

DELEGATED REPORT

Report by Helen Leach	Date of report: 22/08/2022	Ref: 68612/FUL
Registration: 28/06/2022	LDFC: 22/08/2022	Expiry Date: 23/08/2022
Site Visit: 08/08/2022	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: MIOT

Proposal: Variation of condition no. 3 following approval of planning permission 58310 - Opening hours to be extended: Sunday-Thursday 10:00-00:00 hrs (as approved)
Friday-Saturday 10:00-02:00 hrs (extended)
Location: 53 Bury Old Road, Prestwich, Manchester, M25 0FG

Description

The application site relates to a hot food takeaway (now Class E) within a Local Shopping Centre. The property is a two storey red brick mid-terrace fronting Bury New Road on a row of other commercial premises, the majority of which are in retail use. There is a single storey extension covering the former rear yard area. At the front there is separate vehicular access road along the frontage with parking on one side.

The attached property on the south side is a vets practice (No.51) and on the north side is a dress shop (No.55).

Planning permission was granted in February 2015 to change the use from a retail unit to a hot food takeaway including the installation of a flue on the rear elevation and a small condensing unit on the flat roof area at the rear. The opening hours were from 10.00 - 00.00 every day.

The proposed development involves the variation of condition No. 3 of planning permission 58310 to extend the opening hours on Friday and Saturday to 10.00 - 02.00. The opening hours on Sunday - Thursday would remain as approved - 10.00 - 00.00.

Relevant Planning History

58310 - Change of use from retail (A1) to hot food takeaway (A5); Erection of extract duct and new shop front at 53 Bury Old Road, Prestwich. Approved with conditions - 2 February 2015.

58730 - 1 No. internally illuminated fascia sign; 1 No. internally illuminated projecting sign; 1 No. internally illuminated built up logo sign at 53 Bury Old Road, Prestwich. Approved with conditions - 13 July 2015

Publicity

The neighbouring properties were notified by means of a letter on 29 July 2022. There has been no response.

Statutory/Non-Statutory Consultations

Environmental Health - Pollution Control - No response.

Pre-start Conditions -Not relevant.

Unitary Development Plan and Policies

EC4/1	Small Businesses
H3/1	Assessing Non-Conforming Uses
EN7/2	Noise Pollution
S1/4	Local Shopping Centres
S2/6	Food and Drink
HT2/4	Car Parking and New Development
SPD6	Supplementary Planning Document 6: Alterations & Extensions

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 unit is already in use as a hot food takeaway and is located in a local shopping centre. As such, the proposed development would not conflict with Policy S1/4 of

the Bury Unitary Development Plan.

Impact upon residential amenity - The proposed development involves the increase in the opening hours from midnight to 02.00 on Fridays and Saturdays. Most of the noise associated with the proposed increase would be at the front of the property and there are residential properties opposite the site. There is 43 metres between the hot food takeaway and the existing residential properties on Bury New Road. Given the distance, the lack of objections and the existing consent allows for the unit to be open until midnight, it is considered that the proposed development would not have a significant adverse impact upon the amenity of the occupiers of the properties on Bury New Road.

There are residential properties to the rear of the site and the rear garden of No. 123 Kings Road forms the boundary. As stated above, most of the noise associated with the proposed increase in hours would be at the front of the property and the building would act as a barrier. In addition, the hot food takeaway is located in a row of commercial units, which form a local shopping centre and some degree of noise and disturbance is to be expected. As such, it is considered that the proposed development would not have a significant adverse impact upon the amenity of the neighbouring properties.

Therefore, the proposed development would not have an adverse impact upon the amenity of the neighbouring properties and would be in accordance with Policies H3/1 and EN7/2 of the Bury Unitary Development Plan.

Statement in accordance with Article 35(2) Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2015

The proposal complies with the development plan and would improve the economic, social and environmental conditions of the area. It therefore comprises sustainable development and the Local Planning Authority worked proactively and positively to issue the decision without delay. 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 This decision relates to drawings numbered 00501-02B, 03A, 04A, 05A and technical information within the document 'Supporting Information on the Proposed Extract System and Plant' and the development shall not be carried out except in accordance with the drawings and supporting information 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.
- 2 The use hereby permitted shall not be open, either to customers or for external deliveries, outside the following times:
Sunday - Thursday - 10.00 - 00.00
Friday - Saturday - 10.00 - 02.00
Reason. To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to Policy S2/6 Food and Drink of the Bury Unitary Development Plan.
- 3 The development shall be carried out in accordance with the details approved as part of condition 4 of permission 58310.
The scheme as approved shall be available for use and maintained in accordance with the approved scheme whilst it serves the development.
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.

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<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HL - 22/08/2022			