

DELEGATED REPORT

Report by Helen Pressley	Date of report: 07/10/2024	Ref: 71023/FUL
Registration: 12/08/2024	LDfC: 20/09/2024	Expiry Date: 07/10/2024
Site Visit: 30/08/2024	Site Notice: 30/08/2024	Press Date: N/A
Objections: 24	Con Area:	Adv Type: PI
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Part change of use of former showroom/laundrette and 1no. flat (Use Class E/Sui Generis/Class C3) to form 1no. 7 bedroom (single occupancy) HMO (Sui Generis) and 1no. 8 Bedroom (single occupancy) HMO (Sui Generis) with associated parking and refuse storage and external alterations

Location: 1-5 Porter Street, Bury, BL9 5DZ

Description

The application relates to an end terraced building on the corner of Porter Street and Back Walmersley Road West. The building is an "L" shaped property that turns the corner of this junction, and currently has a yard area and single storey outbuilding to the rear. The property currently has 3no. commercial units at ground floor and 4no. self contained flats at first floor.

Planning permission is sought for the conversion of the commercial properties, and 1no. flat into 1no. 7 bed HMO at ground floor and basement level (HMO 1) and 1No. 8 bed HMO at ground floor and first floor (HMO 2). HMO 1 would be accessed from Back Walmersley Road West and HMO 2 would be accessed from Porter Street. The existing garage/outbuilding to the rear of the sit would be demolished to provide 3no. parking spaces, bin storage and bike storage that would be accessed from Back Rake Street. An area of shared amenity space for the 2no. HMOs would be located to the rear of the site.

Relevant Planning History

70536 - Part change of use of former showroom/laundrette and 1no. flat (Use Class E/Sui Generis/Class C3) to form 1no. 7 bedroom (single occupancy) HMO (Sui Generis) and 1no. 8 Bedroom (single occupancy) HMO (Sui Generis) with associated parking and refuse storage and external alterations- Refused 12/04/2024

70830 - Lawful development certificate for proposed change of use from 4 no. flats (Class C3) to 4no. HMO's (C4) - Lawful Development 30/07/2024

22/0253 - Change of use of property to place of worship - 26/08/2022

Publicity

Letters were sent to 58 neighbouring properties on 15/08/2024
Site notice posted 30/08/2024

1 representation of support in relation to:

- Existing housing is expensive.
- HMOs provide flexible housing.
- Location good for walking into town, to local shops and to support local businesses.
- Help meet housing demands.

24 objections received in relation to:

- Too many HMOs in area.
- Increase in crime.
- Increase in litter/fly tipping.
- Loss of property value.
- Already refused once.
- Family area.
- Increased traffic.
- Increase in noise disturbance.
- Introduction of transient tenants.
- Lack of parking - residents already forced to use side streets
- Increased foot traffic.
- Decrease in security and safety of existing residents.
- Impact on community.
- HMO works have progressed without permission.
- Existing unlawful uses causing antisocial behaviour.

Statutory/Non-Statutory Consultations

Traffic Section - Recommendation for refusal due to the significant intensification of a building with no existing off-street car parking facilities, substandard proposed parking and insufficient information in relation to bin storage.

Environmental Health - Contaminated Land

Waste Management - Confirmation of bins required for the site.

Drainage Section - No response

Greater Manchester Police - designforsecurity - No response

Adult Care Services - No response

Housing - Public Protection - No response

Planning Policy Manager - Confirmation that the proposal would provide 1 net dwelling and only have a limited contribution to housing supply. Proposal would create of cluster of these uses around the junction of Porter Street and Back Walmersley Road West. A lawful development certificate has been granted to convert the existing flats into 4 HMOs. Although the proposal is to retain 3 of the flats, as demonstrated by the lawful development certificate, these could also be converted into HMOs, resulting in a total of 5 separate HMOs within this property.

Pre-start Conditions - Not relevant

Development Plan and Policies

H1/2	Further Housing Development
H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
H2/4	Conversions
EN1/2	Townscape and Built Design
EN7/2	Noise Pollution
HT2/4	Car Parking and New Development
JP-H1	Scale of New Housing Development
JP-H3	Type, Size and Design of New Housing
JP-H4	Density of New Housing
JP-S2	Carbon and Energy
JP-P1	Sustainable Places
JP-S5	Clean Air
JP-C2	Digital Connectivity

JP-C5	Streets For All
JP-C6	Walking and Cycling
NPPF	National Planning Policy Framework
SPD13	Conversion of Buildings to Houses in Multiple Occupation
SPD11	Parking Standards in Bury
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), 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 (Residential)

The National Planning Policy Framework (NPPF) should be treated as a material planning consideration and it emphasises the need for local planning authorities to boost the supply of housing to meet local housing targets in both the short and long term. The Framework states that unless they have an adopted plan that is less than five years old that identified a five year supply of specific deliverable sites at the time of conclusion of the examination, then local planning authorities should identify and update annually a supply of specific developable sites to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing in certain circumstances set out in NPPF paragraph 226.

Bury's Strategic Housing Land Availability Assessment sets out the latest housing supply position, which is made up of sites that have an extant planning permission and sites that have potential to obtain planning permission in the future.

This shows that there are a number of sites within the Borough with the potential to deliver a significant amount of housing. However, not all of these sites will contribute to the deliverable land supply calculations as many sites will take longer than five years to come forward and be fully developed (e.g. some large sites could take up to ten years to be completed). In addition to the housing land supply in the SHLAA, the joint Places for Everyone Plan was adopted with effect from 21 March 2024 and allocates significant strategic sites for housing within Bury.

The adopted joint Places for Everyone Plan Policy JP-H1 sets a requirement for an average of 452 homes per year over the plan period, with stepped targets starting from a minimum housing target of 246 homes per year from 2022-2025 (increasing in future years of the plan). Following the adoption of PfE the Council is able to demonstrate a 5 year supply with a 20% buffer.

The National Planning Policy Framework also sets out the Housing Delivery Test, which is an assessment of net additional dwellings provided over the previous three years against the homes required. Where the test indicates that the delivery of housing was substantially below (less than 75%) of the housing requirement over the previous years, this needs to be taken into account in the decision-taking process. The latest results published by the Government show that Bury has a housing delivery test result of less than 75%, and therefore, this needs to be treated as a material factor when determining applications for residential development.

Therefore, paragraph 11d) of the National Planning Policy Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless:

- i. The application of policies in the Framework that protect areas, or assets of particular importance, provides a clear reason for refusing the development proposed; or
- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.

The site is in a sustainable location for housing within the urban area and sitting outside the Green Belt.

Due to the housing delivery test result, the 'tilted balance' applies and planning permission should be granted unless the above points Para 11(d) i or ii apply. However, the adoption of the Places for Everyone Joint Development Plan has resulted in new housing targets for the Borough and the allocation of strategic sites housing sites, which along with the identified housing land supply within the urban area enable the Council to demonstrate a deliverable 5 year supply of housing land, and will accelerate housing delivery within the Borough to meet housing needs.

In terms of residential units, the property currently comprises 4 flats. The proposal retains 3 of the existing flats and proposes 1 no. 7 bedroom HMO and 1 no. 8 bedroom HMO. For the purposes of housing supply monitoring (as set out in the housing lows reconciliation guidance which forms the basis for the housing delivery test), "House in Multiple Occupation (an HMO), if they were a house before, cannot be counted as a net additional dwelling, as they would have been counted as a net additional dwelling in a previous year. However, if a House in Multiple Occupation, is created by change of use from a non-residential building, then it can be counted as one net additional dwelling". This is contrary to the calculations set out within the Design and Access Statement that appear to have incorrectly used the HDT calculations for student accommodation or other communal accommodation (e.g. C2 care homes) rather than HMOs and therefore state that the development would deliver an equivalent of 8.3 dwellings. As the property currently comprises 4 flats, and the application is to retain 3 flats and provide 2 HMOs, the proposal would actually result in 1 net additional dwelling. As such, the proposal would have a limited contribution to housing supply.

Principle (HMO Sui Generis Use)

Policy H1/2 states that the Council will have regard to various factors when assessing a proposal for residential development, including whether the proposal is within the urban area, the availability of infrastructure and the suitability of the site, with regard to amenity, the nature of the local environment and the surrounding land uses.

Policy H2/4 - Conversions, has specific regard to effects on amenity of neighbouring properties, general character of the area, amenity of occupants, effects from external changes on the street scene and car parking and servicing requirements. This is supported by SPD 13- The Conversion of Buildings to Houses in Multiple Occupation, that seeks to ensure that properties are of a sufficient size to accommodate the proposals and are large enough to offer satisfactory levels of accommodation for future residents. This document also seeks to ensure that HMO's are located in suitable locations.

SPD 13 is rather dated in absolute terms (adopted in May 2007) and in some of the assumptions expressed (e.g. HMO's tend to attract residents in their teens and twenties who by their nature can be a little more energetic than older people, leading to a more active social life in the evenings). However, the general factors against which proposals should be assessed at UDP Policy H2/4 remain relevant.

Policy JP-H3 - Seeks to provide an appropriate mix of dwelling types and sizes reflecting local plan policies and having regard to relevant local evidence. Development across the plan area should seek to incorporate a range of dwelling types and sizes, including for self-build.

Paragraph 63 of the NPPF confirms that "size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing; families with children; older people (including those who require retirement housing, housing-with-care and care homes); students; people with disabilities; service families; travellers; people who rent their homes and people wishing to commission or build their own homes" however no direct reference is made to HMOs or buildings of multiple occupation.

For clarification, a house in multiple occupation is a form of housing tenure, where occupants live together forming more than one household (i.e. where facilities such as kitchen, bathroom or bathrooms can be shared with other tenants).

The conversion of properties to multiple occupation can often make an important contribution to local housing stock. However, it is recognised that such conversions can put pressures on buildings, sites and areas depending upon the amount of accommodation to be provided, demands created from parking etc and thus have an adverse effect on residential amenity and the character of an area.

The main issues in relation to this proposal is the consideration of the impact of the proposed accommodation in relation to the suitability of the site and location, impacts on amenity, nature of the local environment, surrounding land uses and highway issues. These issues are discussed in more detail below and in light of the policies set out above.

Character of the area

Whilst there is no specific policy in relation to HMOs within the UDP, Policy H2/4 - Conversions takes into consideration the concentration of building conversions for multiple occupation and the impact this can have to the character of an area. The justification for this policy makes it clear that it is necessary to ensure that dwelling standards are maintained and to ensure that, generally, an over provision of building conversions does not adversely affect the need to maintain a good mix of housing types, or adversely affects the character and amenity of residential areas. This is an issue which has been raised by a number of objectors.

According to the current Bury Council Register of licensed Houses in Multiple Occupation, there are 10 licensed HMO's on Walmersley Road. 1 further HMO on Walmersley Road have been approved through planning permission within the last 12 months but is not yet showing on the published register. A further application (71034) is currently under consideration. No HMOs are registered on Porter Street, Clifton Street, Rake Street or Hornby Street however the LPA does not have access to records in relation to smaller HMOs that either do not require a licence, or do not need planning permission.

The applicant has set out within their Design and Access Statement that a proportional model of HMOs should be utilised. The examples of urban areas provided by the applicant that utilise this method are Portsmouth, Southampton, Bristol, Liverpool and Manchester. These examples are cities or towns that bear little resemblance in terms of character to Bury, a town without a university. Bury has a different demographic and doesn't experience the same issues in relation to HMO's that these places may do. Some places that utilise this proportional model (eg Salford a neighbouring borough but with a city centre and university) also have access to more information as to the location of smaller HMOs, or Article 4 directives. As set out above, the LPA also does not have access to records of smaller HMOs and as such a true proportional model would not be possible for this site. It would therefore not be appropriate to use a model that would not accurately allow the impact of the character of the locality being considered to be weighted accordingly against the adopted Policies.

When considering the character of the locality, in terms of building conversions and the required Policy it is considered that an assessment of converted properties, not just HMOs, is required for this site. Whilst a number of properties are retained in single occupancy on Porter Street, there are also a number of properties, particularly on Walmersley Road that have been subdivided into flats or are in use as hostels or community homes in addition to the HMOs already listed above. Whilst these uses are compatible within residential areas, the over concentration of subdivided properties can impact on the character of the area due to the intensified use of the buildings in question and this is at the core of the Policy being considered.

No. 171 Walmersley Road is the nearest HMO to the site. This property is located on the junction of Walmersley Road and Porter Street and is adjacent to the site. This is registered as a 9 bed HMO. When reviewing address information between 147-187 Walmersley Road (to the east of the site) there are 10 properties that have been converted into smaller units. 7 properties within this row appear to have retained single occupancy. Further subdivided properties are also located on the directly facing row of properties on Walmersley Road. This has led to a cluster of properties on the junction of Porter Street, and Walmersley Road that have been subdivided and as such impact on the overall character of the locality. The proposal would add to this intensification of subdivision of units impacting on the general character of the area.

It is considered that the applicant has failed to consider the full context of the existing building, retained uses, and the wider character of the area in relation to Policy H2/4. The applicant has solely focused on the impact of HMOs rather than the general character of the area and the Policy context set out above and against which the proposal should be assessed. The proposal would result in 2no large HMOs, and an additional 10no. bedrooms in the locality compared to 5no. bedrooms (across 4 units) currently at the site which, when considered against the existing neighbouring land uses would intensify the use of the site and fail to provide a good quality residential environment. The permitted fall back position presented by the applicant is set out below. It is therefore considered that the application has failed to demonstrate that the proposal would not have a detrimental impact on the character of the area contrary to Policies H1/2, H2/4, JP-H3 and the National Planning Policy Framework.

Permitted Development Fall Back

Various court cases have considered the concept of a fallback development as a material consideration. In *Gambone v SSCLG* a two-stage approach was set out, where a determination must first be made concerning whether the fallback position is a material consideration, before weight is determined.

This was followed by Appeal Judgement *Mansell v Tonbridge and Malling Borough Council* that confirmed the legal considerations in determining the materiality of the 'fall back' position as a planning judgement and as set out within the applicant's Design and Access Statement confirmed that the basic principle is that for a prospect to be a real prospect it does not have to be probable or likely, a possibility will suffice.

Submissions therefore need consider and address whether the fallback would be significantly more harmful than the appeal scheme or whether the effect would be similar or less harmful. In each case, the decision-makers must use their judgement to decide where the planning balance lies.

The applicant was asked to compare the impact of the 2 large HMOs proposed, to the established permitted development fallback discussed below during the application process however this does not appear to have been addressed within the submission documentation other than highlighting the cases above and submitting a lawful development certificate prior to resubmission of planning. The LPA has therefore made their own assessment of the effect of the proposal and what could lawfully take place and attributed weight to this accordingly.

Lawful Development Certificate

A lawful development certificate (LDC) has been submitted for the proposed change of use of the existing 4no. flats at the site to 4no. HMOs.

Case correspondence with the applicant's agent in relation to the LDC confirmed that the applicants are HMO landlords and as such are committed to executing the LDC if planning permission is not granted for the alternative scheme. The agent also considers that the bedrooms are sufficiently sized to allow double occupancy of the bedrooms. As such it is considered weight needs to be given to this fall back position as the change from 5 bedrooms to 12 bedrooms through permitted development would also intensify the use of the site.

Whilst the layout plans submitted with the LDC have not been conditioned, they do give some indication of how the existing units could be utilised to provide HMOs. There is no shared amenity space provided on the floor plans submitted for the LDC and a number of the bedrooms would not be large enough for double occupancy when compared to National Designated Space Standards, or Bury's own HMO licensing despite the assertions set out above. The LDC submitted plans also show subdivided larger rooms to enable the units to provide more bedrooms, above and beyond the indicated layout of these flats within the

planning application. It should also be noted that where there is no separate living area Bury HMO licensing standards require additional floor space within bedrooms, to provide a combined bedroom and living room to ensure that living accommodation is suitable for tenants. The flats however may be small enough in terms of occupancy to not require a licence.

The applicant has not stated exactly how many occupants they believed could be accommodated within the existing 4no. flats within the submission documentation. Given the size of the rooms proposed on the indicative LDC plans, and limited shared space, it is considered that the fallback would provide accommodation for approximately 12 persons. It is acknowledged that the LDC HMOs would not provide the standard of accommodation proposed through the planning application.

A scenario not presented by the applicant however is if the retained 3 flats, that are outside of the description of development, were also converted to HMOs in addition to the 2no. HMOs that require planning permission. As referenced above the applicant's agent has set out within email correspondence with the case officer that the applicant is an HMO landlord who wishes to pursue the scenario set out within the LDC if the current application is not approved. Given this stance it is considered that it is a possibility that this additional scenario could come forward and as such lead to a total of 5no. HMOs on the site - and a total of 27 no. bedrooms some of which may be double occupancy.

The existing 3 flats are currently occupied as C3 dwellings, and the LPA has considered whether it would be reasonable to remove the PD rights for these units through condition. However, the retention of these units has not been included within the description of development and as such it is considered to be beyond the scope of the application to include a condition to restrict this existing established use.

It is considered that this established possibility of a fall back position, in association with the proposed 2no. HMOs creates a significant over intensification of the site which would not be acceptable.

Class M/MA

It is not clear how the applicant envisions converting the property utilising this prior approval process as it has not been demonstrated through the submission of an application, or through the documentation provided.

This prior approval process however does restrict the ability for the resulting C3 units to be utilised as HMOs and as such any subdivision into individual units is likely to create less bedrooms, and therefore less occupancy than the proposal. This may be a more appropriate way to utilise the building for residential use.

Planning Balance

The possibility of a PD fall back has been established by the applicant through the submission of a Lawful Development Certificate and weight attributed to this accordingly. In accepting this PD fall back the LPA have also had to consider the implications of the proposal in association with the existing, and retained residential units at this site.

It is considered that the introduction of 2no. large HMOs, in association with the possibility of 3no. smaller HMOs would be significantly more harmful than the PD fall back presented by the applicant. As such, it is considered that the proposal as put forward would be more harmful than the fall back position and as such would have a detrimental impact on the character of the area contrary to Policies H1/2, H2/4, JP-H3 and the National Planning Policy Framework.

Layout and Design

In addition to the policies set out above Policy EN1/2 seeks to ensure that development proposals would not have a detrimental effect on the visual amenity and character of a

particular area. Policy JP-P1 Sustainable Places aims to promote a series of beautiful, healthy and varied places. UDP Policies H2/1 - The Form of New Residential Development and H2/2 - The Layout of New Residential Development, provide the assessment criteria for detailed matters relating to height, appearance, density and character, aspects and finish materials.

The existing street scene is depicted largely by two storey terraced dwellings. The site itself is an end of terrace, two storey property. There is evidence of the site's former use as a co-operative within stone work to the front of the building, above the front window openings on door headers. A traditional shop front is also retained to the front of the building, however this has been somewhat degraded by the windows installed at No. 1.

The conversion of the building to residential needs to be sympathetic to the existing structure, reflecting its character and retaining important features. It is noted that the applicant seeks to retain the shop front as a nod to the former use of the site and this is welcomed.

The windows proposed to serve the ground floor amendments are considered to be suitably aligned and revised plans have been submitted during the application process showing headers and cills to these windows. It is considered that the external alterations to the external elevations of the building are appropriate and as such comply with the policy considerations set out above.

Waste Management have been consulted as part of the application to ensure that bin storage within the site is adequate for the existing and proposed uses.

Flats are entitled to and normally receive 240 litres of capacity for general waste and 120 litres of capacity for each recycling scheme. So for the 3x1 bed flats the Council would normally allocate 3x240l bins (or the equivalent larger bin) for general waste and 2x240l bins for recycling.

For HMOs, as they only pay council tax on the building and not per room, they are only entitled to a larger domestic household allocation. For the 7 room HMO this would be 380 litres for general waste (1x240l and 1x140l bin) and a 240l bin for each recycling scheme. For the 8 room HMO they would be entitled to 480 litres of general waste (2x240l bins) and a 240l bin for each recycling scheme. Waste Management also confirmed that they find that HMOs typically need more capacity than this but this would need to be paid for through a commercial waste agreement and is down to the landlord to arrange.

Based on the above 14x240l bins and 1x140L bin would be required for the existing and proposed uses (not considering the PD fall backs). The proposed area indicated for bin storage would therefore be inadequate and would not meet the needs of future occupiers and would therefore lead to either a reduction in the amenity space associated with the site, or the storage of bins on the highway which would be unacceptable and contrary to the policy considerations set out above.

Amenity

Neighbouring Properties

Policy H2/4 requires applications for conversion to have regard to the effect on the amenity of the neighbouring properties through noise, visual intrusion, the position of entrances, impact of parking areas, extensions and fire escapes.

SPD 13 states that generally, planning applications will not be approved in areas of predominantly single family dwellings. However, decisions on such applications will depend upon the particular characteristics of each scheme, and its impact on the amenity and character of the neighbourhood. The LPA however can not condition who the tenants of the property would be and the management of the property would be undertaken by the landlord who would be required to obtain an HMO licence. The licensing of HMOs is

required for landlords to ensure these properties are kept to the required standards and are adequately managed.

Bedrooms have been located adjacent to the shared wall between the site and No. 7 rather than the communal spaces, maintaining a similar relationship between the proposed use and the attached terraced dwellings.

There are no adopted aspect standards for new build residential properties however, SPD 6 provides guidance on aspect standards between residential properties in relation to householder extensions and as such, would be a reasonable guide in this case.

For clarity the following aspect standards would be applicable:

- 20 metres between directly facing habitable room windows;
- 13 metres between an existing habitable room window and a proposed two storey blank wall
- 6.5 metres between an existing habitable room window and a proposed single storey blank wall
- 7 metres between a proposed first floor habitable room window and a directly facing boundary with a neighbouring property.

SPD 6 confirms that in terraced streets, where the current aspect standards are not available, the existing distances between habitable room windows will be maintained as a minimum. However, the existing floor plans do not denote the uses of the existing rooms within the flats and commercial units to allow this assessment.

The front elevation of the site faces towards No. 2 - 10 Porter Street. A distance of 14 metres can be provided between the proposed ground floor and first floor habitable room windows. It is noted that this is below the 20 metres set out above however the site is separated from these dwellings by a highway. In addition whilst room uses have not been included on the plans it would appear that there are already some habitable room windows at first floor with this existing relationship.

The rear windows would face towards the rear of the properties at No.6-10 Rake Street. The first floor rear windows would be located approximately 17metres from the rear boundaries of these properties exceeding the 7 metres set out above and would be over 20 metres from the principal rear elevations of these dwellings.

The ground floor rear windows would be separated from the rear of the properties along Rake Street by an area of amenity space, parking, a highway and the rear boundaries of these properties. As such no undue overlooking is foreseen.

Future Occupiers

Policy JP-H3: states that all new dwelling must:

1. Comply with the nationally described space standards; and
2. Be built to the 'accessible and adaptable' standard in Part M4(2) of the Building Regulations unless specific site conditions make this impracticable.

This is further supported by UDP Policy H2/4 that seeks to consider the impact of any proposals on the amenity of the occupants. Policy JP-S5 confirms that comprehensive range of measures will be taken to support improvements in air quality, focusing particularly on locations where people live. Policy JP-P1 further reinforces this by stating that developments should offer comfortable and inviting indoor and outdoor environments "offering a high level of amenity that minimises exposure to pollution. This is further reinforced by Policy EN7/2 - Noise Pollution which does not permit development which would lead to an unacceptable noise and environmental nuisance to nearby occupiers and/or amenity users.

HMO 1 would be a 7no bed, single occupancy property. Each bedroom would be over

7.5m² and 2.15m wide complying with space standards for single occupancy rooms. Each bedroom would also have an ensuite that is not included within these floor areas.

A communal lounge/dinner with access to an additional shared WC would be located centrally within the unit would allow for approximately 18.7 square metres. Access would be available from this area to the communal outdoor space. A kitchen would be located within the basement.

HMO2 would be a 8no. bed, single occupancy HMO. Each bedroom would be over 7.5m² and 2.15m wide complying with space standards for single occupancy rooms. Each bedroom would also have an ensuite that is not included within these floor areas.

This HMO would also have a kitchen/diner, a separate lounge at ground floor and co-working space at first floor. As with HMO 1 access would be available from the kitchen/diner to the communal outdoor space.

A recent appeal decision, APP/T4210/W/24/3338058 - June 2024 considers the effect of proposals on the living conditions of future residents of a proposed ground floor flat with particular regard to privacy, outlook and amenity focusing on a shared rear yard/bin storage area. Given the relationship of the proposed bedrooms within the HMOs, and the associated shared yard area it is considered that this appeal is applicable in this instance.

The side and front ground floor bedroom window have an outlook directly over the pavement of the street. The road has no parking restrictions immediately outside the windows. The outlook for these bedrooms is likely to be restricted at times and privacy would be limited. Whilst this kind of relationship is not uncommon on terraced properties this usually relates to living rooms rather than bedroom accommodation where occupants would expect a greater level of privacy.

Bedroom 3 of HMO1 and Bedroom 1 of HMO 2 would be located with windows facing towards the rear yard/bin store area. As with the appeal decision, it is considered that having all residents within the building including those within the existing flats accessing the retained yard area to access bins would be extremely intrusive for the resident's of these bedrooms. It is also considered that the close proximity of the only communal outdoor space has the potential to cause nuisance in relation to noise and smells to these habitable room windows contrary to the policies set out above.

Whilst mindful that Clarence Park is within walking distance of the site, the outlook from the rear bedrooms into the limited area of shared yard, bin storage and parking areas with shared access, would represent overdevelopment. Privacy within the bedrooms would be harmed because of the shared access and it would be unacceptably intrusive when the other residents accessed their bins, particularly when moving them on bin day. This particular arrangement would result in very poor living standards for the ground floor residents and would represent poor design. This would replicate the unacceptable standards highlighted in the appeal referenced above, but on a larger scale.

The outlook of bedroom 2 within HMO 1 would also be restricted, with cars parking within 2 metres of the windows associated with this room which would not only restrict outlook but again the privacy associated with this room. The close proximity of parking to this bedroom would also have the potential to cause nuisance in relation to noise and fumes.

The proposed development, by virtue of the proposed density and layout would lead to a poor arrangement of individual accommodation available for the future occupiers and as such would have a detrimental impact on residential amenity of the occupiers contrary to Policies H2/4, JP-S5, JP-P1 and EN7/2.

Highways

Policy EN1/2 requires the consideration of the design and appearance of access, parking

and service provision. This is further supported by Policy H2/2 that requires proposals to demonstrate adequate car parking provision, access for both vehicles and pedestrians, and provision for public transport and the existence of any public rights of way and Policy H2/4 that requires consideration of the impact of parking areas on the amenity of neighbouring properties, and the consideration of car parking and servicing requirements. Policies JP-C5 and JP-C6 require streets to be well designed and managed to make a significant positive contribution to the quality of place and support high levels of walking, cycling and public transport.

The proposed parking spaces would be accessed from Back Rake Street. This is a narrow back street with yard walls, and existing footways limiting the space to manoeuvre vehicles into and out of parking spaces. Tracking has been submitted to show how the spaces can be accessed by a large car. Visibility has been assessed in relation to Manual for Streets within the submitted Technical Note, but not plotted or indicated on any submitted plans to demonstrate how these particular parking spaces, on this site can be accessed and exited safely. The proposed access and parking arrangements are sub-standard, with inadequate levels of visibility at junction with Back Rake Street and at the back edge of the footway and inadequate arrangements to maintain vehicles clear of the adopted highway, which is likely to lead to the creation of conflicts on the adopted highway between emerging and parked vehicles and pedestrians, to the detriment of highway safety contrary to the policies set out above.

Parking

In terms of parking standards Policy HT2/4 requires all applications for development to make adequate provision for their car parking and servicing requirements. Supplementary Planning Document 11 provides parking standards for developments. Policy JP-C8 requires new development to be located and designed to enable and encourage walking, cycling and public transport use and to reduce the negative effects of car dependency.

There are no specific car parking standards for HMO's or buildings of multiple occupation in SPD11 Parking Standards in Bury. However, SPD 13 The Conversion of Buildings to Houses in Multiple Occupation gives some general advice. It states that parking and road safety issues will be important considerations when assessing a planning application and any proposal that is considered to have a detrimental impact on highway safety or harm to amenity will not be permitted. Car parking provision should meet the requirements of the likely occupants and, where possible, should be provided off-street.

The proposal seeks to remove the existing single storey outbuilding to the rear to create 3no. spaces. SPD 11 confirms that the LPA do not consider garages within parking standards, and the plans submitted show an access door to this outbuilding that is 1.4m wide which would not currently allow access by a vehicle without modification. As such it is considered that there is currently no off street parking provided for the property.

The application site is located within a highly sustainable area and is walking distance to bus stops and local amenities. Parking needs are therefore likely to be less, and the applicant has provided in curtilage cycle storage to promote more sustainable methods of transport. Given the proposed use however, and the number of likely residents it is considered likely that some level of parking will be required to meet the needs of future occupiers. An assessment is also required into the existing parking needs at the site.

SPD11 would require a maximum of 4.5 spaces for the existing first floor flats. Any parking for these flats is currently provided on street. It is not clear from the floor plans submitted, how much floor area can be attributed to each of the uses at ground floor, currently the lawful use of these units is a mixture of Class E and Sui Generis. SPD 11 notes that for smaller developments, that are assumed to be more local in nature and are accessible by other modes would have reduced levels of parking requirements. Given the nature, and size of the units at the site it is considered that these units, in their current use and location would be utilised primarily to serve the day to day needs of local residents who live nearby,

and therefore would walk to the site and not attend by car.

The submitted Highway Technical Note states that the current on site uses would generate an on street parking demand, no assessment has been provided in relation to the parking needs for the existing uses outside of this. An assessment has also been provided in relation to selected Class E uses and the parking and trip development that would be required for these, although not in reference to SPD11. The Design and Access Statement provides a different scenario for the ground floor units, with prior approval residential proposed for the ground floor rather than Class E uses. An assessment has also been provided within the Technical Note in relation to the LDC for the existing residential units, stating that 24no persons could live within the existing flats - as established above this assumed level of occupancy is incorrect.

It is accepted that there are various different scenarios for this building, with various different scales of parking, access and servicing needs some of which can be implemented without Planning Permission. The LPA can not possibly provide a rebuttal for all the different fall back positions that can be presented and as such, a judgement has been made on the planning application submitted and any harm that this may create in terms of parking, and giving weight to the relevant policy and material planning considerations.

As set out above, SPD 11 does not have parking standards for HMOs. The submitted Technical Note has reviewed car ownership levels for similar types of development, within the ward that the site is located in. The proposal suggests that the HMO uses would require 6no. spaces. Given the data presented, and the accepted position that HMO occupants generally require less parking the LPA accepts this potential car ownership assessment in relation to the proposed use, whilst acknowledging Policy JP-C8 which also seeks to reduce car dependency. No assessment has been provided in relation to the parking needs for the retained 3x1no. bed flats (or potential HMOs discussed in the fall back above). SPD 11 requires a maximum of 1 space per 1 bed unit in high access areas. As such it is reasonable to assume that an additional 3no. spaces would be required for the existing uses at the site. As such the building as a whole, with existing and proposed uses, would require approximately 9 parking spaces for occupants, with 6 of these spaces needing to be facilitated on street. No assessment has been made in relation to the need for visitor parking.

A Parking Stress Survey has been submitted within the technical note, undertaken in June 2024 and includes a parking assessment along a number of streets, some as much as 200m away from the site. If the applicant is asserting that the impact of the character of the HMO on the locality should only be assessed in a 50m radius of the site, then it is unclear why parking assessments have gone outside of this radius as lack of parking can have an impact on the character of an area, as set out within Policy H2/4. The parking stress survey has also excluded a number of back roads and side roads incorrectly asserting that they are private. These roads are not private, they are adopted highway and site visits by the Case Officer, objections raised in relation to the application, and indeed Google Street view confirm that these roads are used for off street parking and therefore should have been included within the assessment. Contrary to paragraph 2.1.11 of the Highways Technical Note, it is not for the Local Highways Authority to provide any parking data as part of a Planning Application.

It is considered that the parking survey includes on street parking that realistically would not be utilised by future residents of the site. Spaces and streets have been identified that are either too far away or separated from the site by a busy main road. If the data from Porter Street, Clifton Street (one street north) and Rake Street (one street south) is reviewed it gives a very different picture. Part of Hornby Street should also be included within this assessment however the stretch of Hornby Street included within the data is 260m long and again sections of this street are considered to be too far away from the proposal site to realistically be utilised by future residents.

Snapshot surveys (01:00) conducted by the applicant show a worst-case reserve capacity on Porter Street, Clifton Street and Rake Street of 14 spaces on the 25th June and 26th June. The parking required by the proposal would therefore significantly limited on street parking on the nearest streets to the site and would increase the occupancy of parking spaces to 92%, which based on the project approach set out within the Technical Note would be above the 85% set as an indicative level at which parking stress becomes a cause for concern. If reduced further to reviewing a worst case capacity to just Porter Street, which would be the primary street utilised for users of the site, this is reduced to 0 reserve spaces on both days, or 100% occupancy of spaces with parking having to be secured on neighbouring residential streets.

Peak Demand for the three streets identified above during the AM would be 70% instead of 66% of total capacity, increased to 74% if localised to Porter Street. Similarly peak demand during PM would be 77% rather than 68% of total capacity, increased to 82% if localised to Porter Street. The identified streets therefore have limited capacity to facilitate the additional 6no. parking spaces.

On the basis of the above, amended assessment of the parking data provided, it is considered that the existing on street parking provision, would not be able to accommodate the potential demand and as such this demand would likely have to be offset onto side streets and back streets that have not been included within the parking data submitted.

It is therefore considered that the intensification of the building is highly likely to lead to vehicles parking and carrying out manoeuvres on the surrounding residential streets where on-street parking facilities are at a premium at all times of day, which would have a significant impact on existing parking facilities for existing residents and be detrimental to the free flow of traffic and road safety contrary to the policy considerations set out above.

Carbon and Energy

Policy JP-S2 sets out the steps required to achieve net zero carbon emissions.

An outlines sustainability and energy reduction proposal has been submitted with the application that concludes that the proposal would meet or exceed building regulations. The proposal is therefore considered to comply with this policy.

Digital Connectivity

Policy JP-C2 requires all new development to have full fibre to premises connections unless technically infeasible and / or unviable.

The applicant has registered the site with Openreach and can connect the building to the available fibre optic data network. As such the proposal is considered to comply with this policy consideration.

Other Considerations

As highlighted within the applicant's own Design and Access Statement the NPPF advocates early engagement with the LPA so that issues can be resolved prior to submission of an application. Despite a previous refusal at the site, and the same issues being raised within the Officer Report for 70536 the applicant/agent did not seek to engage in pre-application advice with the LPA although did approach Highways directly and did submit a Lawful Development Certificate.

The applicant's agent has confirmed via email to the Case Officer that whilst a pre-app is a material consideration it is not legally binding on the Council and as such is advisory only. They also consider that this would not have address the principle of development.

Despite not engaging in pre-application discussions the Case Officer has raised the issue of principle of development, and other matters via email during the application process and has accepted amendments to try to address some of the previous reasons of refusal at the

site. A live planning application however is not the appropriate place to negotiate and a pre-application would have been useful to establish the context of the application, to fully explore the Policy considerations and how the number of bedrooms or type of development was set (HMO v individual flats for instance). As highlighted in the report, there are various different uses that could be implemented at this site and a pre-application could have been utilised to discuss these.

Response to representations

It is considered that the material planning considerations raised within the representations submitted have been addressed within the main body of the report.

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

The Local Planning Authority offered solutions to the applicant in order to make the development acceptable. The applicant was however unwilling to amend the plans. Without these amendments the development would not improve the economic, social and environmental conditions of the area and therefore does not comprise sustainable development. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Refuse

Conditions and Reasons:

- 1 The proposal would result in a development within the locality that would intensify the use and occupancy of the site, resulting in a high concentration of such uses within the vicinity of the site particularly on the corner of Porter Street and Walmersley Road. The application has therefore failed to demonstrate that the proposal would not have a detrimental impact on the character of the area contrary to Bury Unitary Development Plan Policies H1/2 - Further Housing Development, H2/4 - Conversions and Places for Everyone Joint Development Plan Policy JP-H3 - Type, Size and Design of New Housing and JP-H4 -Density of New Housing.
- 2 The proposed development, by virtue of the proposed density and layout would lead to a poor arrangement of individual accommodation available for the future occupiers of HMO1 and HMO2 and as such would have a detrimental impact on residential amenity of the occupiers contrary to Bury Unitary Development Plan Policy H2/4 - Conversions.
- 3 The proposal would result in the significant intensification of the use of a building with limited existing off-street parking facilities, which is highly likely to lead to vehicles parking and carrying out manoeuvres on the surrounding residential streets where on-street parking facilities are at a premium at all times of day, which would have a significant impact on existing parking facilities for existing residents and be detrimental to the free flow of traffic and road safety. The proposed development therefore conflicts with Bury Unitary Development Plan Policies HT2/4 - Car Parking and New Development, H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design, H2/4 - Conversions and Places for Everyone Joint Development Plan Policies JP-C5 Streets For All, JP-C6 Walking and Cycling and Supplementary Planning Document 11 - Parking Standards in Bury.
- 4 The proposed access and parking arrangements are sub-standard, with inadequate levels of visibility at junction with Back Rake Street and at the back edge of the footway and inadequate arrangements to maintain vehicles clear of the adopted highway, which is likely to lead to the creation of conflicts on the adopted highway

between emerging and parked vehicles and pedestrians, to the detriment of highway safety. The proposed development therefore conflicts with Bury Unitary Development Plan Policies HT2/4 - Car Parking and New Development, H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design, H2/4 - Conversions and Places for Everyone Joint Development Plan Policies JP-C5 Streets For All, JP-C6 Walking and Cycling and Supplementary Planning Document 11 - Parking Standards in Bury.

- 5 The application and submitted plans contain insufficient information to ensure that adequate off-highway bin storage arrangements can be provided for the number of flats and HMO's proposed within the curtilage of the site in order to ensure that the adjacent adopted highways are not used for refuse collection purposes or the storage of communal bins. The proposed development therefore conflicts with Bury Unitary Development Plan Policies H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design, H2/4 - Conversions and Places for Everyone Joint Development Plan Policy JP-C5 Streets For All.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HP - 07/10/2024		HL - 07/10/2024	