and the extension on the surface water drainage arrangements.

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

NPPF	National Planning Policy Framework
EN1/2	Townscape and Built Design
EN5/1	New Development and Flood Risk
S1/5	Neighbourhood Centres and Local Shops
S2/6	Food and Drink
HT2/4	Car Parking and New Development

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.

Application - S73A of the Town and Country Planning Act 1990 makes provisions for Planning permission to be considered for development already carried out.

Siting - The proposed extension would cover a floor area of 61.57 sqm and would be located on the patio/paved open area which fronts Walshaw Road. The extension would cover the full length of the eastern elevation and project the full width of the patio area with the building line of the extension located directly adjacent to the back edge of the footway.

It is therefore considered that due to the siting and scale of the building, the proposed development would introduce an expanse and massing of built form which would add a discordant and alien feature along this part of the street frontage. Further harm would be caused due to the loss of the open patio area which provides a relief and attractive setting from views from the street. The loss of the boundary wall and railings which added to the attractiveness is also considered to be unsympathetic to the visual amenity of the area.

As such, the proposed development is considered to be contrary to Policies EN1/2 and EC4/1.

Design and appearance and visual impact - The restaurant is a relatively modern/contemporary build, with a featured curve bay and bay window to part of the east elevation. This feature is also mirrored on the south elevation which faces the car park.

The previous application assessed the extension as a uniform and rectangular shape and of a solid and 'boxy' design. Elevations are flat, featureless and lacking any character, and the extension does not provide any rhythm along the frontage, nor does it have any design associations to the existing building.

The attachment of the extension is also clumsy and incoherent and completely obstructs the features and 'art deco' type character of this elevation, with little thought of its connectivity to the existing building and as such appears as a disjointed addition.

In terms of materials, elevations comprise a composite clad wall in dark matte grey with 3 rows of rectangular window openings, resulting in a 'shed' like appearance which would be inappropriate to the setting of the site, the streetscene and particularly at this well used and highly visible position and junction in the middle of the village.

The roof is covered by plastic sheets, which on a building of this type and in this highly visible location would add to the unsightly appearance of the building.

The submitted planning statement itself refers to the structure as a 'shed'; a structure considered not to be appropriate on a prime village frontage. which would not be

In addition, the railing and brick pillar walls which were a pleasant and attractive feature along the site frontage have been removed to facilitate the siting of the extension. In its place, the extension would introduce a strident and dominating feature at this part of the site.

The only change proposed in terms of the appearance of the extension is the addition of a pitched design feature to the top of the window which would add little, if anything at all to

the utilitarian and shed like appearance of the build. In any event, the windows which have actually been inserted are positioned higher within the east elevation and closer to the eaves level compared to the proposed plan and as such the insertion of the pitched detail could not physically be added.

It is therefore considered the proposed development would have an adverse and significantly harmful impact on the visual amenity of the streetscene and as such would be contrary to policies EN1/2 and EC4/1.

Highways - The extension is sited directly at the back of the footway on Walshaw Road. No design solution had been incorporated within the build to restrict surface water run-off from the building onto the public highway and none is proposed in this application and as such this is considered unacceptable.

Any outward opening windows from those on the eastern elevation onto a public highway would also not be acceptable.

In terms of parking, whilst the site is located in a village setting with some custom locally, the extension would facilitate more customers to the restaurant and a greater demand for parking, and for a business which already under-provides parking, pressure would be added to the nearby streets. This has been evidenced with cars often seen parking on part of the footway on Walshaw Road and the access road on Grassington Court.

No parking, either existing or proposed, was included in the previous application and which formed a reason for refusal.

In this application, the applicant has sought to address this reason for refusal and has provided a site layout plan of the existing parking arrangements. For staff and patrons, there is potential parking for 13 cars. The proposed site plan shows there are 6 at the front of the building and 7 spaces shown to be provided at the back of the building accessed off Grassington Court, although only 4 of these are formally demarcated on site.

The proposed plan also shows 4 spaces are proposed to be located beyond the rear elevation of the restaurant next to the boundary with houses on Campbell Close. This land is not included in the red edge or blue edge location plan and not within the ownership of the applicant and as such the 4 spaces are not in the gift of the applicant to provide. This land is in fact within the ownership of Victoria Mill which is currently being developed out for residential purposes.

Now that the spaces have been detailed in the application and in considering the existing 13 parking spaces which are in the gift of the applicant to provide for the site, given the scale of the proposed development in this locality, on balance it is considered additional parking would be required to facilitate the scale of development proposed.

As such parking arrangements are considered acceptable.

Residential amenity - The nearest residential properties would be more than 30m away and have oblique views of the site.

It is therefore considered that impact on residential amenity would not be significant.

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

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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, by reason of its size, position, design and materials be a discordant, prominent and intrusive feature in the street scene and would therefore be seriously detrimental to the visual amenities of the area. The proposed development therefore conflicts with the following policies of the Bury Unitary Development Plan EN1/2 - Townscape and Built Design and EC4/1 - Small Businesses.
- 2 The extension, windows and its surface water drainage arrangements results in an unacceptable impact on the integrity of the adjacent adopted highway due to the unauthorised discharge of surface water onto the adopted footway on High Street, which is detrimental to highway safety and contrary to provisions in the Highways Act 1980. The proposed development would therefore be contrary to Bury unitary Development Plan Policies EC4/1 - Small Businesses and EN5/1 - New Development and Flood Risk.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	23/1/23		