

**DELEGATED REPORT**

|                                 |                                   |                                |
|---------------------------------|-----------------------------------|--------------------------------|
| <b>Report by</b> Helen Pressley | <b>Date of report:</b> 26/07/2023 | <b>Ref:</b> 69740/FUL          |
| <b>Registration:</b> 08/06/2023 | <b>LDfC:</b> 25/07/2023           | <b>Expiry Date:</b> 03/08/2023 |
| <b>Site Visit:</b> 12/07/2023   | <b>Site Notice:</b> N/A           | <b>Press Date:</b> N/A         |
| <b>Objections:</b> 0            | <b>Con Area:</b> N/A              | <b>Adv Type:</b> NONE          |
| <b>Reason for Delay:</b><br>N/A |                                   | <b>EIA:</b> NA                 |
|                                 |                                   | <b>Dec Level:</b> DEL          |
|                                 |                                   | <b>Stat Class:</b> MIOT        |

**Proposal:** ((Variation of condition no. 3 following approval of planning permission 68612 - Opening hours to be extended from Sunday-Thursdays 10:00-00:00 and Friday-Saturday 10:00-02:00 (As Approved) to Sunday-Thursdays 10:00-00:30 (extended) and Friday-Saturday 10:00-02:00 hrs (as approved).

**Location:** 53 Bury Old Road, Prestwich, Manchester, M25 0FG

**Description**

The application site relates to a hot food takeaway within a Local Shopping Centre. The property is a two storey, red brick mid-terrace fronting Bury New Road on a row of other commercial premises, the majority of which are in retail use. There is a single storey extension covering the former rear yard area. At the front there is a separate vehicular access along the frontage with parking on one side.

The attached property on the south side is a vets practice (No.51) and on the north side is a retail unit (No.55).

Planning permission was granted in February 2015 to change the use from a retail unit to a hot food takeaway including the installation of a flue on the rear elevation and a small condensing unit on the flat roof area at the rear. The opening hours were from 10.00 - 00.00 every day. In 2022 a variation of these opening hours was approved allowing opening 10:00-02:00 hrs Friday-Saturday (application 68612).

A refusal was issued to extend the hours to Sunday-Thursdays 10:00-01:00 hrs and Friday-Saturday 10:00-03:00 hrs due to concerns in relation to noise and disturbance.

The current application seeks variation of condition no. 3 of approval 68612 to extend the opening on Sunday-Thursdays 10:00-00:30 hrs. The Friday-Saturday opening times would be retained as previously approved (10:00-02:00 hrs).

**Relevant Planning History**

58730 - 1 No. internally illuminated fascia sign; 1 No. internally illuminated projecting sign; 1 No. internally illuminated built up logo sign - Approve with Conditions 13/07/2015

68612 - Variation of condition no. 3 following approval of planning permission 58310 - Opening hours to be extended: Sunday-Thursdays 10:00-00:00 hrs (as approved) Friday-Saturday 10:00-02:00 hrs (extended) - Approve with Conditions 22/08/2022

69486 - Variation of condition no. 3 following approval of planning permission 68612 - Opening hours to be extended from Sunday-Thursdays 10:00-00:00 hrs and Friday-Saturday 10:00-02:00 hrs (Approved) to Sunday-Thursdays 10:00-01:00 hrs and Friday-Saturday 10:00-03:00 hrs (Extended) - Refused 30/05/2023

**Publicity**

Neighbour letters sent 15/06/2023 and 04/07/2023. No representations received.

**Statutory/Non-Statutory Consultations**

**Environmental Health - Pollution Control** - no comments to make regarding this application

**Pre-start Conditions** - Not relevant

**Unitary Development Plan and Policies**

|       |                                                             |
|-------|-------------------------------------------------------------|
| EC4/1 | Small Businesses                                            |
| H3/1  | Assessing Non-Conforming Uses                               |
| EN7/2 | Noise Pollution                                             |
| S1/4  | Local Shopping Centres                                      |
| S2/6  | Food and Drink                                              |
| HT2/4 | Car Parking and New Development                             |
| SPD6  | Supplementary Planning Document 6: Alterations & Extensions |

**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.

**Policy**

S1/4 - Local Shopping Centres -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.

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.

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.

UDP Policy EN7/2 - Noise Pollution does not permit development which could lead to an unacceptable noise nuisance to nearby occupiers and/or amenity users.

**Principle (Use)**

The unit is already in use as a hot food takeaway and is located in a local shopping centre. As such, the proposed development would not conflict with Policy S1/4 of the Bury Unitary Development Plan.

**Residential Amenity**

The proposed development involves the increase in the opening hours from midnight to 00:30 Sunday to Thursday. Friday and Saturday opening hours would remain unaltered. Most of the noise associated with the proposed increase would be at the front of the property and there are residential properties opposite the site. There is 43 metres between the hot food takeaway and the existing residential properties on Bury New Road. Given the distance, the lack of objections and the existing consent allows for the unit to be open until midnight, it is considered that the proposed development would not have a significant adverse impact upon the amenity of the occupiers of the properties on Bury New Road.

There are residential properties to the rear of the site and the rear garden of No. 123 Kings Road forms the boundary. Residential addresses are also logged on the internal Council system for the first floors above 57 Bury Old Road, 59 Bury Old Road and 63 Bury Old Road which are within the same row as the unit. As stated above, most of the noise associated with the proposed increase in hours would be at the front of the property and the building would act as a barrier. In addition, the hot food takeaway is located in a row of commercial units, which form a local shopping centre and some degree of noise and disturbance is to be expected. As such, it is considered that the proposed development would not have a significant adverse impact upon the amenity of the neighbouring properties.

Therefore, the proposed development would not have an adverse impact upon the amenity

of the neighbouring properties and would be in accordance with Policies H3/1 and EN7/2 of the Bury Unitary Development Plan.

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

The Local Planning Authority worked positively and proactively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

**Recommendation:** Approve with Conditions

**Conditions and Reasons:**

- 1 This decision relates to drawings numbered 00501-02B, 03A, 04A, 05A and technical information within the document 'Supporting Information on the Proposed Extract System and Plant' associated with application 58310 and the development shall not be carried out except in accordance with the drawings and supporting information hereby approved.  
Reason. For the avoidance of doubt and to ensure a satisfactory standard of design pursuant to the policies of the Bury Unitary Development Plan listed.
- 2 The use hereby permitted shall not be open, either to customers or for external deliveries, outside the following times:  
Sunday - Thursday - 10.00 - 00.30  
Friday - Saturday - 10.00 - 02.00  
Reason. To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to Policy S2/6 Food and Drink of the Bury Unitary Development Plan.
- 3 The development shall be carried out in accordance with the details approved as part of condition 4 of permission 58310.  
The scheme as approved shall be available for use and maintained in accordance with the approved scheme whilst it serves the development.  
Reason. To protect the residential amenities of nearby residential property from impact upon from fumes and odour pursuant to UDP Policy S2/6 - Food and Drink.

|                     |             |                         |             |
|---------------------|-------------|-------------------------|-------------|
| <u>Case Officer</u> | <u>Date</u> | <u>Sign off Officer</u> | <u>Date</u> |
| HP                  | 26/07/2023  | DM                      | 27/07/23    |