

Appeal by Emerald Property Capital Limited

104 Ainsworth Road, Bury, BL8 2RS



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1 Appeal References

- 1.1 Planning Inspectorate reference: APP/T4210/W/23/3324587
- 1.2 Local Authority reference: 69132

2 The Appeal Site and its Location

- 2.1 The appeal site is relates to a mid-terraced dwelling located on Ainsworth Road. The dwelling was converted to a 6no. house of multiple occupation (HMO) under permitted development (Use Class C4).
- 2.2 The site is a 2 storey property with accommodation in the roofspace and rear dormer. There is also a 2 storey rear outrigger. To the rear there is a yard where bins are stored, and which provides a small level of outdoor amenity space which is enclosed by a high wall and gate. A single storey out building is also located within the rear yard of the site that is utilised to store bikes.

3 Description of the Proposal

- 3.1 The proposed development seeks the change of use of the property from a 6 no. bedroom HMO (Class C4) to a 7 no. bedroomed person HMO (Sui generis).
- 3.2 It is proposed to convert a current storage space within the loft to provide an additional bedroom. The remainder of the internal and external arrangements and accommodation would not change.
- 3.3 The application was refused under delegated powers on 22nd March 2023 for the following reason:

1. The proposed development, by virtue of the increased occupation and loss of communal space, would result in a loss of facilities and amenities available to the existing and future occupiers of the property and as such would have a detrimental impact on residential amenity of the occupiers. The proposed development would therefore be contrary to Bury Unitary Development Plan Policies H1/2 - Further Housing Development, H2/1 - The Form of New residential development, H2/2 - The Layout of New Residential Development and H2/4 - Conversions.

4 Relevant Planning History

- 4.1 There are no previous planning applications lodged in respect of the appeal site.

5 Relevant Policies, Plans and Strategies

- 5.1 With regard to the application that is subject to this current appeal, the decision to refuse planning permission was made in accordance with the National Planning Policy Framework, the adopted Bury Unitary Development Plan and Supplementary Planning Documents.

National Planning Policy Framework

- 5.2 In July 2021, the Government issued the National Planning Policy Framework (NPPF). Central to the NPPF is the Government's objective of achieving sustainable development and it highlights (para. 8) that the planning system has a number of roles to play in achieving this fundamental objective, namely:
- **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
 - **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of the present and future generations; and by fostering well-designed , beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities health, social and cultural well-being; and
 - **an environmental objective** – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and

mitigating and adapting to climate change, including moving to a low carbon economy.

- 5.3 The National Planning Policy Framework (NPPF) should be treated as a material planning consideration, and it emphasises the need for local planning authorities to boost the supply of housing to meet local housing targets in both the short and long term.
- 5.4 Paragraph 62 confirms that “the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers²⁷, people who rent their homes and people wishing to commission or build their own homes)” however no direct reference is made to HMO’s.
- 5.4 Paragraph 39 of the NPPF in Section 4 (Decision-making) states that Promoting sustainable transport) states that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality preapplication discussion enables better coordination between public and private resources and improved outcomes for the community.

Local Planning Policy

Bury Unitary Development Plan, 1998

- 5.4 The Government remains committed to the plan-led system and this is made clear through Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that where a determination is made under the Planning Act, regard is to be had to the development plan and the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

- 5.5 The Bury Unitary Development Plan (UDP) was adopted on 29th August 1997 and sets out the Council's policies and proposals for the development and use of land in the Borough. The majority of the policies and proposals of the UDP have been saved until such time that they are replaced by policies and proposals in the emerging Local Plan.
- 5.6 The following policies are considered to be relevant to this appeal.
- 5.7 H1/2 - Further Housing Development states that the Council will have regard to the following factors when assessing proposals for housing development on sites not identified on the Proposals Map:
- a) the need to direct development towards the urban area;
 - b) the availability of infrastructure;
 - c) the need to avoid the release of peripheral open land, unless this can be shown to be consistent with urban regeneration;
 - d) the suitability of the site in land use terms with regard to amenity, the nature of the local environment and surrounding land uses;
 - e) other policies and proposals of the Plan.
- 5.8 H2/1 - The Form of New Residential Development states that all new residential development will be expected to make a positive contribution to the form and quality of the surrounding area. Factors to be considered when assessing proposals will include:
- a) the height and roof type of adjacent buildings;
 - b) the impact of developments on residential amenity;
 - c) the density and character of the surrounding area;
 - d) the position and proximity of neighbouring properties;
 - e) the materials to be used in proposed developments, especially their colour and texture.

- 5.9 H2/2 - The Layout of New Residential Development. New residential development will be required to demonstrate acceptable standards of layout. Factors to be considered when assessing proposals will include:
- a) car parking provision;
 - b) access for both vehicles and pedestrians, and provision for public transport;
 - c) the possible need for traffic calming measures;
 - d) density;
 - e) space about and between dwellings;
 - f) landscaping and screening;
 - g) protection/provision of trees and hedgerows;
 - h) open space/children's play areas;
 - i) design for safety and security;
 - j) access/facilities for the disabled;
 - k) the existence of any public rights of way.
- 5.10 H2/4 – Conversions. Applications for the conversion of buildings into two or more self contained units, or the conversion of a building into a house of multiple occupation, will be considered with regard to the following factors:
- a) the effect on the amenity of neighbouring property through noise, visual intrusion, the position of entrances, impact of parking areas, extensions and fire escapes;
 - b) the general character of the area and the existing concentration of flats;
 - c) the amenity of occupants;
 - d) the effect on the street scene of any changes to the external appearance of the building;
 - e) car parking and servicing requirements.
- 5.11 This policy is further supported by Supplementary Planning Document 13 – Conversion of Buildings to Houses in Multiple Occupation.

5.11 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 be considered when assessing proposals will include:

- a) the external appearance and design of the proposal in relation to its height, scale, density and layout;
- b) the relationship of the proposal to the surrounding area;
- c) the choice and use of materials;
- d) access and other design features for the mobility impaired;
- e) the design and appearance of access, parking and service provision;
- f) landscaping, including the use of natural landscape features, and open space provision;
- g) the use of lighting.

5.12 HT2/4 - Car Parking and New Development states that 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.

5.13 The Council's car parking standards are set out within Supplementary Planning Document 11 – Parking Standards in Bury.

6 The Council's Case

- 6.1 The Council's case has been set out within the Officer Report. It was considered by the Council that the increased occupation of the property would lead to a development that would provide a poor level of shared accommodation for future occupiers.
- 6.2 The original property was a 2 storey terraced dwelling, providing enough accommodation for a small family and associated amenity space. It is considered by the Council that the accommodation proposed would fail to provide adequate communal space and external amenity space for 7 separate occupiers.

7 Response to the Appellant's Grounds of Appeal

- 7.1 It is acknowledged that the proposed layout would comply with Bury Council HMO Licencing Department guidance however a planning application was submitted and duly assessed in relation to the material planning considerations. Planning decision-making involves exercising judgement and weighing up the relative weight of the matters at hand. The amount of weight to be afforded to a material consideration is a judgement in itself. Whilst the comments of the HMO Officer do make up one of the material considerations, this was not considered to outweigh the planning policy considerations set out within the Officer Report.
- 7.2 It is considered that the house, as a 6 person HMO is already at capacity. Whilst occupancy rates may vary, dependent on lifestyles and working patterns the appellant's assertion that the HMO "is basically used as an alternative to a hotel stay" appears disingenuous. The needs for all users of the property need to be taken into consideration not just those who only inhabit it Monday-Friday. Indeed, with the number of people now adapting to homeworking and hybrid working it can be argued that there is an even greater need to ensure that the needs for all future tenants is adequately provided in terms of adequate internal and external communal and amenity space outside of their own private rooms. The addition of an extra user within the property would therefore lead to an intensified use of the communal and outdoor amenity spaces that would go beyond the existing use and would exert unacceptable pressure on a terraced property.
- 7.3 There is a public open space within walking distance of the appeal site, but this would have a different role in serving the amenity requirements of the occupants of the property. As confirmed by Appeal Decision APP/T4210/C/18/3195651 "Such spaces are

important to serve recreational needs, but do not meet the immediate day-to-day domestic functions that can be served by outdoor private amenity spaces such as back yards and gardens.”

- 7.4 In paragraph 4.15 and 4.16 the appellant confirms that they consider that the rear yard area is sufficient and that 7 persons could fit into it. In paragraph 4.17 the appellant confirms they are going to relocate the bins inside the existing bike storage to further increase this external space. Even if the bins are relocated within the bike storage due to the existing extensions, and outbuildings reducing the amenity space of the property this would lead to a linear amenity area of 15 square metres rather than a usable outdoor space to relax, sit out, dry washing etc. It is noted that the weather in the North West does not always facilitate the use of this space, however it is considered that the future tenants should be provided with adequate space outside of the single kitchen/dining/sitting area should they so wish and when the weather permits.
- 7.5 It is considered the existing yard space is already inadequate for the existing 6 users to meet their domestic needs and a further user would intensify this use further. Whilst a condition can be put on to submit plans to show a new bin storage area within the bike store, the use of this area as bin storage cannot be reasonably enforced by condition and it is considered that it is likely that the bins will still be stored in the yard area. It is also unknown how much the existing bike storage is currently utilised, but there is also potential that the bikes may now need to be stored in the rear yard rather than the bins which would not address the issue of inadequate outdoor space.
- 7.5 It is accepted that there would be no occupation limit on the property if it were retained as a dwelling and that the property can be utilised for intergenerational living if it were retained as a family property rather than an HMO. It is also accepted that the extent of

built form is existing and could be utilised by a family in a different configuration than existing. The ability for any occupiers of this property do to this however is limited by the size and layout of the property, and their specific needs and circumstances. Indeed, the appeal referenced above (Appeal Decision APP/T4210/C/18/3195651) was for an extension to provide additional family accommodation, and this was refused and the enforcement appeal dismissed due to the reduced amenity space for the occupiers.

- 7.6 The original property would have been a two bedroom property, that has been extended at two storey to the rear to provide a kitchen and a bathroom. Even if some of the downstairs living spaces were converted to a bedroom to meet the needs of family members, or a loft conversion were included to create an additional bedroom it is considered highly unlikely that a family would convert the kitchen and family bathroom to additional bedrooms and provide ensuites to each room and as such this would naturally limit the amount of occupants. In any case, an HMO use is different to a dwelling use in, which is why planning permission is required if they appellant wishes to utilise the property as a 7no. person HMO.

8 Conclusions

- 8.1 On the basis of the above evidence, the Council considers that the appeal proposals are in conflict with policies of the adopted Bury Unitary Development Plan and the National Planning Policy Framework. Accordingly, it is the Council's view that this appeal should be dismissed.

9 Suggested Conditions and Planning Obligations

- 9.1 Notwithstanding the Council's case, should the Inspector be minded to allow this appeal, the Council would respectfully request that this be done subject to planning obligations and a series of conditions.

Suggested Conditions

- 9.2 Should the Inspector be minded to allow the appeal, it is requested that the following conditions be added to any granting of planning permission
- 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 numbered (20)A004, (-9)A001, (20)A003 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 Prior to the use hereby approved being brought into use a scheme for the storage of bins, refuse and bikes for the proposed use, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme only shall be implemented in accordance with the approved details.
Reason. Full details of storage have not been submitted to ensure adequate provision for the storage and disposal of refuse pursuant to Bury Unitary Development Plan Policies H2/4 - Conversions, H2/2

- The Layout of New Residential Development and EN1/2 -
Townscape and Built Design



Bury Council
Business, Growth and Infrastructure
Development Management
3 Knowsley Place, Duke Street, Bury BL9 0EJ