

DELEGATED REPORT

Report by Tom Beirne	Date of report: 11/03/2025	Ref: 71585/FUL
Registration: 30/01/2025	LDfC: 05/03/2025	Expiry Date: 27/03/2025
Site Visit: 25/02/2025	Site Notice: N/A	Press Date: N/A
Objections: 19	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: MIOT

Proposal: Retention of tipi and heater for a temporary period of 18 months

Location: Eagle And Child, 3 Whalley Road, Shuttleworth, Ramsbottom, Bury, BL0 0DL

Description

This application relates to a detached two storey pub/restaurant on the corner of Whalley Road and Peel Brow. The stone built property has parking for 11 cars with access onto Peel Brow on the south side and there is a beer garden on the north side. To the west and set down are houses backing onto the west boundary and fronting Cheshire Court. Across Whalley Road to the east are terraced houses and a treed embankment with private parking in front.

The beer garden, in its existing form, comprises an external bar projecting off the rear of the main building, toilet block and pergola structure. Most prominent within the garden area is a circular tented 'tipi', erected during Covid and sitting on a circular area of stone chippings. The tipi comprises a timber frame Upvc sides with a canvas cover and has a footprint of 86sqm. It has a maximum height at central point of 10m and seats up to 72 people. The structure is heated by an externally located space heater.

It is important to note that the tipi structure, following a refusal of planning permission in October, remains unauthorised and subject to enforcement action.

The public house licence details are:

To serve alcohol

9am - midnight Monday - Thurs, (opening 08.00 - 0.30)

9am - 01.00 Friday - Saturday (opening 08.00 - 01.30)

9am - midnight Sundays (opening 08.00 - 0.30)

The external garden area of the public house measures 584sqm and is licensed to be used for the consumption of alcohol until 11pm daily.

Although a noise report has not been submitted with this application, the noise report submitted with the previous application 71062 is still considered valid and material to any assessment. This report indicated that, to mitigate excessive noise, a 2.5m high acoustic fence could be erected along the boundary with the rear gardens of properties fronting Cheshire Court.

Relevant Planning History

60601 - Change of use of first floor to bed and breakfast creating 5 bedrooms and single storey extension to rear - Approved 23/11/2016

71062 - Retrospective application for the retention of external bar, tipi, toilet block and pergola and the laying of paving and associated works - Refused 07/10/2024

71359 - Retrospective application for the retention of external bar, toilet block/log store and pergola - Approved 29/01/2025

12/0111 - Creation of beer garden - 16/05/2012

22/0211 - Installation of outdoor bar and ti pi - 18/07/2022
24/0147 - Teepee structure - 12/08/2024

Publicity

Immediate neighbours notified by letter dated 11/02/2025. 14 objections received from neighbours are summarised as follows:

- No change to the unacceptable situation regarding parking and noise levels. The retention of this structure should be refused like the previous application.
- Whilst the reasoning behind the reapplication is to honor events already planned, it is unreasonable given that these events were made when the tipi did not have planning permission and that planning permission has since been denied. You cannot continue to trade from a building or an equivalent that is not authorised to be used for the business
- The resident's objections haven't been taken into consideration with this new application and is only focused on the needs of the brewery.
- The parking issues have not changed and it is not fair as residents to have no access to parking anywhere near your home due to these events and the pub not having the capacity to hold them.
- The noise issues have not been addressed so this will not change and will continue to be a nuisance. No consideration given to the local residents.

Statutory/Non-Statutory Consultations

Traffic Section - Recommends refusal - see section below.

Environmental Health - Recommends refusal - see section below.

Greater Manchester Police - No comment received

Licensing Department - No comment received.

Pre-start Conditions - N/A

Development Plan and Policies

NPPF	National Planning Policy Framework
PfE	Places for Everyone
EN1/2	Townscape and Built Design
EN7/2	Noise Pollution
S2/6	Food and Drink
SPD11	Parking Standards in Bury
SPD16	Design and Layout of New Development in Bury
EC4/1	Small Businesses

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.

Background.

As with the previous refusal, the main issues are community and economic development, noise and disturbance and the impact of traffic and parking.

The applicant has attempted to address the main issues and suggests that any adverse impact of the tipi being in situ over the next 18 months is essentially outweighed by other factors:

- The need for public house to honour its commitment to clients who have booked the 'tipi' for various functions.
- The economic benefits that the additional business, generated by the tipi, accrue to the public house/ brewery in the face of a downturn in the hospitality business nationwide. The functions 'make an important contribution to the overall viability of the pub'.
- Although the tipi creates some noise, this is to be expected. However, it does not create additional noise over and above those which could reasonably be expected from a sizeable pub beer garden. The previous objections with regard to noise have been 'overstated and with an Operational Noise Management Plan in place, any impact would be further mitigated.
- The temporary permission would allow a more suitable solution to be found.
- The pub is established part of the locality and a balance approach is required.
- The 'permitted development' fallback for moveable structures within the curtilage of a pub. see General Permitted Development Order 2015, Part 2, Class G.

Policy context

Section 6 of the NPPF relates to the economy. Paragraph 85 states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth

and productivity, taking into account both local business needs and wider opportunities for development.

Section 8 of the NPPF promotes healthy and safe communities and indicates that in order to provide the facilities and services that a community needs, planning policies and decisions should, amongst other points, guard against the unnecessary loss of valued facilities and services, and ensure that established facilities are able to develop and modernise, and are retained for the benefit of the community.

Section 15 of the NPPF deals with conserving and enhancing the natural environment. Paragraph 180 states that planning policies and decisions should contribute to and enhance the environment by, inter alia, preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise and other forms of pollution.

Places for Everyone Joint Development Plan Policy JP-P1 promotes the development of sustainable places. Amongst other points, all development should respect and acknowledge the character and identity of the locality in terms of its design, siting, size, scale and materials. Development should be visually stimulating, legible, inclusive, safe, durable, comfortable and inviting.

Unitary Development Plan Policy EC4 relates to small and growing businesses and states that the Council will ensure that the needs of small and growing businesses are met by looking favourably on proposals for such developments, where these do not conflict with other policies of the Plan.

UDP Policy EN1/2 Townscape and Built Design states that the Council will give favourable consideration to proposals which do not have an unacceptable adverse effect on the particular character and townscape of the Borough's towns, villages and other settlements. Factors to consider when assessing proposals will include, amongst other points, the external appearance and design of the proposal, the choice and use of materials and the relationship of the proposal to the surrounding area.

UDP Policy EN7/2 Noise pollution. In seeking to limit noise pollution, the Council will not permit development which could lead to an unacceptable noise nuisance to nearby occupiers.

EC4/1- Small Businesses. Proposals for small businesses will be acceptable when the scale of development is appropriate to, and the use is environmentally compatible with, the surrounding area in which it is to be located, and where they do not conflict with other policies and proposals of the Plan.

S2/6 - Food and Drink. The Council in considering all proposals which involve restaurants, hot food takeaways, cafes, snack bars, wine bars and public houses, together with any other uses contained within Class A3, will have regard to the following factors:

- a) the amenity of nearby residents by reason of noise, smell, litter and opening hours;
- b) whether or not the proposal would result in an over concentration of Class A3 uses, which could adversely change the nature or character of a centre as a whole;
- c) parking and servicing provision associated with the proposed development and its effects in terms of road safety, traffic generation and movement;
- d) provision for the storage and disposal of refuse and customer litter;
- e) the environmental impact of any ventilation flues and/or ducting.

PfE Policy JP-C8 - Transport Requirements of New Development and UDP Policy HT2/4 - Car Parking and New Development. The Council will require all applications for development to make adequate provision for their car parking and servicing requirements in accordance with the Council's car parking standards.

Resident Standards: The SHS STANDARD BS 8236:2014 (A1) 2019s Guidelines with the beer garden area sitting between Redoubt House Buildings, the rear side of the latter Redoubt and the beer garden buildings on the other. Constraints are 35dB and 30dB respectively to the beer garden.

B50823 goes has been submitted with the pre-flight application and considered relevant. The desknote that the external noise levels were returned exceeded 60 dB(Aeq,Twp) and including appeal guideline value of 55 dB(Aeq,Twp) function would be acceptable at noise sensitive environments. However, it is recognised that the Monday 22nd, Tuesday 23rd, Wednesday 24th, Thursday 25th, Friday 26th, Saturday 27th, Sunday 28th, higher noise areas, such as city centre or urban areas are likely to be affected by the aircraft noise. It is noted that the noise levels between elevated noise levels and other factors might be warranted.

The report suggested mitigation measures in the form of acoustic barriers at a height of 2.5m. It is suggested that the existing bar garden, which provides a raised 100dB of attenuation to reduce noise levels from the theatre, be demolished and replaced with a new bar garden. The existing properties on Church Lane must be at effect significantly lower level of noise compared to the bar garden, as such, the proposed 2.5m high acoustic barrier was the effect of light fencing over garden and the ground floor windows of the adjacent properties across the whole year, as opposed to a general outdoor beer garden function, even with a 'permitted' moveable structure. The knock-on effect is the increased use of the bar garden space, which with mitigation measures was implied for street parking, impacts predicted during the parking area concept stage. In addition, highway safety development is a problem from the number of pedestrians crossing the road, which is already at a conflict of interests between the functions/activities taking place within the bar garden, specifically functions related to the tipi and external bar area, and the immediate neighbours.

Permitted development - The applicant has referred to permitted development rights with a view to the existing beer garden being regarded as established and indeed, permitted. Class G development relating to beer gardens attached to pubs and vessels that 50% of the footprint of the building or structure, which is used for music to be played with beer gardens. It is unusual to have a function room within a beer garden and the impacts of this are the main issue arising with this proposal. This permission as it is above 3m in height and is not a moveable structure. Whilst the tipi is a tent-like structure, it has a significant degree of permanence. Notwithstanding, allowing for seating area, there is certainly an issue of additional noise from the tipi with wind blowing and the addition of the coming and going from the external bar area. It is noted that there is music played, through a function space and also outside the external bar area. The fabric of enclosing the tipi provides no insulation from the noise generated within it or from the music emanating from the sound system or from the visual amenity. The supporting statement submitted with the application suggests

improvements to the garden have been carefully designed to complement and enhance the appearance of the site.

The difference between an average beer garden and one with a function tent catering for birthday parties and weddings etc and external bar in terms of noise impact is considered significant.

The report confirms that a 2.5 metre high acoustic fence would be required, which

would be a close timber boarded fence against the boundary of the site with properties on Cheshire Court. As such, the proposed parking would be similar to the existing without the tip function space there would probably be additional on street parking generated by the pub and associated noise. However, it is clear that additional customer vehicles generated by visiting events at the tip, no doubt adds to the on street parking around the site and as a particularly onerous feature is the problem of general loitering and disturbance arising from loitering and the premises and accessing their vehicles, waiting and closing down the streets and affording etc. This would be particularly in the area of the residential roads such as Peel Brow and Cheshire Court.

The proposal to retain the tipi structure in situ for 18 months would not be appropriate and would constitute an incongruous feature that is out of keeping with the visual uniformity of the area. The premises and customers accessing their cars on side streets is a particular problem.

Noise Impact Assessment: Although DP Power's noise report has been submitted, the previously submitted design and is considered relevant. This report determined that the representative background sound level for the surrounding receptors would be 44 dB. This has been derived from looking at the hours before and after operation (11:00 and 23:00) on

each day surveyed, the median value of these hours is 44 dB. This value is representative of the background sound level when the external seating area is not in operation.

The surveys produce a highest hourly noise level for a planned event within the Tipi and also a highest hourly noise level when the external area is being utilised, but no planned event is taking place.

The highest predicted specific noise level in rear gardens is noted to be 69.3 dB. This is above the upper criterion of 55 dB as stipulated in BS 8233. Even with the acoustic fence, the noise level would be 59.3dB, which is above the 55dB limit. As such, the retention of the tipi would have an adverse impact upon the sensitive noise receptors in the rear gardens of the neighbouring properties.

Furthermore, the noise levels predicted at the façade of the worst affected receptor is 58.2 dB. Assuming an open window this would result in internal noise levels of 45 dB. This is 10 dB above the daytime criterion within BS 8233: 2014. As such, the development would have an adverse impact upon the amenity of the neighbouring properties.

The report accepts there is a noise issue and recommends the construction of an acoustic fence along the shared boundary with properties on Cheshire Court. The proposed acoustic fence would be constructed from timber. The Environmental Health team have raised concerns that a timber fence would not be sufficient to deal with the potential for noise and recommend that a brick/solid wall should be provided.

Whilst the proposed acoustic fence would mitigate noise to an extent, on balance, it is not considered sufficient mitigation for the use of the tipi and the associated on-site activities and noise generators in addition to the noise and disturbance caused by customers leaving and accessing their vehicles on the residential side streets, particularly given the proximity of the surrounding residential properties to the site.

The noise report addresses noise from the beer garden, tipi and heater but does not address wider issues of noise from other sources such as customers leaving the pub and accessing cars, which would be exacerbated by the retention of the tipi through use all year round.

The Environmental Health team maintain that the proposal would be unsuitable in this location and there would be insufficient mitigation for noise and disturbance created.

Given the harm identified, the proposal, in terms of residential amenity, is unacceptable for the reasons set out above and does not comply with UDP Policies EC4/1 Small Businesses, S2/4 Food and Drink and EN7/2 Noise Pollution.

Economy - Like most of the retail sector nationally, the pub/restaurant sector is under great pressure to survive in a competitive market. In past years approval has been given to extend and introduce bed and breakfast accommodation at the pub. The supporting statement submitted with the application states that the developments subject to this application have allowed the business to further adapt and modernise and provide a high quality environment for its customers. It adds that the development is an essential part of the pub / restaurant and supports the viability of the business going forward.

The existing public house appears to be a popular local destination both for social functions, drinking and eating. The tipi, which has allowed the pub additional function space is clearly commercially beneficial and in particular was beneficial during Covid when the structure was first erected. The critical factor to consider is, do the economic and commercial benefits outweigh other disbenefits, in this case those relating to visual and residential amenity and highway safety.

In terms of economy, the proposal, whilst improving the economic viability of the pub, would

have a serious and detrimental impact on visual and residential amenity. The proposal therefore is not acceptable and conflicts with the NPPF, PfE and UDP Policies EC4/1 Small Businesses and S2/6 Food and Drink.

Access and Parking - The public house is a popular venue for drinking and dining for both locals and those from further afield. The pub is also used as a bed and breakfast with consent has been granted for 5 bedrooms in 2016. With on-site parking limited to a small car park containing 11 spaces, it is a regular occurrence for customers to park on Peel Brow and Cheshire Court, directly behind the pub.

The proposal to retain the tipi as a function space for 18 months would have the consequence of maintaining the relatively high levels of customer parking around the site that have given rise to parking problems experienced by residents in the immediate vicinity.

The pub is located close to the junction of Whalley Road with Peel Brow and any parked cars in this area would lead to restricted visibility at this junction, which provides the only right turn into Ramsbottom and as such, is used frequently.

The Traffic Section have objected on the grounds of lack of parking and consider that the proposed development would put parking pressures on the adjacent nearby streets which would be detrimental to highway safety and as such would be contrary to policies H2/4, JP-C5 and JP-C6.

Carbon and Energy - An energy and carbon statement was submitted and states that the proposed development does not fall into any of the above categories set out in the PfE validation checklist and therefore a Carbon and Energy Statement is not be required.

It is not possible for the structures to incorporate any renewable energy generation (such as solar PV), since they do not have the load-bearing capacity. The inclusion of any renewable energy generation would also be totally disproportionate to the development.

The applicant states that the requirements of Policy JP-S2 of the PfE Document should not be applicable to the proposed development.

It can be argued that the tipi is clearly a building and therefore a carbon and energy statement is required. However irrespective of this, the issue of carbon and energy efficiency is not considered to be significant.

Digital connectivity - A short statement submitted states that the site served by Wi-Fi and customers are able to access the internet for free via their devices on site.

Public comments - Where relevant, the issues raised by local residents are addressed in the above report.

Complaints about waste being thrown into rear gardens from beer garden and other anti-social behaviour, whilst clearly are relevant, could be mitigated by improved management.

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 design and appearance of the 'tipi' structure is neither appropriate to, nor sympathetic with its site and surroundings and would be detrimental to the visual amenity of the area. The proposed development therefore conflicts with the following policies of the Bury Unitary Development Plan: EN1/1 Visual Amenity, EN1/2 Townscape and Built Design and associated guidance in SPD16 New Development in Bury and the National Planning Policy Framework
- 2 The retention of the 'tipi' structure for 18 months would be seriously detrimental to the residential amenities of surrounding residents, by reason of the noise, disturbance and general activity associated with the proposed use, including customers leaving and accessing vehicles late in the evening. The proposed development therefore conflicts with the National Planning Policy Framework and Places for Everyone and the following policies of the Bury Unitary Development Plan: EC4/1 Small Businesses, S2/6 Food and Drink, EN7/2 Noise Pollution.
- 3 The proposal would result in the significant intensification of the use of the site with limited existing off-street parking facilities, which is highly likely to lead to vehicles parking and carrying out manoeuvres on the surrounding residential streets where on-street parking facilities are at a premium at all times of day, which would have a significant impact on existing parking facilities for existing residents and be detrimental to the free flow of traffic and road safety. The proposed development therefore conflicts with Bury Unitary Development Plan Policies HT2/4 - Car Parking and New Development, EN1/2 - Townscape and Built Design and Places for Everyone Joint Development Plan Policies JP-C5 Streets For All, JP-C6 Walking and Cycling and Supplementary Planning Document 11 - Parking Standards in Bury.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
Tom Beirne	11/03/2025	HL -	13/03/2025