

DELEGATED REPORT

Report by Helen Leach	Date of report: 11/04/2024	Ref: 69299/FUL
Registration: 21/02/2023	LDFC: 16/03/2023	Expiry Date: 18/04/2023
Site Visit: 17/03/2023	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: Proposed alteration to the external façade of existing building, including partial demolition and external works to accommodate a Drive-Thru Lane

Location: Unit 2, Victoria Retail Park, Victoria Street, Bury, BL8 2EQ

Description

The site comprises part of a retail (A1) unit of 1598 square metres (occupied by Lidl), a trade/bulky goods (A1) unit of 418 square metres (occupied by Mencap and referred to as unit 1) and a 232 square metres unit (referred to as unit 2), which is vacant. Planning consent (59488) was granted in 2016 to vary the uses within unit 2 to B1, B8, A1, A3 or A5. Following changes to the Use Classes Order, these uses would now fall within Class E and the hot food takeaway use would be sui generis.

The site has highway frontages to Victoria Street to the east, Bolton Road to the south east and Ainsworth Road to the south, and is bounded by the elevated Manchester, Bolton and Bury Canal feeder to the west. To the south of the application site is a gas works, which is operational.

On the opposite side of Victoria Road there is an 'island site' with mature trees and advertisement hoardings with a commercial/industrial mill building located further along Victoria Street. The nearest residential properties are to the south on the opposite side of Victoria Road.

The development of the site for the mixed use scheme was granted on appeal in 2014 (56249). A subsequent application to vary the approved plans to increase the footprint of the bulky goods/retail unit (A1) (unit 1) and reduce the floorspace of the industrial unit (B1/B8) (unit 2) was granted approval in 2015 (58382). A further application to vary the uses of unit 2 to include any use within B1, B8, A1, A3 or A5 was approved in March 2016 (59488). Following changes to the Use Classes Order, these uses would now fall within Class E and the hot food takeaway use would be sui generis.

A further application to vary the approved plans condition to allow for the external alterations to facilitate the sub-division of unit 2 into 2 separate units of 74 square metres and 158 square metres. This permission has not been implemented.

Proposed development

The proposed development involves the partial demolition of the building and external works to accommodate a drive thru lane. The western part of the building would be demolished, leaving a unit of 184.62 square metres, which includes a drive-thru pod projecting on the western side.

Three compounds would be created with one on the eastern elevation of unit 1 and two on the rear elevation of the two units. The compound on the eastern elevation would be used for bin storage for unit 1 and the two units on the rear would contain air conditioning units.

The proposed drive thru lane would start on the western side of the Mencap unit, pass around the rear of the units and exit into the car park on the eastern side. A cycle stand area would be provided. The proposed drive thru lane would be used in association with a cafe/coffee shop. The use of the unit as a cafe/takeaway in accordance with the uses granted consent in 2016 and does not require planning consent.

Relevant Planning History

36453 - Continuation of hazardous substances consent following a change in control of part of the site at Victoria Street, Bury. Approved with conditions - 6 July 2000.

56249 - Erection of 1598 m2 retail foodstore (Class A1), 325 m2 (Class B1/B8) unit and 325 m2 trade/bulky goods unit (Class A1) together with car parking and landscaping at former gasworks, Victoria Street, Bury. Refused - 17 September 2013. Allowed on appeal - 8 September 2014.

58382 - Variation of conditions 2 and 15 of planning permission 56249 to amend floor space to 232square metres Class (B1/B8) unit and 418 square metres (Class A1 Trade/bulky goods) Unit at former gasworks, Victoria Street, Bury. Approved with conditions - 16 April 2015.

59488 - Change of use from Class B1/B8 to any use within Class A1/A3/A5/B1/B8 at Unit 2, Victoria Retail Park, Victoria Street, Bury. Approved with conditions - 15 March 2016

60344 - Variation of condition no. 2 (approved plans) of planning permission 59488 to facilitate alterations to internal layout and elevations at Unit 2, Victoria Retail Park, Victoria Street, Bury. Approved with conditions - 15 August 2016.

Adjacent site

64738 - Prior notification of proposed demolition of 2 no. gasholders and associated redundant infrastructure at Bury Elton Gasworks, Victoria Street, Bury. Prior approval required and granted - 28 November 2019.

65432 - Engineering works comprising the partial infilling of voids, created as a result of the demolition of gasholders on the site at Bury Elton Gasworks, Victoria Street, Bury. Approved with conditions - 26 June 2020.

69886 - Engineering works comprising the infilling of voids, created as a result of the demolition of gasholders on the site at Bury Elton Gasworks, Victoria Street, Bury. Approved with conditions - 14 September 2023.

Publicity

The neighbouring properties were notified by means of a letter on 22 February 2023. There has been no response.

Statutory/Non-Statutory Consultations

Traffic Section - Object - loss of existing servicing facilities, loss of car parking, substandard access arrangements and intensification of a substandard access.

Environmental Health - Contaminated Land - No objections, subject to the inclusion of conditions relating to contaminated land.

Environmental Health - Air Quality - Require details of electric vehicle charging.

GM Ecology Unit - No objections, subject to the inclusion of conditions relating to bats.

The Coal Authority - No objections, subject to the inclusion of an informative relating to coal mining.

Waste Management - No response.

Cadent Gas Ltd - No objections, subject to the inclusion of informatives relating to gas infrastructure.

Canal and River Trust - Any excavation required for the drive thru road or drainage must

not affect or undermine the wall foundations or impact the structural integrity of the retaining wall, which supports the Manchester, Bolton and Bury Canal.

Pre-start Conditions - Not relevant.

Unitary Development Plan and Policies

EN1/2	Townscape and Built Design
EN1/5	Crime Prevention
EN1/7	Throughroutes and Gateways
EN1/8	Shop Fronts
EN6/3	Features of Ecological Value
EN7/2	Noise Pollution
EN7/5	Waste Water Management
S2/1	All New Retail Proposals: Assessment Criteria
S2/6	Food and Drink
HT2/4	Car Parking and New Development
HT2/5	Public Car Parks
SPD6	Supplementary Planning Document 6: Alterations & Extensions
SPD11	Parking Standards in Bury
JP-C2	Digital Connectivity
JP-C5	Streets For All
NPPF	National Planning Policy Framework

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 proposed development would involve the use of the vacant unit as a coffee shop with an associated drive thru/takeaway. Planning consent was granted in March 2016 to vary the uses of the B1/B8 unit to include any use within B1 (light industrial), B8 (warehousing or storage), A1 (retail), A3 (cafe) or A5 (hot food takeaway) was approved in March 2016. Following the amendment to the Town and Country Planning (Use Classes) Order in 2020, the uses were amended to B1 (light industrial), B8 (warehousing or storage), E (shop or cafe) and a hot food takeaway would be sui generis. As such, the proposed use as a coffee shop with associated takeaway would fall within the uses approved in March 2016 and does not require planning approval.

Design and layout - The proposed development involves the demolition of part of the existing unit on the western elevation to form a drive thru pod. This part of the building is located between the existing unit and the retaining wall, which supports the Manchester, Bolton and Bury Canal feeder. As such, the proposed works would not be visible to the streetscene. In addition, the materials for the proposed development would match the existing building. Therefore, the proposed development would not be a prominent feature and would be in accordance with Policy EN1/2 of the Bury Unitary Development Plan.

The proposed development involves the erection of fencing at the rear of the two units and on the eastern elevation of unit 1. The proposed fencing would be constructed from timber and would be 2 metres in height. The proposed fencing would be appropriate in terms of appearance and would not be visible, due to its position. Therefore, the proposed development would not be a prominent feature and would be in accordance with Policy EN1/2 of the Bury Unitary Development Plan.

Impact upon the canal - The proposed development involves demolition works and the provision of a drive thru lane adjacent to the viaduct, which supports the Manchester, Bolton and Bury canal. When consent was granted for the construction of these units, a 2 metre easement was provided to ensure no damage to the retaining wall.

The Canal and River Trust have stated that they have concerns about the retaining wall, which is immediately adjacent to the site. These relate to any excavation required for the drive thru road or drainage and its subsequent impact upon the retaining wall. It should be noted that the Canal and River Trust own the canal, but do not own the retaining wall.

However, this would be a private matter between the two parties and the concerns of the Canal and River Trust would be added as an informative.

Impact upon residential amenity - The proposed development would provide a drive thru lane, which would be used in conjunction with a cafe/coffee shop in unit 2. The proposed use would not generate any greater noise than the current commercial uses on site and the nearest residential properties would be 45 metres away. Given the distance and the level of potential noise, the proposed development would not have a significant adverse impact upon the amenity of the neighbouring properties. Therefore, the proposed development would be in accordance with Policy EN7/2 of the Bury Unitary Development Plan.

Noise - The proposed site plan indicates that air conditioning units would be installed in a compound at the rear of the two units. The proposed compounds would be bounded by 2 metre high timber fencing. No details of the air conditioning units or the associated noise levels have been provided. As such, there is insufficient information to assess whether the proposed development would have an adverse impact upon the amenity of the neighbouring properties in terms of noise. Therefore, the proposed development would conflict with Policy EN7/2 of the Bury Unitary Development Plan.

Ecology - No significant ecological issues were identified and issues relating to bats, nesting birds and biodiversity enhancement measures are discussed below.

Bats - A bat survey was submitted with the application and the building was assessed as having negligible bat roosting potential. There is no reason to doubt the findings of the report, given the experience of the consultant and nature of the building. The only potential issue would be if any additional external lighting was to be installed that would increase the level of illumination of the high retaining wall along the western boundary. Bollard lighting would not be an issue in this location. GM Ecology Unit has no objections, subject to the inclusion of a condition relating to external lighting.

Nesting Birds - No bird nesting habitat is present on site and as such, no further information or measures are required.

Contributing to and Enhancing the Natural Environment - Section 174 of the NPPF 2021 states that the planning policies and decisions should contribute to and enhance the natural and local environment. The proposed development would not have an adverse impact upon a habitat or species and as such, mitigation is not required. GM Ecology Unit has no objections, subject to the inclusion of a condition requiring the installation of a bird box on the retaining wall.

Therefore, the proposed development would be in accordance with Policy EN6/3 of the Bury Unitary Development Plan.

Impact upon utilities - Gas infrastructure is located to the south of the application site, which is operational. The infrastructure includes major and intermediate gas pipelines and Cadent originally objected to the scheme due to the impact upon the gas apparatus, but revised plans have been submitted, which have addressed these concerns. Cadent have confirmed that there are no objections to the proposed development, subject the access arrangements on the revised site plan being implemented. Therefore, the proposed development would not have an adverse impact upon the gas apparatus and would be in accordance with Policy JP-P1 of the Places for Everyone Plan.

Highways issues - The proposed drive thru lane would start on the western side of unit 1, pass around the rear of the units and exit into the car park on the eastern side of unit 2. The area to the rear of units 1 and 2 is currently in use as a service yard as originally approved. This enabled deliveries to be separated from customers vehicles and provided an area where delivery vehicles could turn around. The location of the proposed drive thru lane would result in the loss of the servicing area for both units.

The agent has provided the following response:

The submitted swept-path analysis demonstrates the path (within the car park) that the 10 metre service vehicle would take in order to service the site. The 10 metre rigid vehicle is largest anticipated service vehicle for the site and no larger HGVs would be expected. Moreover, deliveries would expected to occur at a frequency of just once per day, with these visits expected outside of peak hours in order to minimise disruption. The vehicle tracking shows that the body of vehicle may be required to partially enter one car parking bay. Hatching could be added in this location.

The swept path analysis that was provided indicated that the 10 metre rigid vehicle would have to turn around within the customer car park and would need to use parking spaces to be able to complete the manoeuvre. If a customer was parked in any of these spaces, the lorry would not be able to turn around to the detriment of highway safety.

The nature of the car park would mean that there will be a number of pedestrians walking across the car park to access the retail units. The loss of the dedicated servicing facility would result in a lorry manoeuvring in close contact to pedestrians, which would cause conflict.

The intention for the deliveries to take place outside of peak hours is noted but the unit occupied by Lidl is open between 08.00 and 22.00 on Monday to Saturdays and 10.00 and 16.00 on Sundays. In addition, it is presumed that the proposed coffee shop and drive thru facility will be open early in the morning until early evening. As such, it is highly likely that there will be customers on the car park when a delivery is taking place, which would cause conflict and would be detrimental to highway safety.

Finally, the statement provided addresses the delivery needs of the proposed coffee shop/drive thru facility, but not the attached unit - unit 1, which has a consent for the sale of trade/bulky goods. As such, it is highly likely that this unit will need to be serviced by a HGV in the future. The provision of the drive thru lane would narrow the access to the rear of the site to 2.8 metres at the pinch point, which would not be wide enough for most types of lorry or HGV. The proposed layout would mean any deliveries to unit 1 would need to unload whilst parked in the car park, which would cause significant disruption to the use of the car park by customers.

The doors on the rear of unit 1 are located adjacent to unit 2. This would result in good having to be transported by hand from the public car park for a considerable distance. When measured from the front of the building, this would be a minimum of 47 metres, which would be impractical. As such, this would be caused by the proposed development and is an example of bad design.

The Traffic Section has objected to the scheme as the proposed development would result in the loss of existing servicing facilities, the loss of car parking, substandard access arrangements and intensification of a substandard access. Therefore, the proposed development would be detrimental to highway safety and would conflict with Policies EN1/2 of the Bury Unitary Development Plan and Policy JP-C5 of the Places for Everyone Plan.

Parking - SPD11 states that the maximum floorspace is as follows:

- 1 space per 16 square metres of food retail floorspace
- 1 space per 30 square metres of non food retail floorspace
- 1 space per 8.5 square metres of hot food takeaway floorspace

This equates to 136 spaces and 9 parking bays for disabled users for the 3 units on site (units occupied by Lidl, Mencap and the application site). These figures and the figures below are based upon the reduced floorspace for the proposed unit after the demolition works.

The proposed development would result in a loss of 4 spaces and 2 spaces for disabled users, which would provide a total of 83 spaces and 8 spaces for disabled users.

The number of parking spaces for the proposed development would be significantly below the maximum (53 spaces and a reduction of 1 space for disabled users). Whilst the agent states that the proposed drive thru use would lessen the demand on the car park when compared to a cafe, other correspondence and the proposed site plan indicate that the unit would provide seating for 40 people. These customers would be using the car park for a longer period of time than the customers of the retail units. Based on the site visit, the car park was busy and almost every space was in use with a regular turnover of customers.

The application site is located off Bolton Road and all of the surrounding streets have double yellow lines, so on-street parking would not be available. The Traffic Section have objected to the reduced parking provision.

Whilst it is acknowledge that the site is located off Bolton Road, which is a main bus route, the level of parking would be substandard, which is likely to lead to vehicles parking and carrying out manoeuvres on the highway, which would be detrimental to highway safety.

Therefore, the proposed development would conflict with Policy HT2/4 of the Bury Unitary Development Plan and SPD11 and Policy JP-C5 of the Places for Everyone Plan.

Carbon/Energy - A carbon and energy statement has been submitted as part of the application. The statement refers to a number of options that could be undertaken to reduce the amount of energy used, such as a heat pump and photovoltaic array. However, there is no commitment to provide any of the options detailed. In addition, the statement confirms that the development would be constructed in accordance with Part L of the Building Regulations from 2015. The latest Part L document came into effect in 2022 and as such, it is not clear if the proposed development would comply with the latest Part L document within Building Regulations. Therefore, there is insufficient information to establish if the proposed development would comply with Policy JP-S2 of the Places for Everyone Plan.

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 proposal would result in the loss of existing approved dedicated servicing facilities at the rear of the building for use by all operators in this part of the site and the creation of sub-standard arrangements within the existing car park, which is highly likely to lead to conflicts between manoeuvring service/delivery vehicles and members of the public, to the detriment of pedestrian and road safety. The proposed development would conflict with the Bury Unitary Development Plan Policy EN1/2 - Townscape and Built Design and Places for Everyone Joint Development Plan Policies JP-C1 - An integrated Network and JP-C5 - Streets for All.
- 2 The proposal would result in the loss of existing approved car parking facilities at the front of the building, which is likely to lead to vehicles parking and carrying out manoeuvres on the highway to the detriment of the free flow of traffic and road safety. Therefore, the proposed development would conflict with Policy HT2/4 - Car Parking and New Development of the Bury Unitary Development Plan and Policy JP-C5 - Streets For All of the Places for Everyone Joint Development Plan.
- 3 The proposed access arrangements to and barrier arrangements at the Drive Thru Lane are sub-standard, which is likely to lead to conflicts within the car park and with

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HGV's accessing and egressing the land to the south, which would be detrimental to the free flow of traffic and road safety. Therefore, the proposed development would conflict with Policy EN1/2 - Townscape and Built Design of the Bury Unitary Development Plan and Policy JP-C5 - Streets For All of the Places for Everyone Joint Development Plan.

- 4 The proposed drive thru would result in the intensification of use of existing sub-standard access arrangements at the junction of the site access with Victoria Street, which is likely to lead to conflicts at this hazardous point on the highway network and result in an increase in number of vehicles crossing Victoria Street to avoid utilising the signalised junction at Bolton Road, to the detriment of the free flow of traffic and road safety. Therefore, the proposed development would conflict with Policy EN1/2 - Townscape and Built Design of the Bury Unitary Development Plan and Policy JP-C5 - Streets For All of the Places for Everyone Joint Development Plan.
- 5 The application and submitted plans contain insufficient information in relation to measures to ensure that the development would be net zero with regard to regulated operational carbin emissions to enable them to be properly assessed. Therefore, the proposed development would conflict with Policy JP-S2 - Carbon and Energy of the Places for Everyone Joint Development Plan.
- 6 The application and submitted plans contain insufficient information in relation to the air conditioning unit to enable the impact of the noise generated to be properly assessed. Therefore, the proposed development would conflict with Policy EN7/2 - Noise Pollution of the Bury Unitary Development Plan.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HL - 11/04/2024		DM 11/04/24	