

Appeal at:
No.10 Union Street &
No.40 The Rock
Bury



Appellant's Justification for the Hearing Procedure

- 1.1. The Appellant contends that it is necessary for this appeal to be determined by the Hearing procedure for the following reasons:
- i. The Appellant contends that UDP policy that underpins the reason for refusal is out-of-date. This matter cannot be effectively explored in full through the Written procedure. The Hearing procedure is necessary to enable full consideration of the degree of conformity of UDP policy with the NPPF, and subsequently, to facilitate a discussion between the parties on how this conclusion effects the assessment and determination of the appeal proposal;
 - ii. The reason for refusal alleges that the appeal proposal would '*neither preserve or enhance the conservation area*' and '*would cause an unacceptable loss of architectural significance of a Non-Designated Heritage Asset*'. Both of these matters are predicated upon subjective assessment, which needs to be tested by the appeal process. Such testing can only be effectively achieved the opportunity for open discussion permitted by the Hearing procedure;
 - iii. The Delegated Report states that work to the appeal site's frontage to The Rock could be undertaken without the requirement for planning permission as it '*would not materially affect the external appearance of the building*'. However, planning permission has been refused on the grounds that such works would materially affect the external appearance of the building. The Hearing procedure is necessary to enable this apparent inconsistency in the Council's assessment of the appeal proposal to be explored in full, which is highly unlikely to be satisfactorily achieved through the Written procedure;
 - iv. As above, the Council has stated that the works to the frontage of The Rock may be undertaken without the need for planning permission. It may, therefore, be the case that the proposed work to the frontage of Union Street may also be undertaken without the need for planning permission, but the Council's written assessment of the appeal proposal is silent on this matter. The Hearing procedure is, therefore, necessary to ensure that discussions on this matter are undertaken to determine whether planning permission for the appeal proposal is actually required. The Written procedure does not guarantee that this matter can be dealt with effectively;
 - v. The Appellant contends that additional UDP policies are material to the determination of the appeal proposal, and has sought to explore the Council's consideration of such matters in the draft Statement of Common Ground. However, the Council has simply confirmed that the additional policy considerations are '*not relevant*'. No further explanation of justification has been provided, and the Council is not compelled to provide such explanation if the Written procedure is followed. The Hearing procedure is, therefore, necessary to facilitate discussion on whether such policies are material to the

decision-taking process and, if so, the weight that they carry;

- vi. Following the refusal of planning permission, the Appellant has engaged with the Council in an attempt to find common ground to avoid the need for this appeal. However, the discussions held have identified several matters of significant concern with regard to the manner that the appeal proposal has been assessed. The Council has indicated that it may have taken a different approach towards the determination of the appeal proposal if the building had been vacant and there was no prospect of it being used for non-retail purposes, but it has been bound to refuse consent because the building is occupied by the Appellant. Such matters go to the heart of the refusal, and it is, therefore, necessary to explore them in detail. This detailed assessment cannot be guaranteed through the Written procedure, and can only be reasonably achieved through direct discussion at a Hearing session; and
 - vii. The above post-determination discussions with the Council indicate that the Council felt compelled by the NPPF to refuse consent for any development that would cause harm to a Non-Designated Heritage Asset and/or a conservation area, regardless of the magnitude of that harm. This suggests a fundamental mis-understanding of the NPPF's approach towards heritage impacts, which clearly and plainly advocates a balancing approach. It is necessary for the Council to offer an explanation on this potentially fundamental misunderstanding of policy, which cannot be guaranteed by the Written procedure. Accordingly, a Hearing is necessary.
- 1.2. The Appellant, therefore, concludes it is imperative to the determination of this appeal that primary matters of significant material weight are subject to discussion and interrogation in order for the Appellant's proposals to be fairly and reasonably assessed. This fair and reasonable assessment cannot be guaranteed, and is highly unlikely, if the appeal is determined by the Written procedure. Indeed, the Council is not obliged by the Written procedure to present evidence or even respond to salient points raised by the Appellant that go to the heart of the grounds for refusal. The Hearing procedure is, therefore, necessary and justified.

6 March 2024