

DELEGATED REPORT

Report by Tom Beirne	Date of report: 07/10/2024	Ref: 71062/FUL
Registration: 12/08/2024	LDFC: 20/09/2024	Expiry Date: 07/10/2024
Site Visit: 15/09/2024	Site Notice: N/A	Press Date: N/A
Objections: 22	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: MIOT

Proposal: Retrospective application for the retention of external bar, tipi, toilet block and pergola and the laying of paving and associated works

Location: Eagle And Child, 3 Whalley Road, Shuttleworth, Ramsbottom, Bury, BL0 0DL

Description

The application relates to a two storey public house/restaurant on the corner of Whalley Road and Peel Brow. The stone built property has parking for 11 cars with access onto Peel Brow on the south side and there is a large beer garden on the north side. To the west and set down are houses backing onto the west boundary and fronting Cheshire Court. Across Whalley Road to the east are terraced houses and a treed embankment with private parking in front.

The beer garden, in its existing form, comprises an external bar projecting off the rear of the main building, toilet block and pergola structure. Most prominent within the garden area is a circular tented 'tipi', erected during Covid and siting on a circular area of stone chippings. The tipi comprises a timber frame Upvc sides with a canvas cover and has a footprint of 86sqm. It has a maximum height at central point of 10m and seats up to 72 people. The structure is heated by an externally located space heater.

The remainder of the garden comprises areas of paving, artificial lawn, stone chippings, soft landscaping, planters and customer tables and chairs.

The public house licence details are:

To serve alcohol

9am - midnight Monday - Thurs, (opening 08.00 - 0.30)

9am - 01.00 Friday - Saturday (opening 08.00 - 01.30)

9am - midnight Sundays (opening 08.00 - 0.30)

The external garden area of the public house measures 584sqm and is licensed to be used for the consumption of alcohol until 11pm daily.

A noise report has been submitted and suggests, to mitigate excessive noise, a 2.5m high acoustic fence be erected along the boundary with the rear gardens of properties fronting Cheshire Court. An acoustic enclosure for the heater is also suggested.

Relevant Planning History

47962 - Increase in height to part of existing terrace and erection of roof over - Approve with Conditions 25/05/2007

51699 - A - creation of car park extension with associated landscaping

B - decking area - Split Decision 21/10/2009

52053 - Decked area at side - Approve with Conditions 14/01/2010

60601 - Change of use of first floor to bed and breakfast creating 5 bedrooms with juliet balcony to 2 bedrooms and single storey extension to rear - Approve with Conditions 23/11/2016

12/0111 - Creation of beer garden - 16/05/2012
22/0211 - Installation of outdoor bar and tipi - 18/07/2022
24/0147 - Tipi structure - 12/08/2024

Publicity

Immediate neighbours notified by letter dated 27/08/2024. 21 objections received from neighbours summarised below:

- The activities in the beer garden, external bar and tipi are very noisy and have created a lot of disturbance over the past two years.
- Recorded and live music played.
- Noise and disturbance from customers leaving the pub late in the evening and accessing cars that are parking on surrounding residential roads
- The tipi is an eyesore and out of keeping with the area.
- The top of the Tipi interrupts views from Whalley Road across the valley to Holcombe Hill.
- Waste thrown into rear gardens from beer garden.
- increased ant-social behaviour.

Statutory/Non-Statutory Consultations

Traffic Section - Object, due to lack of parking.

Environmental Health - Issues with noise and disturbance.

Police - No objection

Licensing - Current bar areas have a licence. If tipi has a bar, this would need a new licence.

Pre-start Conditions - N/A

Development Plan and Policies

NPPF	National Planning Policy Framework
PfE	Places for Everyone
EN1/2	Townscape and Built Design
EN7/2	Noise Pollution
S2/6	Food and Drink
SPD11	Parking Standards in Bury
SPD16	Design and Layout of New Development in Bury
EC4/1	Small Businesses

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.

Policy Background - Section 6 of the NPPF relates to the economy. Paragraph 85 states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

Section 8 of the NPPF promotes healthy and safe communities and indicates that in order to provide the facilities and services that a community needs, planning policies and decisions should, amongst other points, guard against the unnecessary loss of valued facilities and services, and ensure that established facilities are able to develop and modernise, and are retained for the benefit of the community.

Section 15 of the NPPF deals with conserving and enhancing the natural environment. Paragraph 180 states that planning policies and decisions should contribute to and enhance the environment by, inter alia, preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise and other forms of pollution.

Places for Everyone Joint Development Plan Policy JP-P1 promotes the development of sustainable places. Amongst other points, all development should respect and acknowledge the character and identity of the locality in terms of its design, siting, size, scale and materials. Development should be visually stimulating, legible, inclusive, safe, durable, comfortable and inviting.

Unitary Development Plan Policy EC4 relates to small and growing businesses and states that the Council will ensure that the needs of small and growing businesses are met by looking favourably on proposals for such developments, where these do not conflict with

other policies of the Plan.

UDP Policy EN1/2 Townscape and Built Design states that the Council will give favourable consideration to proposals which do not have an unacceptable adverse effect on the particular character and townscape of the Borough's towns, villages and other settlements. Factors to consider when assessing proposals will include, amongst other points, the external appearance and design of the proposal, the choice and use of materials and the relationship of the proposal to the surrounding area.

UDP Policy EN7/2 Noise pollution. In seeking to limit noise pollution, the Council will not permit development which could lead to an unacceptable noise nuisance to nearby occupiers.

EC4/1- Small Businesses. Proposals for small businesses will be acceptable when the scale of development is appropriate to, and the use is environmentally compatible with, the surrounding area in which it is to be located, and where they do not conflict with other policies and proposals of the Plan.

S2/6 - Food and Drink. The Council in considering all proposals which involve restaurants, hot food takeaways, cafes, snack bars, wine bars and public houses, together with any other uses contained within Class A3, will have regard to the following factors:

- a) the amenity of nearby residents by reason of noise, smell, litter and opening hours;
- b) whether or not the proposal would result in an over concentration of Class A3 uses, which could adversely change the nature or character of a centre as a whole;
- c) parking and servicing provision associated with the proposed development and its effects in terms of road safety, traffic generation and movement;
- d) provision for the storage and disposal of refuse and customer litter;
- e) the environmental impact of any ventilation flues and/or ducting.

PfE Policy JP-C8 - Transport Requirements of New Development and UDP Policy HT2/4 - Car Parking and New Development. The Council will require all applications for development to make adequate provision for their car parking and servicing requirements in accordance with the Council's car parking standards.

Noise background - BRITISH STANDARD BS 8233:2014+A1:2019 – Guidance on Sound Insulation and Noise Reduction for Buildings. The recommended internal noise levels for living rooms and bedrooms are 35dB and 30dB respectively.

BS 8233 goes on to recommend noise levels for gardens:

It is desirable that the external noise level does not exceed 50 dB LAeq,T, with an upper guideline value of 55 dB LAeq,T which would be acceptable in noisier environments. However, it is also recognised that these guideline values are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors might be warranted.

Use - The proposed development involves the retention of the external bar and tipi in the existing beer garden. By its nature, the use of the beer garden is ancillary to the pub. The tipi, served by the external bar and toilets is used for various functions and celebrations such as birthdays, weddings with either recorded or live music. The tipi has the impact of intensifying the use of the site with all the associated issues such as increased noise and disturbance. It also has the effect of increasing overall customer numbers visiting to use the tipi as a function space across the whole year, as opposed to a general outdoor beer garden function. The knock-on effect is the increased numbers of vehicles parking up on and around the site. With limited off-street parking, the issues related to on-street parking are increased. In addition to highway safety issues, there is a problem with noise and disturbance from customers leaving the premises at closing time - general noise from customers and noise of opening and closing car doors, revving engines etc.

Permitted development - It should be noted that planning permission is not expressly required for the minor works but they are illustrated on the submitted plans for clarity.

Economy - Like most of the retail sector nationally, the pub/restaurant sector is under great pressure to survive in a competitive market. In past years approval has been given to extend and introduce bed and breakfast accommodation at the pub. The supporting statement submitted with the application states that the developments subject to this application have allowed the business to further adapt and modernise and provide a high quality environment for its customers. It adds that the development is an essential part of the pub / restaurant and supports the viability of the business going forward.

The existing public house appears to be a popular local destination both for social functions, drinking and eating. The tipi, which allows the pub additional function space is clearly commercially beneficial and in particular was beneficial during Covid when the structure was first erected. The critical factor to consider is, do the economic and commercial benefits outweigh other disbenefits, in this case those relating to visual and residential amenity and highway safety.

In terms of economy, the proposal, whilst improving the economic viability of the pub, would have a serious and detrimental impact on visual and residential amenity. The proposal therefore is not acceptable and conflicts with the NPPF, PfE and UDP Policies EC4/1 Small Businesses and S2/6 Food and Drink.

Visual amenity - The supporting statement submitted with the application suggests improvements to the garden have been carefully designed to complement and enhance the appearance of the site.

The noise report confirms that a 2.5 metre high acoustic fence would be required, which would be a close timber boarded fence against the boundary of the site with properties on Cheshire Court. As such, the proposed fence would be similar to existing fences in the locality and would not be a prominent feature in the streetscene.

Whilst some elements of the scheme may be considered an improvement, overall the development does not enhance or compliment the existing site as the tipi is not a particularly attractive structure and the upper half of which is readily viewed from Whalley Road to the east. It is not considered to be in keeping with the design and character of the existing public house and is particularly incongruous within the landscape. It is noted that views from that part of Whalley Road running past the beer garden take in what is an attractive vista of Ramsbottom and Holcombe Hill beyond. This view is clearly and somewhat negatively impacted by the tipi sited in the beer garden.

The external bar, toilet block and other associated structures/works are relatively modest in scale and not so readily viewed and would be acceptable in terms of visual amenity.

The proposal to permanently retain the tipi structure in situ would not be appropriate and would constitute an incongruous feature that is out of keeping with the visual amenity of the area.

The proposal does not comply with UDP Policies EN1/1 Visual amenity and EN1/2 Townscape and Built Design and general design guidance in SPD16 Design and Layout of New Development in Bury.

Residential amenity - The site is surrounded by residential dwellings with the beer garden area sitting between terraced houses on the opposite side of Whalley Road and detached dwellings on Cheshire Court, whose garden areas back onto the beer garden.

A noise report has been submitted with the application. The background and ambient sound

surveys were undertaken over a 3-day period including a weekend (with and without a planned function) on the following dates:

- 15:00 Friday 19th July to 07:00 Monday 22nd July 2024.
- 14:00 Friday 26th July to 07:00 Monday 29th July 2024.

A further survey was undertaken for the heater that would be used in colder months.

The report suggests mitigation measures in the form of acoustic barriers at a height of 2.5 metres are required. Also an acoustic barrier would provide at least 10 dB of attenuation to reduce noise levels from the heater. The existing properties on Cheshire Court are at a significantly lower level when compared to the beer garden. As such, the proposed 2.5 metre high fencing would remove light from the rear garden and the ground floor windows of the adjacent properties.

In summary, the assessment concluded that, with mitigation measures in place, no adverse impact is predicted during the day at the receptors due to the proposed development. However, from the number and nature of objections received, there is clearly a conflict of interests between the functions/activities taking place within the beer garden, specifically functions related to the tipi and external bar area, and the immediate neighbours.

It is accepted that the existing beer garden is established and indeed, permitted development. Most beer gardens attached to pubs are wholly outdoor or have a semi-covered gazebo. It is unusual for music to be played with beer gardens. It is unusual to have a function room within a beer garden and the impacts of this are the main issue arising with this proposal.

Notwithstanding the outdoor seating area, there is certainly an issue of additional noise from functions within the tipi and associated comings and goings from the external bar area. It is noted that there is music played through speakers within the tipi and also within the external bar area. The fabric enclosing the tipi provides no insulation from the noise generated within it or from the music emanating from the sound system or from the associated heaters.

The difference between an average beer garden and one with a function tent catering for birthday parties and weddings etc and external bar in terms of noise impact is considered significant.

It is apparent, with 11 spaces, on-site parking is very limited at the site. Without the tipi function space there would probably be additional on-street parking generated by the pub and associated noise. However it is clear that additional customer vehicles generated by the tipi use, no doubt adds to the on-street parking around the site and as a consequence there is the problem of general noise and disturbance arising as customers leaving the premises and accessing their vehicles, opening and closing door and starting engines etc. This would be particularly impactful on the residential roads such as Peel Brow and Cheshire Court.

Objections received from surrounding residents suggest noise and disturbance from both the premises and customers accessing their cars on side streets is a particular problem.

Noise Impact Assessment - The noise report submitted with the planning application determined that the representative background sound level for the surrounding receptors would be 44 dB. This has been derived from looking at the hours before and after operation (11:00 and 23:00) on each day surveyed, the median value of these hours is 44 dB. This value is representative of the background sound level when the external seating area is not in operation.

The surveys produce a highest hourly noise level for a planned event within the Tipi and also a highest hourly noise level when the external area is being utilised, but no planned

event is taking place.

The highest predicted specific noise level in rear gardens is noted to be 69.3 dB. This is above the upper criterion of 55 dB as stipulated in BS 8233. Even with the acoustic fence, the noise level would be 59.3dB, which is above the 55dB limit. As such, the retention of the tipi and external bar would have an adverse impact upon the sensitive noise receptors in the rear gardens of the neighbouring properties.

Furthermore, the noise levels predicted at the façade of the worst affected receptor is 58.2 dB. Assuming an open window this would result in internal noise levels of 45 dB. This is 10 dB above the daytime criterion within BS 8233: 2014. As such, the development would have an adverse impact upon the amenity of the neighbouring properties.

The report accepts there is a noise issue and recommends the construction of an acoustic fence along the shared boundary with properties on Cheshire Court. The proposed acoustic fence would be constructed from timber. The Environmental Health team have raised concerns that a timber fence would not be sufficient to deal with the potential for noise and recommend that a brick wall should be provided.

Whilst the proposed acoustic fence would mitigate noise to an extent, on balance, it is not considered sufficient mitigation for the use of the tipi and the associated on-site activities and noise generators never mind the noise and disturbance caused by customers leaving and accessing their vehicles on the residential side streets, particularly given the proximity of the surrounding residential properties to the site.

The noise report addresses noise from the beer garden, tipi and heater but does not address wider issues of noise from other sources such as customers leaving the pub and accessing cars, which would be exacerbated by the retention of the tipi through use all year round.

The Environmental Health team have outstanding concerns on the basis that there is insufficient mitigation for noise and disturbance created.

Given the harm identified, the proposal, in terms of residential amenity, is unacceptable for the reasons set out above and does not comply with UDP Policies EC4/1 Small Businesses, S2/4 Food and Drink and EN7/2 Noise Pollution.

Access and Parking - As stated above, the public house is a popular venue for drinking and dining for both locals and those from further afield. In addition, consent has been granted for 5 bedrooms for use as bed and breakfast. On-site parking is limited to a car park containing 11 spaces and customers park on surrounding roads, in particular Peel Brow and Cheshire Court, directly behind the pub.

If the hotel rooms are occupied, there would be 6 spaces available for use by customers of the pub, tipi and associated beer garden.

The tipi would provide 118 square metres of floorspace and SPD11 states that the maximum number of parking spaces for this use would be 17 spaces.

The proposal would intensify the use of the site and would draw more customers to the premises and there would be no additional parking within the pub site to facilitate the increased usage and numbers of patrons, the reliance therefore being on street in this predominantly residential area.

The pub is located close to the junction of Whalley Road with Peel Brow and any parked cars in this area would lead to restricted visibility at this junction, which provides the only right turn into Ramsbottom and as such, is used frequently.

The Traffic Section have objected on the grounds of lack of parking.

It is therefore considered the proposed development would put parking pressures on the adjacent nearby streets which would be detrimental to highway safety and as such would be contrary to policies H2/4, JP-C5 and JP-C6.

Carbon and Energy - An energy and carbon statement was submitted and states that the proposed development does not fall into any of the above categories set out in the PfE validation checklist and therefore a Carbon and Energy Statement is not be required.

It is not possible for the structures to incorporate any renewable energy generation (such as solar PV), since they do not have the load-bearing capacity. The inclusion of any renewable energy generation would also be totally disproportionate to the development.

The applicant states that the requirements of Policy JP-S2 of the PfE Document should not be applicable to the proposed development.

It can be argued that the tipi is clearly a building and therefore a carbon and energy statement is required. However irrespective of this, the issue of carbon and energy efficiency is not considered to be significant.

Digital connectivity - A short statement submitted states that the site served by Wi-Fi and customers are able to access the internet for free via their devices on site.

Public comments - Where relevant, the issues raised by local residents are addressed in the above report.

Complaints about waste being thrown into rear gardens from beer garden and other anti-social behaviour, whilst clearly are relevant, could be mitigated by improved management.

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

The proposal would not improve the economic, social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application. 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 design and appearance of the proposed permanent structures is neither appropriate to, nor sympathetic with its site and surroundings and would be detrimental to the visual amenity of the area. The proposed development therefore conflicts with the following policies of the Bury Unitary Development Plan: EN1/1 Visual Amenity, EN1/2 Townscape and Built Design and associated guidance in SPD16 New Development in Bury and the National Planning Policy Framework
- 2 The permanent retention of the 'tipi' structure would be seriously detrimental to the residential amenities of surrounding residents, by reason of the noise, disturbance and general activity associated with the proposed use, including customers leaving and accessing vehicles late in the evening. The proposed development therefore

conflicts with the National Planning Policy Framework and Places for Everyone and the following policies of the Bury Unitary Development Plan: EC4/1 Small Businesses, S2/6 Food and Drink, EN7/2 Noise Pollution.

- 3 The proposed development would be seriously detrimental to the residential amenities currently enjoyed by the occupier(s) of the adjacent dwellings, by reason of its size and position. The proposed development therefore conflicts with the following policy(ies) of the Bury Unitary Development Plan:
Policy EN1/2 - Townscape and Built Design.
- 4 The proposal would result in the significant intensification of the use of the site 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, EN1/2 - Townscape and Built Design 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.

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