

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 30/05/2024	Ref: 70606/FUL
Registration: 10/04/2024	LDfC: 08/05/2024	Expiry Date: 05/06/2024
Site Visit: 17/04/2024	Site Notice: N/A	Press Date: N/A
Objections: 0	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Change of use from former shop and premises (Class E) to 1 no. hot food takeaways (Sui Generis) and a retail unit (Class E) at ground floor; a commercial unit (Class E) at first floor; a two bedroom apartment at second and third floors (Class C3) and external ventilation duct at rear

Location: 85 The Rock, Bury, BL9 0NB

Description

The application relates to a four storey mid terraced property which is located within a main pedestrian shopping street in Bury Town Centre.

The ground floor is a currently a single retail unit with the upper floors used as offices.

The application seeks the change of use of the building to form 2 separate planning units comprising 1 no hot food takeaway (Sui generis) and 1 no retail (Class E) at ground floor, a Class E unit (offices) and associated welfare facilities at first floor, and a 2 bedroomed apartment over the second and third floors.

The ground floor units would be accessed via new shop front entrances with access to the upper floors from the rear yard which would lead to an internal hallway and staircase. There is an existing external staircase which could also be used to access the office and residential unit and for fire escape purposes.

There would be an external ventilation flue installed at the rear to project from the single storey rear outrigger which would serve the hot food outlet.

Communal bins would be located in the rear yard to serve all users of the building.

Relevant Planning History

N/a

Publicity

Letters sent to 41 properties on 15/4/24.
No responses received as a result of the publicity.

During the process, the applicant amended the application from 3 no shop units (2 no hot food takeaways and 1 no retail unit) and locate the flue on the external fire escape stairs to what is now proposed, for 2 no units and to locate the flue to project from the existing single storey outrigger above the main eaves level.

It is considered the amendments would not change the character of the development to a significant degree and the relocation of the flue would not affect adjacent properties to warrant re-notification of neighbours.

Statutory/Non-Statutory Consultations

Traffic Section - No objection subject to condition

Environmental Health - Pollution Control - No objection subject to conditions.

Waste Management - No response received

Pre-start Conditions - Not relevant

Development Plan and Policies

NPPF	National Planning Policy Framework
S1/1	Shopping in Bury Town Centre
S2/3	Secondary Shopping Areas and Frontages
S2/6	Food and Drink
EN1/2	Townscape and Built Design
H2/2	The Layout of New Residential Development
H2/1	The Form of New Residential Development
JP-H3	Type, Size and Design of New Housing
JP-H4	Density of New Housing
JP-C2	Digital Connectivity
JP-S2	Carbon and Energy
Area	The Rock/Peel Way
BY5	

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 NPPF recognises that town centres are made up of a range of different uses to provide a variety of services and facilities for shoppers and residents and UDP Policy TC2/1 supports proposals to bring underused and vacant space on upper floors into a beneficial use.

The building is within a highly sustainable location, with existing infrastructure in place to support the scale of the development.

The ground floor would remain in commercial use and therefore continue to contribute to the shopping role of the town centre.

As such, the proposed development would accord with the NPPF and development plan policies of the UDP and PfE.

Layout

Commercial units

In terms of the shop units, the existing front entrance would be modified to create two separate glazed shop fronts and entrances. Each unit would also have an access at the back of the shop floor area to access shared welfare facilities and the rear yard where bins would be stored.

A ventilation flue for the hot food takeaway would be located at the rear and would project from the single storey outrigger and set against the back wall to project just above the main eaves level of the building. However, it would be located away from any office windows at the first floor and habitable room windows to the proposed flat.

Access to the office and the flats would be located at the rear, either via the back yard to an internal staircase or alternatively the external fire escape and this would be a similar arrangement to other properties on this row.

Residential units

Policy JP-H4 - Density requires new housing development to be delivered at a density appropriate to the location, reflecting the relative accessibility of the site by walking, cycling and public transport and the need to achieve efficient use of land and high quality design. Policy JP-H4 sets out minimum densities that should be considered. Therefore in accordance with Policy JP-H4 regard should be had to a minimum net residential density of 120 dwellings per hectare at this site.

The development proposes one unit. However it would bring back into use under-utilised space above commercial premises and provide relatively generous accommodation within a sustainable town centre location. As such, the density for this particular development is

considered acceptable.

Policy JP-H3: states that all new dwellings must comply with the nationally described space standards and be built to the 'accessible and adaptable' standard in Part M4(2) of the Building Regulations unless specific site conditions make this impracticable.

The proposed residential unit would be a flat above commercial properties and therefore it would be impracticable and costly to fully comply with the requirement of JP-H3 and Part M4(2) of Building Regulations for dwellings to be accessible and adaptable.

This is accepted for development which involves flats above shops in a town centre location.

The applicant has confirmed the development would comply with nationally described space standards and as such the development is considered acceptable given the amount of accommodation available in the building and the setting of the property in the town centre.

The proposed flat would be accessed via the back street which is used for the servicing of the shops and businesses on the row and by other residents accessing existing residential accommodation above some of the commercial units.

As such is considered the proposed access arrangements would be acceptable in this location.

There would be no external changes to the building.

The existing openings and the dormer to the fourth floor would provide adequate levels of lighting to habitable rooms.

It is therefore considered the proposed development would be acceptable and comply with policies S2/3, H2/1, H2/2 and JP-H3.

Impact on residential amenity

In terms of impacts on adjacent occupiers, the proposed development would continue to provide a shop and food outlet which would be appropriate uses for a town centre location. The applicant has not provided details of the opening hours but given the town centre location and that other businesses would operate at various times of the day, it is considered there would be no requirement to restrict the opening hours for the proposed commercial units.

The upper floors for a commercial class E unit and residential flat are not uses which would give rise to significant noise or disturbances and are common uses for upper floors in town centre locations.

It is therefore considered that the proposed development would not cause significant harm to adjacent occupiers.

In terms of the occupation of the proposed residential unit, any future resident should expect some disturbances from town centre living above new shop units.

It is therefore considered the proposed development would be acceptable and would comply with Policies H2/2 - The Layout of New Residential Development and EN1/2 - Townscape and Built Design.

Bin storage

There is a rear yard area which would provide shared bin storage areas sufficient to serve both the retail and residential unit.

The applicant has confirmed the bins could be accessed and collected from the rear yard area.

The Highway Authority have recommended a condition that sufficient provision of communal bins are provided within the yard area.

Carbon and Energy

JP-S2 - Carbon and Energy requires new development to be net zero carbon in relation to regulated operational carbon emissions unless it can be demonstrated that it is not practicable or financially viable. JP-S2 Carbon and Energy also requires new residential development to incorporate adequate electric vehicle charging points and to be consistent with the 2022 Part L Building Regulations to reduce amount of carbon emission from buildings.

A Statement has been submitted to state energy and heat saving mechanisms would be put in place within the premises.

It is therefore considered the proposed development would comply with Policy JP-S2.

Digital Connectivity

JP-C2 - Digital connectivity supports the provision of affordable, high quality, digital infrastructure

The applicant has submitted a Statement to confirm the development would provide local internet infrastructure in compliance with Policy JP-C2.

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 -

Site and site location plans 1956.203 rev C
Proposed front and rear elevations 1956.202 rev C
Existing floor plans 1956. 101
Proposed floor plans 1956. 201 Rev C
Existing front and rear elevations 1956.102
Access Plan 1956.204 rev A
Digital connectivity statement dated 20.4.2024
Carbon and energy statement 20.4.2024

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 No development shall commence unless and until a scheme for treating, diluting and dispersing fumes and odours has been submitted to and approved in writing by the

Local Planning Authority. The scheme submitted shall include a written statement from a suitably qualified person who is a member of the Heating and Ventilation Contractors Association (HVCA) or an equivalent professional body, stating that the fume treatment to be installed complies with or exceeds the 'Minimum Requirements For Odour Control' provided by the Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems :DEFRA 2005 (or if applicable such superseding guidance as shall prevail at the time of commencement of the development).

The scheme to be submitted shall also include the relevant manufacturer and installer instructions for any associated equipment with details of maintenance requirements.

The installation shall be so designed such that the maximum noise emitted does not exceed NR25 (Noise Rating) in the bedrooms of the nearest residential property, with the windows of that residential property being open in the normal manner for ventilation purposes.

The scheme as approved shall be implemented, available for use and maintained in accordance with the approved scheme and in accordance with the approved manufacturers and installers instructions whilst it shall serve the development.

Reason. The application contains insufficient detail in order to demonstrate that the required scheme to protect the residential amenities of nearby residential property from impact upon from fumes and odour pursuant to Policies EN7/2 - Noise Pollution and S2/6 - Food and Drink.

- 4 Notwithstanding the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015, as subsequently amended, the flat hereby approved shall not be used for any other purpose other than a Class C3 use (including any other purpose in Class C3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 as amended) without the submission and approval of a relevant planning application.

Reason. In the interests of residential amenity, to safeguard the character of the area and to secure the appropriate scale and intensification of use of the development for the site pursuant to policies H2/1 - The Form of New Residential Development, H2/2 - The Layout of New Residential Development and JP-H3 - Type, Size and Design of New housing.

- 5 The bin storage facilities indicated on the approved plans, incorporating a sufficient number of slimline communal bins for both the commercial and residential uses proposed and that can be accommodated through an inward opening gate and stored within the yard area clear of the adopted highway, shall be made available prior to the uses hereby approved commencing and maintained thereafter.

Reason. To ensure adequate provision for the storage and disposal of refuse within the curtilage of the site, clear of the adopted highway pursuant to Bury Unitary Development Plan Policies EN1/2 - townscape and Built Design, H2/2 - The Layout of New Residential Properties and S2/6 - Food and Drink.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	30/5/24		