

Appeal against the refusal by Bury MBC for a change of use of part of car showrooms to general retailing plus an independent office (including an extension to the existing building), Performance House, Heywood Street, Bury BL9 7DZ

Appeal Statement

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr H. Khan against the decision of Bury Metropolitan Borough Council.
- The application ref: 70710, dated 28 April 2024, was refused by notice dated 19 June 2024.
- The development proposed is a change of use of car showrooms to general retailing plus an independent office (including an extension to the existing building)

Administrative Issue

A planning application for the same development, but with differing proposed parking and servicing arrangements, has been refused previously by the local planning authority (LPA) on 3 April (ref: 70461). The matter is the subject of a separate planning appeal and where an appeal decision is awaited.
(APP/T4210/W/24/3341939)

Matters not in dispute.

The appeal relates to a former car showrooms. Approximately a third of it received approval for its change of use to a café with an office on its existing mezzanine floor level on 26 August 2022 under planning application ref: 68430. The approval is extant.

The current appeal relates to the change of use of the remaining two-thirds of the building for retailing purposes and includes a rear extension where the proposed use is for an office.

The LPA is not objecting to the principle of the development, nor on grounds of the design or in terms of any adverse impacts upon the amenities of the occupiers of adjoining premises.

The Main Issues

The main issues are (i) the amount of proposed parking and also servicing arrangements and the effect upon highway safety; (ii) the suitability of the location of proposed parking for customers and (iii) provisions for refuse collection.

Parking, servicing and highway safety

In its Decision Notice, the LPA states that *'the proposed servicing and car parking arrangements/provision is inadequate and is likely to lead to vehicles parking and carrying out manoeuvres on the highway on the surrounding streets and in close proximity to the Heywood Street/Mason Street junction, to the detriment of the free flow of traffic and road safety'*.

The officer report sets out the parking requirement as follows –

'Parking provision

Supplementary Planning Document 11 indicates that the proposal should provide a maximum of 12 spaces and that the development should be appropriately provided for servicing and manoeuvring'.

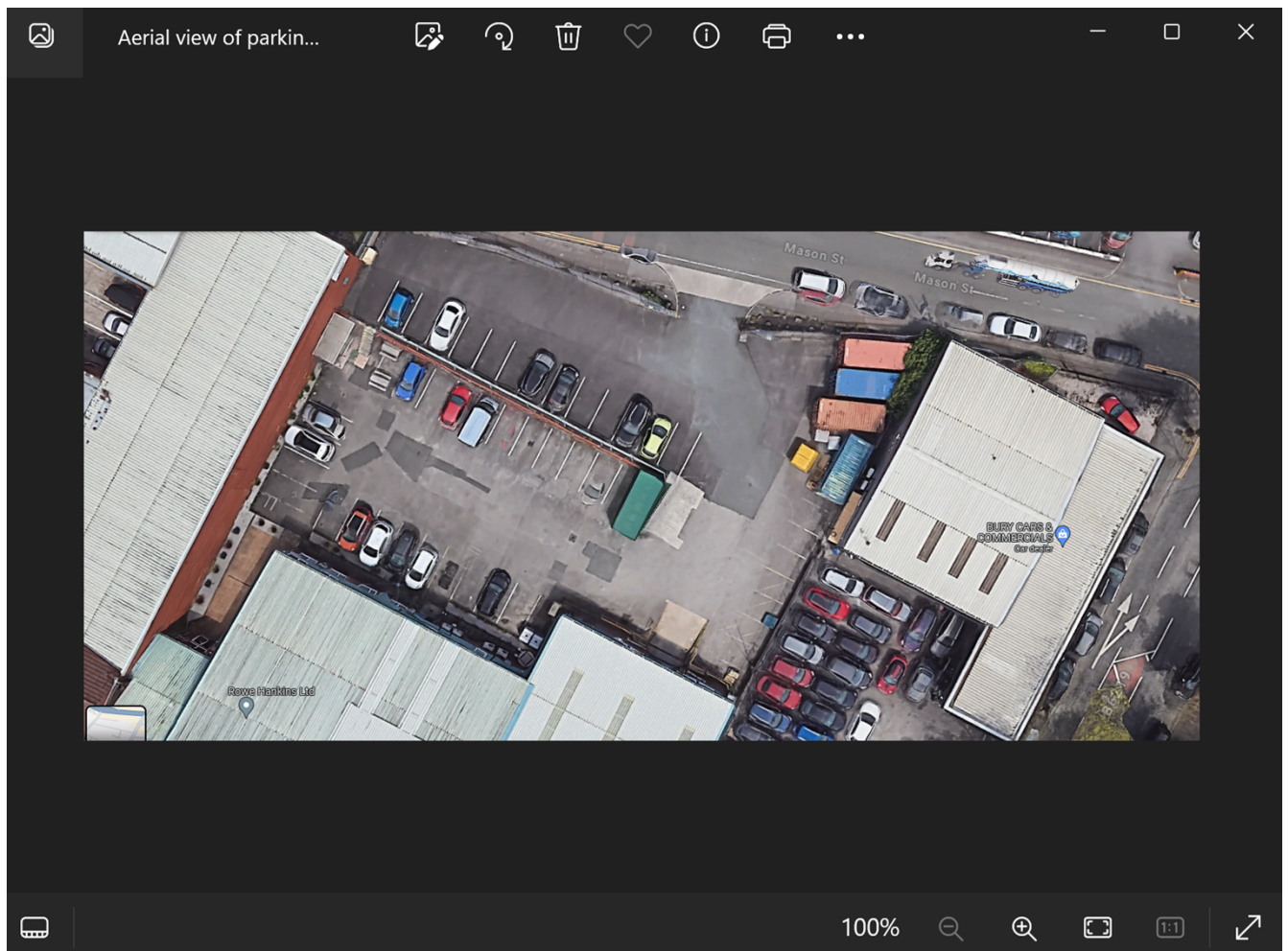
The current appeal proposal provides 12 such spaces in the ownership and control of the appellant.

The LPA has considered that such spaces are required as part of an approval for adjoining commercial premises and are not, therefore, available for the current appeal proposal.

In its email of 4 May 2024, the LPA states: -

'I would add that the car parking now proposed with the development was shown as being necessary with the industrial unit behind when they applied to extend it under ref. 53730 (subsequently amended by 54824 and which has been implemented). That application included the reorganisation of the car park to meet a standard of 34 spaces (looking at the Officer Report). The proposed development now intends to reallocate 11 of these spaces (thus reducing off-street parking for the adjacent business). In effect, the proposal is not increasing off-street parking, just borrowing off an adjacent business, where it was previously shown that these spaces were necessary to support the intended expansion of that business.'

However, in response and on the same day, we sent the following aerial photograph of the parking to the LPA to show that the adjoining business has 34 spaces, as required by the LPA, but that there are a further minimum of 12 spaces which are not required for the business according to the LPA and which are directly adjoining Mason Street:-



The lighter coloured tarmacadam is parking associated with and required by the LPA to provide for the adjoining business. The darker area is not in the ownership of the adjoining business but rather is owned and controlled by the appellant. It is being used for parking without any authority from the owner/appellant. It provides the required 12 parking spaces.

Furthermore, the proposed development also provides for cycle parking within the red edge of the location plan at the junction of Mason Street and Heywood Street. The LPA raises no objection to its suitability.

The proposed parking area has an existing access to/from Mason Street which is clearly suitable for the car park.

The LPA raises no objections to the actual presence of the car parking area, nor is there any reason to object to its use.

The proposed use of the existing car parking land (which is not a public car park and is on private land) as part of the appeal proposal would meet the requirements in terms of parking spaces. Moreover, it gives access for refuse vehicles to storage bins associated with the proposed development.

But even if such spaces, for some reason were not suitable, the LPA has recently regarded the appeal building, at least a part of it, to be within the town centre where public parking spaces are available. On 26 August 2022, planning approval, under application ref:68430 was granted by the LPA for the change of use of part of the existing building to a café and an office. In its officer report, the LPA concluded as follows: -

'The Highway Officer recommends refusal of the proposal in relation to lack of servicing and car parking provision, loss of bin storage for the existing car showroom.

The site, whilst at the periphery, falls within the defined boundary of Bury town centre. There are small areas of public parking at the northern end of Heywood Street and there is a town centre multi-storey public car park within 500m walking

distance and bus stops on Rochdale Road within 100m. There are areas on the surrounding streets with unrestricted on-street parking.

Supplementary Planning Document 6 sets a maximum parking standard of 18 spaces for the two uses combined. There is no minimum overall standard. The site falls within a high accessibility area.

The NPPF states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Whilst it would be preferable that the proposal included provision for servicing, the test has to be whether the lack of such and customer parking would result highway safety impacts of such severity that the proposal should be refused.

It is not uncommon for town centre commercial businesses located in traditional properties to lack parking and servicing and often where they are located in a more restricted environment (e.g. to the north on Rochdale Road). As noted, there are locations on the surrounding highways to the site that have unrestricted parking options, that could enable servicing. Customers could also potentially utilise immediate streets, but also public parking areas serving the wider town centre that are within easy walking distance. It is also possible that customers would be drawn from nearby residential areas. Given such circumstances, and whilst the Highway Officer objects to the proposal, it is not considered that a refusal of planning permission on the basis of a lack of off-street parking and servicing would be reasonable, justifiable and sustainable.

The neighbouring car sales business could quite easily accommodate their bin storage needs within their own site and it would not be necessary to demonstrate this. The proposal indicates that bins serving the proposed businesses would be positioned to the side. Issues relating to pre-existing unauthorised vehicular access and illegal crossing of the adopted highway are not material to the consideration of the present application given that such is not proposed in the application. The Council as Highway Authority have the powers to remedy this.

Therefore, although the objections and advice of the Highway Officer indicate the proposal should be refused, it is not considered that the impacts of the proposal on highway safety would be of a severity to justify refusal of planning permission'.

As the appeal proposal relates, amongst other things, to the rest of the building, it must follow that it is also to be regarded as being located within the defined town centre and where the impacts upon highway safety would not justify its refusal. That must be especially the case where the appeal proposal does actually include the provision of 12 off road parking spaces as required by the LPA and access to bin storage by the refuse vehicle.

The provision of off-road parking spaces, in accordance with the LPA's parking standards, should alleviate its concerns about on-road parking. If not, then it is as if the LPA has no faith in its own adopted parking standards and which would leave applicants in an unreasonable policy vacuum.

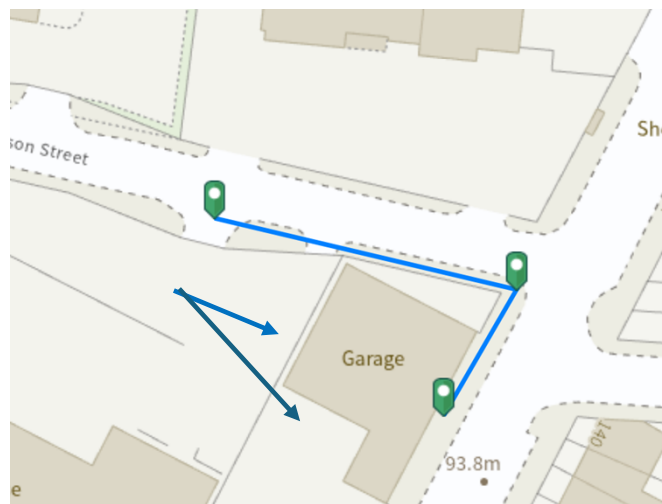
It is also the case that the LPA has not sought it necessary to introduce on-road parking restrictions in the immediate area and where parking spaces can usually be found. When allowing the use of about a third of the existing building for a café and for an office, the officer report so no objection to the use of such spaces for servicing needs and where, if necessary, they would be available in the same way for the current proposal.

Therefore, the appeal proposal would accord with the Bury Unitary Development Plan 1997 (UDP) policies EN1/2, HT2/4, HT6/1 and HT6/2 which require development to make adequate provision for parking and servicing in accordance with its parking standards, to ensure the safety of other highway users by avoiding on-road parking. It would conform to its Supplementary Planning Document 11 (2007) (SPD) regarding the required number of parking spaces and servicing arrangements, and with Places for Everyone Joint Development Plan Document (2024) (JDPD) policies JP-C6 and JP-P1, in so far as they are concerned, amongst other things, to ensure easy movement, free of obstacles, especially for walking and cycling.

Location of parking for customers

The LPA considers that *'the remote location of the proposed car parking is sub-standard in terms of accessibility for the pedestrians/customers likely to be generated by the proposed development, especially those with mobility impairments and in view of the need to load goods from the retail use to a parked car or access the office, which is likely to lead to vehicles parking and carrying out manoeuvres on the highway on the surrounding streets and in close proximity to the Heywood Street/Mason Street junction, to the detriment of the free flow of traffic and pedestrian and road safety'*.

However, the proposed car park is not remote, being approximately 66 metres away and along Mason Street with a flat footpath between: -



Moreover, the proximity of the parking area permits direct access from it into the back and side of the buildings without having to use Mason street which would assist loading and unloading and would also provide a shorter route. This would assist those with mobility issues.

In addition, we have pointed out in our application submission that there are other public parking spaces close by: -



Furthermore, the proposed development, at the request of the LPA, includes a 'Sheffield' style cycle store on the triangular piece of land at the junction of Mason street and Heywood Street.

The LPA has accepted, when approving the change of use of part of the car showrooms to a café and separate office, that the site is located within the town centre and that parking within it is suitably available. Such parking, while equally suitable, is at a greater distance than the dedicated parking arrangements which are now proposed.

Therefore, the appeal proposal in this regard, would accord with UDP policies EN1/2, HT2/4, HT6/1 and HT6/2, the SPD document 11, JDPD policies JP-C6 and JP-P1, in so far as they are concerned, amongst other things, to ensure adequate and suitable parking which takes account of the needs of all, including those with mobility issues , walkers and cyclists, so as to promote highway safety

Refuse Collection

In its Decision Notice, the LPA objects to the proposed development because *‘the application and submitted plans contain insufficient information to enable the proposed refuse collection arrangements within the curtilage of the site to be properly assessed in relation to Waste Management’s ‘Guide to Refuse Collection Requirements & Storage Methods for New Developments’.*

Following the issuing of the Decision Notice, we have requested and obtained a copy of the Environmental Health’s Guidance note. It is undated and it is by no means clear that it forms part of the Development Plan, even when the LPA in its Decision Notice links it to UDP policies.

It is not possible at this stage to determine with any certainty the amount of refuse to be created as this is dependent upon the eventual users of the spaces. However, there is ample space for the storage of refuse in the area shown for this purpose on the proposed site plan and there is equally good access for refuse collection vehicles via Mason Street.

Refuse storage is shown to the rear of the building, allowing refuse collection vehicles to access the storage area directly from the existing access from Mason Street leading to the proposed car park.

In any event, this is a matter which could be appropriately resolved, if deemed to be necessary, by way of a condition.

The LPA considers that details of refuse storage and collection are required by UDP policy EN1/2, but this policy relates to ‘Townscape and the Built Environment ‘with no mention of refuse storage or collection. It also refers to the requirement in this regard of JDPD policy JP-C6 but this refers to walking and cycling, again with no mention of refuse storage and collection.

Conclusion

The proposed development meets the Council's parking standards by the use of an existing parking area which is not assigned to any other business.

Moreover, it is close to the proposed development, giving easy, level access for customers including cyclists and those with mobility impairment problems and with direct access for off-road loading and unloading. It is located in the defined town centre where there are also other public parking facilities available.

In these circumstances, the proposed development would have no significant adverse impact upon highway safety.

Equally, adequate provision is available for refuse storage and collection.

Therefore, we request that the appeal is allowed.

Steven Hartley BA(Hons), Dist.TP (Manc), DMS, MRTPI, MRICS

HP and DA Ltd

June 2024