

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 16/08/2022	Ref: 68409/FUL
Registration: 25/05/2022	LDFC: 16/06/2022	Expiry Date: 20/07/2022
Site Visit: 10/06/2022	Site Notice: N/A	Press Date: N/A
Objections: 0	Con Area: N/A	Adv Type: NONE
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Change of use from retail (Class E) to Hot food takeaway (Sui Generis) and retention of flue at rear

Location: 3 Rufford Parade, Rufford Drive, Whitefield, Manchester, M45 8PL

Description

The site relates to the ground floor of a retail (Class E) shop which is located within a parade of five shops in a Local Neighbourhood Shopping Centre (S1/5). The adjacent businesses comprise two hot food takeaways, two retail shops and a beauty salon. There are 2 floors of residential flat accommodation above the shops.

At the rear there is an access to the rear yard areas of these premises where bins are stored.

The application property has a flue on the rear elevation, which has been erected without planning consent. The application seeks the change of use to a hot food takeaway (sui generis) and retention of the flue.

Hours are proposed as 5pm to 11pm daily.

Relevant Planning History

N/a

Publicity

Letters sent on 26/5/22 to 8 adjacent occupiers.

No responses received

Neighbours re-notified on 22/7/22 of the amended description to include the retention of the flue.

No responses received.

Statutory/Non-Statutory Consultations

Environmental Health - Pollution Control - Recommend conditions

Traffic Section - No objection subject to condition.

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

NPPF	National Planning Policy Framework
EN1/2	Townscape and Built Design
EN7	Pollution Control
EN7/1	Atmospheric Pollution
EN7/2	Noise Pollution
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.

Principle - The premise is located within a Neighbourhood Centre and under policy S1/5, the Council seeks to maintain and enhance local shopping centres to cater for day to day needs of local residents.

Policy S2/6 has regard to factors including impact on amenity of residents, concentration of hot food takeaways within the centre, parking and servicing, storage and disposal of refuse, impact of flues.

It is recognised that it may not always be possible to retain existing retail provision where there is no demand to make a retail or class E business viable. In this case, the proposed use would result in 50% of the shops operating as a hot food takeaway.

More recent times have seen a general economic decline in the number of small businesses which has also affected town centres. The change in legislation to merge some former class A uses with other uses such as offices, clinics and recreation facilities into a single Class E category is one demonstration of relaxation of planning to facilitate an easier process to change the use of premises.

The application premises is currently vacant and from google street images, appears to be the case for almost 12 months.

The proposed use, whilst an evening and nighttime business, would make some contribution to consolidating and contributing to the viability of the local shopping centre and encourage footfall to the area.

It is therefore considered that given the proposed takeaway would occupy a vacant unit and make some contribution to the viability and vitality of the centre, on balance, it is considered the proposed use would be acceptable and comply with S1/5 and S2/6.

Impact on residential amenity - There are residential flats above the parade of shops and the occupier of the flat above the application premises the most likely to be affected by noise and disturbances.

There would already be some comings and goings later at night from the takeaways which are open at the upper end of the row and also the off license which could open until a later time and as such there is already an existing level of noise and disturbance.

The proposed use would likely serve a local need where the majority of patrons would be local and walk. Visits to such establishments also tend to be for brief periods of time.

Hours are proposed as 5pm to 11pm.

Occupiers of residential flats above a parade of shops in a mix of uses would expect a degree of noise and disturbance from both those using the shops and occupiers.

It is considered in the context of the area, an evening and night time use would not result in significant additional noise and disturbance to the occupiers of the nearby residential properties. That said, 10.30pm closing time would be a more reasonable time for a premises of this type.

It would also be considered reasonable to include a condition for soundproofing to be incorporated between the floors of the takeaway and residential flat above.

As such, it is considered the proposed use would not have a detrimental impact on residential amenity and would comply with policies EN1/2, S2/6 and EN7/2.

Flue - There is an existing flue on the rear elevation which extends past a habitable room window on the rear elevation which has been erected without the benefit of a planning permission. It is also proposed to install a fan system.

The applicant has confirmed the intention to use this equipment.

The flue is not ideally located in terms of outlook from the residential flat or potential noise and vibrations which may emanate from the flue. However, there have been no objections from this resident or from any other neighbours notified of the application.

The EHO has recommended a condition that the flue be required to be fully operational to be compliant with or exceed the 'Minimum Requirements For Odour Control' provided by the Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust

Systems :DEFRA 2005

Given there is an existing flue already in situ it is considered the location in this instance would be acceptable.

It is therefore considered that the proposed development would be acceptable and comply with S2/6, EN7/1 and EN7/2.

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 Location and block plan 001; Existing and proposed plan 002; Site - Existing and proposed site plan 004 rev 1; Lindab roof hub specification; MaXfan compac specification 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 The bin storage facilities indicated on approved plan reference GSS22012 004 Revision 1 shall be implemented prior to the use 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 and S2/6 - Food and Drink.
- 4 Prior to the first use of the development hereby approved, a scheme to soundproof the floor/ceiling between the ground floor and the first floor flat, which shall be in accordance with standards of construction specified in current Building Regulations, shall be implemented.
Reason. To protect the residential amenities of the future occupiers of the residential flat pursuant to UDP Policy EN7/2 Noise Pollution.
- 5 The flue and ventilation equipment hereby approved shall operate in compliance with or exceeding 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 flue and ventilation equipment shall thereafter be maintained whilst it shall serve

the development.

Reason. To protect the residential amenities of nearby residential properties from impact upon from fumes and odour pursuant to UDP Policies S2/6 - Food and Drink, EN7/1 - Atmospheric Pollution and EN7/2 - Noise Pollution

- 6 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 fully implemented and all equipment installed shall be used and maintained in accordance with the manufacturers and installers instructions.

Reason. To protect the residential amenities of nearby residential property from impact upon from fumes and odour pursuant to UDP Policy S2/6 - Food and Drink and EN7/2 - Noise Pollution.

- 7 The use hereby permitted shall not be open to customers outside the following times: 5pm to 10.30pm daily.

Reason. To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to Policies S1/5 – Neighbourhood Centres and Local Shops and S2/6 – Food and Drink of the Bury Unitary Development Plan.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	16/8/22		