

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 08/05/2024	Ref: 70545/FUL
Registration: 01/03/2024	LDFC: 26/03/2024	Expiry Date: 26/04/2024
Site Visit: 19/03/2024	Site Notice: 19/03/2024	Press Date: 14/03/2024
Objections: 0	Con Area: BURY	Adv Type: CA
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Change of use of ground floor shop (Class E) to sports bar with first floor offices (Sui Generis)

Location: 12 Bolton Street, Bury, BL9 0LQ

Description

The application relates to a two storey mid terraced property located on a shopping street in Bury Town Centre which is within the Conservation Area. The premises is currently vacant having operated as a retail sport shop at ground floor with associated storage rooms above.

This side of the shopping street comprises a restaurant, bars/pubs and a mix of Class E uses.

At the rear of the site is a paved area where servicing area where most of the premises on this row of store bins.

The application seeks the change of use of the ground floor shop to a sports bar and restaurant with offices at the first floor.

The existing shop front would be retained with the right hand entrance used as the access to the bar and restaurant and the left hand entrance solely used to access the offices at the first floor.

Bins would be stored inside the property within the outrigger at the rear and waste would be collected from the back of the premises.

The applicant proposes the following opening hours -

Bar

Sunday: 8am -3 am

Monday: 8am -3 am

Tuesday: 8am -3 am

Wednesday: 8am -3 am

Thursday: 8am -3 am

Friday: 8am - 4:30 am

Saturday: 8am - 4:30 am

Offices

Mon-Fri 8am to 8pm

Relevant Planning History

69796 - Prior approval for proposed change of use from commercial, business and service (Class E) to mixed use including 2 No. Flats (Class C3) - Prior Approval Required and Granted 08/02/2024

70390 - Change of use of ground floor from shop (Class E) to sports bar and restaurant with first floor offices (Class E/Sui Generis); Replacement shop front - Withdrawn by

Applicant 21/02/2024

Publicity

Letters sent to 39 adjacent properties.

Site notice posted 19/3/24

Press advert 14/3/24

No responses received

Statutory/Non-Statutory Consultations

Traffic Section - No objection subject to condition

Environmental Health - Contaminated Land - No objection

Waste Management - No response received

Conservation Officer - No objection

Environmental Health - Pollution Control - Recommend conditions in relation to noise and insulation

Greater Manchester Police - designforsecurity - No response received

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

NPPF	National Planning Policy Framework
EC4/1	Small Businesses
EN1/2	Townscape and Built Design
EN2/1	Character of Conservation Areas
EN2/2	Conservation Area Control
EN2/3	Listed Buildings
S1/1	Shopping in Bury Town Centre
S2/3	Secondary Shopping Areas and Frontages
S2/6	Food and Drink
EN7/2	Noise Pollution
JP-S2	Carbon and Energy
JP-S3	Heat and Energy Networks
JP-C2	Digital Connectivity

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.

The application site is located within Bury Town Centre and as such Bury's Unitary Development Plan (UDP) policies S1/1 (Main Shopping Area in Bury Town Centre), S2/3 (Secondary shopping area and frontages) and Area BY 3 Bolton Street/Market Place are relevant.

Policy S1/1 states that the Council will protect, maintain and enhance the role of Bury Town Centre as a sub-regional shopping centre and promote the centre as a focal point for further development.

Under Policy S2/3 the Council seeks to maintain class A1 retailing (now Use Class E(a)) as the predominant land use at ground floor level within secondary shopping frontages. Where a proposal would lead to more than 40% of any identified secondary shopping frontage being in non-retail use, the Council will also consider several factors.

UDP Policy Area BY3 Bolton Street/Market Place states that proposals for cultural, leisure and tourism, shopping, business and office uses would be supported.

Paragraph 90 of the National Planning Policy Framework (NPPF) says that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth management and adaptation. Paragraph 90 (a) further states that planning policies should promote the long-term viability and viability of town centres by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows as suitable mix of uses and reflects their distinctive characters. The NPPF no longer refers to secondary shopping frontages.

The proposal would lead to more than 40% of the secondary shopping frontage being in non-retail use. However, it is understood that the premises are currently vacant having last been used as a sport shop and therefore the unit is generating no activity. Although the proposal is not for retail use it is considered that the change of use to a sports bar and

restaurant will still generate activity within the existing frontage. Furthermore, it will make a positive contribution to help support the long-term vitality and viability of the town centre in line with the NPPF.

Therefore, on balance there is no objection to the proposed change of use in principle.

Impact on the surrounding area

The property is located within Bury Town centre within a row of other commercial premises including a bar, restaurant and public house.

Comparative to a shop use, the character of a bar/restaurant would bring about higher levels of activity and noise, as it would be likely that more customers would visit the premises at one given time. The applicant also proposes the premises would be open until later hours of the day, into the early morning (3am during the week and 4.30am Friday and Saturday).

That said, the premises are located within a busy town centre, where there is frequent and regular activity from people visiting the area and the other drinking/eating establishments nearby and there are no known sensitive land uses in the vicinity to protect.

In terms of crime and disorder and any nuisances and disturbances which may occur into the late night or early morning would be covered under licensing regulations in consultation with the police.

It is therefore considered unnecessary in this particular case that given the location and surrounding uses and development, a condition to control hours is unnecessary.

The EH Pollution Control Section have been consulted on the proposals and have raised no objection subject to conditions that a noise survey be submitted to determine ambient noise levels and sound proofing between floors.

The applicant has commissioned a noise survey which recommends that mitigation measures including insulation and repair and maintenance of windows be implemented. The EH Pollution Control are satisfied with the recommendations of the report and a condition would therefore be attached for the development to accord with these requirements.

The EH Section also recommend that should food be cooked on the premises, a scheme would be required for the treating of fumes and odours and that under the Public Entertainment Licensing, noise from any entertainment should not be generally audible within noise-sensitive premises (for example, houses) with windows open in a typical manner for ventilation.

The application does not propose to make food on site (licensing).

It is therefore considered that subject to conditions, the proposed development would be acceptable and comply with policies EN7/2 and EN1/2.

Heritage

The premises is located in the Bury Town Centre Conservation Area.

Para 200 of the NPPF states that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.

Para 205 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's

conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

EN2/1 - Character of Conservation Areas and EN2/2 - Conservation Area Control policies only support proposals where it can be demonstrated that development would preserve or enhance the special character of the area. In the case of re-use of buildings or the introduction of new uses, the impact of the proposal on the character or appearance of the area and the fabric of the building will be considered.

The applicant has submitted a Heritage Statement which is considered proportionate to the application proposals.

UDP Policy EN2/1 and the NPPF considers the positive benefits of the re-use of buildings and contributing to the economic vitality of an area , providing it would conserve or enhance the Conservation Area.

There is no operational development proposed and the proposed change of use would preserve the character and appearance of that part of the conservation area by bringing a vacant building back into a viable sustainable use that makes a strong contribution to the character and appearance of that part of the conservation area and would be compliant with Policy EN2/1 and EN2/2 and the NPPF.

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.

The applicant states that the proposed change of use will comply 1,2 and 3 of Policy JP-S2 and with Part L of Building Regulations by improving energy efficiency and generate renewable and low carbon energy, heating and cooling and proposes:

- 1) Cavity Wall Insulation: Any empty cavity walls will be fully filled, subject to a check for suitability from an accredited installer and approval by local authority building control.
- 2) Loft Insulation: loft spaces will be checked and filled with appropriate insulation.
- 3) Floor Insulation: uninsulated suspended timber floors, where easily accessible from underneath will be insulated.
- 4) HVAC (Heating controls) will be upgraded with central heating that has a programmable timer, room thermostat or thermostatic radiator valves.
- 5) Energy efficient lighting will be used throughout the bar and offices

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

Digital Connectivity

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

The applicant states that the premises will have an internet provider. This will be full fibre optic connectivity.

It is considered the proposal would accord 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 numbered -
Red edge location plan received 23/2/24
Revised proposed site plan 12BR3
Revised proposed floor plans 12BR3
Revised proposed front and rear elevations 12BR3
Revised proposed left and right side elevations 12BR3
Noise Impact Assessment Report ref P6759-R2-V1, Version 1 dated 3 May 2024.
Carbon and Energy Statement and Digital connectivity statement in the Design, Access and Heritage Statement
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 internal bin storage facilities indicated on the approved plans shall be made available 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 Development Policies EC4/1 - Small Businesses and EN1/2 - Townscape and Built Design.
- 4 The development hereby approved shall be carried out in accordance with the recommendations in Section 5 of the Noise Report ref:P6759-R2-V1 dated 3rd May 2024 by NoiseAir and any subsequent requirements of Section 5 of the report.
Reason. To protect the amenity of adjacent occupiers pursuant to Policies EN7/2 Noise Pollution and EC4/1 - Small Businesses.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	8/5/24	DM	08/05/2024