

DELEGATED REPORT

Report by Tom Beirne	Date of report: 20/01/2022	Ref: 67709/FUL
Registration: 25/11/2021	LDFC: 23/12/2021	Expiry Date: 20/01/2022
Site Visit: 12/01/2022	Site Notice: N/A	Press Date: N/A
Objections: 6	Con Area: N/A	Adv Type: NONE
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: MIOT

Proposal: Change to opening hours from 09:00-23:00 to 09:00-01:30; Repositioning of kitchen extractor

Location: 424 Bury New Road, Prestwich, Manchester, M25 1BD

Description

The application relates to an existing restaurant within a row of two storey red brick terraced commercial properties on the east side of Bury New Road. The site lies within the Secondary Shopping Area and Frontage of Prestwich Town Centre, fronting the main road.

The attached property to the north is a financial services office and on the south side is a hot food takeaway outlet. There are flats above the commercial units on the row. Beyond the rear yard are houses fronting Greenhill at a higher level. There is a pedestrian access from the rear yard to Bury New Road where bins are taken to the collection point next to No.418 Bury New Road. There is metered public parking along Bury New Road, directly in front of the property.

The initial change of use planning application in 2020 proposed opening hours to 2300hrs daily. This application seeks to extend the opening hours to 01.30am daily. The application also includes the installation of a large flue/extractor on the rear elevation. This is already in situ. It is noted that the previously approved plans indicated a smaller flue in a different position on the rear elevation.

Relevant Planning History

02349/E - Change of use from A1 to A3 - Enquiry completed 25/09/2019

64941 - Change of use from shop (Class A1) to restaurant and bar (Class A3/A4) with flue at rear and minor alterations to shopfront - Approve with Conditions 17/02/2020

21/0244 - Breach of conditions no. 3 (opening times), no. 4 (noise) and no's. 6 & 7 (flue) of planning permission 64941 - application received.

Publicity

Immediate neighbours notified by letter dated 01/12/2022. Six objections received from nearby properties, summarised below:

- The current situation is already challenging for those that live on the cul-de-sac.
- The previous application appears not to have been adhered to; namely the planning rule regard incorrect flue/extraction system (rear and facing the cul-de-sac) There has been no address to comply with the original planning permission and DEFRA guidance to noise and odour control. Strictly, the exhaust system has to comply with BS4142- if the commercial noise is 10dB or higher than the background noise level then this is an adverse impact to environment and health. Does it comply? We need to see proof.
- Extending opening hours will severely impact on residential amenity and health
- Concern regards possible emission, odours that is extracted.
- The restaurant backs onto a residential area. Noise and disturbance caused by odour and noise from both the chimney, restaurant and smashing of bottles into bins after

midnight. This is only winter, in summer all of the above are intensified to a level as it is impossible to sit outside in our gardens.

- Accepting diners or even staying open 'til 1.30 am in the morning is overkill particularly on summer evenings when diners will be sitting and drinking outside in the already prepared area to the rear of the property.
- At best, there is a constant, lengthy and prolonged din from the flue/extraction system. At worst, a norm during warmer weather, a flue/extraction system running at full capacity is therefore louder emitting clouds of bellowing smoke. In addition, patrons enjoying their evening become fully animated and just as loud as the flue/extractor as the evening draws into night.
- Does outdoor seating comply fully to regulations? To add, a nauseating kitchen grill meat smell persistently blankets Greenhill much of the day and well into early hours.
- Heightened activity at Gorge Restaurant & Bar means all windows in my house have to remain shut. I am not able to sit or play with my toddler in the garden for long periods due to the louder and constant din made by the flue/extractor. It is noted that patrons shouting, shrilling and shrieking have been serviced well into the early hours and beyond current opening hours.
- My main bedroom, where by young toddler and I sleep, is no longer a place to rest.
- Our room faces directly onto the flue/extractor. Not only is this a visible reminder of the constant din but the noise that carries disrupts my toddlers sleep. On occasion, the intermittent, riotous laughter, shrills and shrieks by patrons outside have scared and woken him often around midnight. It is upsetting to witness my toddler frightened by noise which he is not able to comprehend.
- I believe extending opening hours will severely impact my mental health in the longer term as the situation, currently, is grossly challenging particularly at night as outlined.
- For the avoidance of doubt, residents of Greenhill are a welcoming community who have fully supported all local businesses and have seen the benefits of what local entrepreneurs and commerce bring.
- There is no malice in my objection but a request that the proprietor and/or business owner complies with regulations and that his business interest does not override the basic sincere request for a peaceful neighbourhood which it has always been until of late. It is imperative that the proprietor and/or business owner engage with his neighbours and the surrounding, to offer consideration of the well-being of those that live within very close proximity of Gorge Restaurant & Bar.

Statutory/Non-Statutory Consultations

Environmental Health - Pollution Control - Serious concerns with regard to the impact of the extractor/ flue and extended opening times and impact on nearby residential properties.

Pre-start Conditions - N/A

Unitary Development Plan and Policies

Area	The Longfield Centre/Bury New Road
PR1	
S1/2	Shopping in Other Town Centres
S2/3	Secondary Shopping Areas and Frontages
S2/6	Food and Drink
EN1/2	Townscape and Built Design
NPPF	National Planning Policy Framework
EN7/2	Noise Pollution

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.

Use/ Economy- The site is within Prestwich Town Centre and in an area characterised by a mix of commercial/residential uses. In assessing the original change of use, it was considered that bringing what was an empty property back into active commercial use with up to five employees, would enhance the viability and vitality of the town centre. As such, the proposal, in terms of use, was acceptable and complied with UDP town centre shopping policies S1/2 and S2/3 and Area Policy PR1 and EC4/1 Small Businesses.

It is recognised, particularly within the current climate, that small local businesses need to be supported by planning policies. It is recognised that the Gorge Restaurant has occupied a previously vacant shop unit and appears to have been successful in what have been difficult times.

The critical factor in assessing this proposal is to balance the commercial benefits of the business and town centre with the amenities of residents.

Visual amenity - Although the proposed flue is rather large and incongruous, it is on the

rear elevation and not particularly prominent when viewed from the public arena. It can be viewed from Greenhill to the rear and could benefit from being moved over on the elevation and given different finish (grey/black powder coating). It is noted that a condition was attached to the previous approval that required the flue to be powder coated - The proposed flue at the rear shall be powder coated grey or black and maintained in such condition thereafter. This condition was attached in the interests of visual amenity pursuant to EN1/2 Townscape and Built Design.

With a different finish, required by a similar condition, the flue would be considered acceptable in terms of visual amenity and complies with UDP Policies EN1/2 relating to streetscape. However as the flue is in situ without the required finish, the flue is considered to be unacceptable and contrary to UDP Policy EN1/2 Townscape and Built Design and S2/6 Food and Drink.

Residential Amenity - When the original application was assessed in 2020, it was considered that the modest sized bar/restaurant, within the town centre and opening to 11pm, with a modest flue, would not generate excessive noise and disturbance or have a seriously adverse impact on nearby residents serious enough to warrant refusal. In addition suitable conditions were attached to secure the flue would be finished and installed appropriately. No information with regard to the conditions was submitted.

Given the presence of residential properties to the north and east of the site, there are serious concerns that the current flue and other activities associated with the use, operating to 01.30am and possibly beyond during cleaning up time, would be seriously detrimental to the amenities of residents in these properties in terms of noise and disturbance caused. It is noted that no information with regard to noise levels or sound insulation has been submitted with regard to the current flue. Objectors have indicated that the flue has been particularly noisy during operation and has not been operating appropriately.

Without an up-to-date noise assessment, based on BS4142 and carried out by a competent person that clearly proves that the extractor/flue is operating within acceptable limits, the proposal is considered to be unacceptable and contrary to UDP Policies S2/6 Food and Drink and EN7/2 Noise Pollution.

Opening hours - Whilst the 11pm closing required by the previous approval could be seen a little restrictive within what is a town centre location on a busy, main throughroute, the extension to 01.30am is considered to be excessive when considering the proximity of residential properties on Greenhill. It is considered that a more modest time extension may be more appropriate subject to the proper functioning of the extractor/ flue and other operations at the premises.

Objections - The issues raised by the objectors, set out above, have been addressed in this report. The concerns of the objectors, where appropriate, are reflected in the reasons for refusal.

Enforcement - Given the flue is in situ, it is recommended that enforcement is undertaken to secure the appropriate flue is installed at the property.

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 proposed extended opening hours to 01.30am would be seriously detrimental to the residential amenities of nearby occupiers, by reason of the noise, smell, disturbance and general activity associated with the proposed use, including the operation of the proposed flue at the rear. The proposed development therefore conflicts with the following policies of the Bury Unitary Development Plan: S2/6 Food and Drink and EN7/2 Noise Pollution.
- 2 The application and submitted plans contain insufficient information with regard to the extractor/flue at the rear to enable them to be properly assessed. As such the proposal is unacceptable and contrary to UDP Policies S2/6 Food and Drink and EN7/2 Noise Pollution.
- 3 The extractor/flue, without an appropriate finish would appear incongruous on the building and would therefore be seriously detrimental to the visual amenity of the immediate locality. The proposal would be contrary to the following UDP Policy EN1/2 Townscape and Built Design.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
Tom Beirne	20/01/2022		