

DELEGATED REPORT

Report by Helen Pressley	Date of report: 14/09/2023	Ref: 69786/FUL
Registration: 20/06/2023	LDfC: 01/09/2023	Expiry Date: 15/08/2023
Site Visit: 06/09/2023	Site Notice: N/A	Press Date: N/A
Objections: 0	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Change of use of ground floor from taxi booking office to hot food takeaway (Sui Generis) with installation of extraction flue and external staircase at rear

Location: 42 Walmersley Road, Bury, BL9 6DP

Description

The application relates to a taxi booking office located within a row of commercial premises within a Local Shopping Centre that runs between 26 and 64 at the southern end of Walmersley Road.

There are parking restrictions in the form of double yellow lines along Walmersley Road and there have been railings erected along the edge of the footway in an effort to deter crossing and illegal parking. Badger Street, to the north, has restrictions at its western/Walmersley Road end but is not restricted at its eastern end where there is a row of terraced houses. Peter Street, running from Badger Street to the rear of the site has unrestricted parking. Redevelopment has been approved on land to the south of the site, on the corner of Moorgate and Walmersley Road (ref: 65524) for a new public car park, however this has not been implemented and the site appears to now be used for car sales.

Proposal is for a change of use of the ground floor of the premises to a hot food takeaway. The proposed opening hours are stated to be unknown on the application form. The proposal also includes external alterations including the provision of a new shop front with aluminum glazed windows, and relocation of the entrance door. To the rear it is proposed to install an external extraction flue.

The application is a resubmission of application 66359. There do not appear to be any changes to the proposal from the previously refused scheme.

Relevant Planning History

48641 - Change of use from hot food takeaway to private hire booking office - Refused 07/11/2007

49354 - Change of use of ground floor from takeaway (A5) to office (A2) and taxi booking office (SUI GENERIS) - Approve with Conditions 12/02/2008

53472 - Externally illuminated fascia sign (retrospective) - Refused 03/03/2011

66359 - Change of use of vacant ground floor (43m2) from taxi booking office to hot food takeaway - Refused 17/03/2021

Publicity

Neighbour letters sent 10/08/2023

No representations received

Statutory/Non-Statutory Consultations

Traffic Section - Recommends refusal on grounds that there is inadequate parking and servicing arrangements.

Planning Policy Manager - no response

Environmental Health - Pollution Control - No objection subject to conditions in relation to submission of a scheme for treating fumes and odours.

Waste Management - no response

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

S2/6	Food and Drink
S1/4	Local Shopping Centres
EN1/2	Townscape and Built Design
EN1/8	Shop Fronts
EN7/2	Noise Pollution
NPPF	National Planning Policy Framework
EN1/7	Throughroutes and Gateways
HT6/2	Pedestrian/Vehicular Conflict
HT2/4	Car Parking and New Development
S1	Existing Shopping Centres
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) 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.

Policies and Guidance

The National Planning Policy Framework indicates that significant weight be placed on the need to support economic growth and maintain the shopping hierarchy.

Unitary Development Plan Policy S1 - Existing shopping centres states the Council will seek to protect, maintain and enhance the role and function of the existing hierarchy of shopping centres within the Borough.

The proposed change of use involves an existing unit fronting Walmersley Road, which forms part of the Walmersley Road/Moorgate Local Centre as identified under Policy S1/4 of the adopted Bury Unitary Development Plan (UDP). Under this Policy, the Council will seek to maintain and enhance local shopping centres and will encourage the provision of a range of shopping facilities required to serve purely local needs.

Given the proposed use of the premises as a hot food takeaway, the proposal should also be considered against UDP Policy S2/6 on food and drink which states that, in considering all proposals which involve restaurants, hot food takeaways, cafes, snack bars, wine bars and public houses, the Council 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 to A5 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

Paragraph 92(c) of the National Planning Policy Framework states that planning policies and decisions should aim to achieve healthy, inclusive and safe places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs - for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

In 2008, planning permission was granted to change the use of these premises from a from a takeaway to an office and taxi booking office. It was considered at this time that the change of use would not have a significant affect on the appearance of the street scene given that the existing hot food take-away was closed for much of the day. The loss of a hot food take-away and its replacement with an office and private hire booking office was also considered to improve the range of facilities within the existing centre. In addition to this since the previous change of use was granted, national planning policy has changed to highlight the need for planning to support healthy lifestyles, especially where this would address identified local health and wellbeing needs, including through improving access to

healthier foods.

The current application is to change the use of the premises from a taxi booking office to a hot food takeaway. Whilst the Design and Access Statement provided by the applicant states that this unit is currently vacant it is unclear how long the unit has been vacant for, although it is noted that an identical scheme was refused in 2021. No update has been given by the applicant to suggest the site has been marketed for its current use and no alternative applications have been submitted for any other use. The principle of this change of use needs to therefore be considered against UDP Policies S1/4 and S2/6 within the context of the premises having now been established within its current use and also against the change in emphasis of national planning policy.

With this in mind, the fundamental aim of UDP Policy S1/4 is to maintain and enhance the Borough's local shopping centres, principally through the encouragement of a range of shopping facilities to support their vitality and viability. The proposal, it is considered, would lead to a further depletion of retail uses within the centre and would involve a new use that is unlikely to generate significant footfall, particularly during the day. Both factors would be to the detriment of maintaining and enhancing its role as a local shopping centre, contrary to the aim of UDP Policy S1/4.

The majority of the criteria set out under UDP policy S2/6 are matters of detail but, in terms of principle, criterion (b) considers whether the proposal would result in an over-concentration of food and drink uses which could adversely change the nature or character of a centre as a whole. It is considered that the approval of the proposal would lead to a rebalance of the centre in that food and drink uses would be the predominant use within the centre occupying more units than A1 retail. Furthermore, the particular frontage that the application premises sits within (i.e. 28-46 Walmersley Road) already includes 4 of the 9 units occupied by food and drink uses some of which are double fronted units. As such the approval of proposal would mean that approximately 56% of this frontage would be occupied by food and drink uses.

On balance, therefore, it is considered that the application would lead to an over-concentration of food and drink uses and reduction of potential retail uses to the detriment of the function and character of the Walmersley Road/Moorgate Local Centre contrary to UDP Policies S1/4 and S2/6.

A further point to consider is the 'healthy lifestyle' issues raised in the National Planning Policy Framework. Whilst this could potentially be a reason to refuse a hot food takeaway, the design and access statement states that the proposal site would primarily serve healthy Indian and Pakistani cuisine together with other healthy eating options to individuals and deliveries to birthday parties, weddings and religious events within the community. In addition once the change of use is granted, another takeaway business could implement the permission. It is therefore considered that there is insufficient information as to the exact type of food that would be on offer at the premises. Therefore, it is considered that refusing the proposal on the basis of 'unhealthy food' is not sustainable in this case.

Visual Amenity

The proposed flue would project beyond the rear wall of the property, sited above the existing single storey rear extension, but would be largely screened from public view points due to the existing commercial paraphernalia to the rear of the row. It is considered that the views of the proposed flue would be limited and as such would not detrimentally impact on the character of the street scene.

Whilst the new shopfront would not be out of keeping with the other properties within the centre, the use of the premises as a hot food takeaway, as opposed to a retail shop, would have a cumulative and detrimental impact on the character of the shopping centre in the sense of generating footfall. The proposal would therefore be contrary to UDP Policy EN1/2 Townscape and Built Design.

Residential Amenity

The nearest residential properties appear to be a flat above 40 Walmersley Road (adjacent) and the flat above No. 37 Walmersely Road (opposite), with the nearest houses on Badger Street, to the north.

In this location it is considered that there is already background activity in and around the area. There are other uses in the locality which are open late in the evening and as such the addition of one other premises with evening opening hours is considered not to have a significant impact on amenity in the area. The application is therefore considered to comply with Policy S2/6 - Food and Drink in this respect.

Traffic and Parking

The Traffic Team has serious concerns about the proposal in relation to car parking and servicing arrangements for the premises. Given the nature of this part of Walmersley Road, with parking restrictions and railings together with the lack of dedicated parking, there is a distinct possibility that customers would park and carry out manoeuvres on, or in close proximity to the A56 Walmersley Road and the nearby signalised junction (Moorgate/Walmersley Road) to the detriment of the free flow of traffic and road safety.

It is noted that an appeal at the nearby 30 - 32 Walmersley Road was allowed (APP/T4210/W/20/3261134) as the appellant has recently gained planning permission for a public pay and display car park and proposed that users of the take away would utilise this space rather than illegally parking on Walmersley Road. It should however be noted that this planning permission for a public pay and display car park (65524) has now lapsed and has not been implemented. The landowner now appears to be utilising this area for car sales, without approval, which has been reported to planning enforcement. Whilst the Appeal Inspector concluded that due to existing parking restrictions in place along Walmersley Road, "it would be unlikely that customers would park along this stretch of road or towards the nearby signalised junction" it is clear from consultation with the highways section, who confirmed they have received a number of complaints relating to this stretch of highway, that this is not the case and that this is an issue that is of concern.

Other Considerations

This application is nearly identical to a previously refused scheme at the site. The plans and Design and Access Statement are the same, however this application does not confirm opening hours. No appeal was submitted following the previous refusal. The applicant has provided no details in relation to how the previous reasons for refusal have been addressed as such the same recommendation has been made.

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 application, if approved, would lead to an over-concentration of food and drink

uses and reduction in retail uses to the detriment of the function and character of the Walmersley Road/Moorgate Local Centre contrary to UDP Policies S1/4 Local Shopping Centres, S2/6 Food and Drink, EN1/2 Townscape and Built Design and EN1/7 Throughroutes and Gateways.

- 2 The proposed car parking and servicing arrangements for the premises are inadequate and would lead to vehicles parking and carrying out manoeuvres on the adjacent classified road (A56 Walmersley Road), to the detriment of the free flow of traffic and road safety. The proposal is therefore unacceptable and contrary to the NPPF and UDP Policies S2/6 Food and Drink, HT2/4 Car Parking and New Development and HT6/2 Vehicular/Pedestrian Conflict.
- 3 The application and submitted plans contain insufficient information to ensure that adequate accessible refuse collection facilities will be provided within the curtilage of the site for the additional hot food takeaway use proposed and to accommodate the highly likely increase in waste that will be generated. The proposal is therefore contrary to UDP Policy S2/6 Food and Drink.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HP 14/09/2023			