

DELEGATED REPORT

Report by Dean Clapworthy	Date of report: 08/07/2022	Ref: 68303/FUL
Registration: 05/04/2022	LDFC: 25/05/2022	Expiry Date: 31/05/2022
Site Visit: 29/04/2022	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: COUS

Proposal: Change of use from Shop (Class E) to hot food takeaway (Sui Generis); Alterations to shop front; Extraction flue to rear.

Location: 14 Victoria Square, Whitefield, Manchester, M45 6AL

Description

The application relates to the ground floor of an end terrace property located within Victoria Square. The property is located within an identified district centre, and secondary shopping area and frontage as identified within the UDP.

Planning permission is sought for a change of use from a shop (Class E) to hot food take away (Sui Generis) including a new shop front and extraction flue to rear.

Relative to the previous proposal, the application clarifies that the bin storage would be accommodated within the building and comprises an amended flue and specification details. The business intends to operate between 11:00 and 22:00 daily.

Relevant Planning History

67172 - Change of use from shop (Class E) to hot food takeaway (Sui Generis); New shop front; Extraction flue to rear - Refused 17/12/2021

50462 - NON - ILLUMINATED FREESTANDING NAME BOARD FOR SHOPPING CENTRE - Approve with Conditions 20/10/2008

Publicity

Advertised by direct neighbour notification. No representations received.

Statutory/Non-Statutory Consultations

Traffic Section: No objection, subject to condition relating to bin storage facilities.

Environmental Health - Pollution Control: No comments received.

Property & Technical Services - Estates Consultancy: No comments received.

Unitary Development Plan and Policies

S1/3	Shopping in District Centres
S2/3	Secondary Shopping Areas and Frontages
S2/6	Food and Drink
EN7/2	Noise Pollution
NPPF	National Planning Policy Framework
EN1/2	Townscape and Built Design
EN1/8	Shop Fronts

HT2/4 Car Parking and New Development

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.

Background

The previous application for a hot food takeaway under 67172 was refused for the following reasons:

1. The application and submitted plans contain insufficient information to enable them to be properly assessed in relation to the impact of the proposal on the residential amenities of nearby occupiers, by reason of the location of the flue to habitable room windows and

insufficient information provided in relation to odour and noise created by the proposed flue and venting. The proposed development therefore conflicts with the following policy(ies) of the Bury Unitary Development Plan: EN7/2 - Noise Pollution and S2/6 - Food and Drink.

2. The application and submitted plans contain insufficient information in relation to the provision for the storage and disposal of refuse and customer litter and would therefore fail to comply with UDP Policy S2/6.

Principle

Policy S2/6 - Food and Drink gives regard to factors relating to amenity of nearby residents; the concentration of these types of uses in the locality; parking/servicing provision and traffic generation; refuse provision and environmental impact of any ventilation flues and/or ducting.

Paragraph 86 of the National Planning Policy Framework (2021) states that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth management and adaptation. Paragraph 86 (a) further states that planning policies should promote the long term vitality and viability of town centres by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows as suitable mix of uses (including housing) and reflects their distinctive characters.

The proposal relates to a vacant commercial unit within a district centre. A range of non-retail uses could be introduced within the unit without planning permission (as a permitted change of use). This is a significant and determinative material consideration. For example, Use Class E(b) - sale of food and drink for consumption (mostly) on the premises has similarities, in that they both may need kitchen extraction, commercial bins, may open late into the evening (there are no restrictions on the opening times of the existing commercial use). As such, a restaurant use could open later into the evening without planning controls relating to opening hours. Furthermore, restaurants now often supplement the main business with takeaway options too with online orders for collection and/or delivery.

The proposed use would generate activity within the existing frontage, supporting the long term vitality and viability of the subject unit and the district centre. Given the other uses within the centre, there would not be an over concentration of take away uses within the centre and the proposal would comply with Policy S2/6 - Food and Drink and is therefore acceptable in principle provided it complies with other considerations set out within S2/6 and other UDP Policies identified.

Design, Layout and Appearance

Policy EN1/2 - Townscape and Built Design seeks to ensure that any proposals would not have an adverse impact on the particular character and townscape of an area. EN1/8 - Shop Fronts further seeks to ensure that proposals for new and altered shop front properly respect the architectural elements of the building and the character of the surrounding street scene.

The proposed new shop front would maintain a stall riser and area of glazing to the front elevation, as well as an area of signage above the glazing for any required signage. The overall character of a shop front would be maintained and would therefore assimilate appropriately within the commercial row.

The proposed flue would be positioned at the rear elevation, so it would not be visible in the context of the main commercial frontage. Where it would be visible, it would be backdoped against the rather bland and unattractive rear elevation of the building that relates to the rear service yard.

Residential Amenity

Policy S2/6 point a and e require there to be an assessment of this type of proposal in terms of residential amenity, and the impact of any potential flues and ducting. 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.

The Environmental Health Officer has no objection to the principle of the proposal, subject to a condition requiring the agreement of the extraction system to ensure that no nuisance would be likely to result from the proposed use.

Access, parking and servicing

There is a public car park serving the district centre to the front of the unit. Bin storage is proposed within the rear of the unit as there is no private curtilage relating to the site. The Highway Officer has raised no objection.

CONCLUSION

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. The proposal would support the function of and maintain the vitality and viability of the district centre without detriment to the character and appearance of the area, highway safety or amenity. As such, the proposal would comply with the above policies of the Local Plan and the NPPF. Therefore, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act, the proposal merits approval.

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 The development must be begun not later than three years beginning with the date of this permission.
Reason. Required to be imposed by Section 91 Town & Country Planning Act 1990.
- 2 This decision relates to drawings Location Plan (Dwg no. 0461/100), Proposed Site Plan (Dwg no. 0461/104 B), Proposed Floor Plan (Dwg no. 0461/105) and Proposed Elevations (0461/106 B) and the development shall not be carried out except in accordance with the drawings 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.
- 3 No materials shall be used on the external elevations or roof of the proposed development other than those referred to on the approved plans / supporting documentation.
Reason. In the interests of visual amenity and to ensure a satisfactory development pursuant to Policy EN1/2 - Townscape and Built Design of Bury Unitary Development Plan.

- 4 The bin storage facilities indicated on approved plan reference 0461/104 Revision B shall be implemented in full prior to the use hereby approved commencing and maintained thereafter.

Reason. To ensure adequate provision for the storage and disposal of refuse within the curtilage of the site clear of the adopted highway in the interests of highway safety, pursuant to Bury Unitary Development Plan Policy EN1/2.

- 5 No development shall commence unless and until a scheme for treating, diluting and dispersing fumes and odours has been submitted to and approved in writing by the Local Planning Authority. The scheme submitted shall include a written statement from a suitably qualified person, and it shall demonstrate that the fume treatment to be installed complies with or exceeds the 'Minimum Requirements For Odour Control' provided by the Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems :DEFRA 2005 (or if applicable such superseding guidance as shall prevail at the time of commencement of the development).

The scheme to be submitted shall also include the relevant manufacturer and installer instructions for any associated equipment with details of maintenance requirements.

The scheme as approved shall be implemented, available for use and maintained in accordance with the approved scheme whilst it shall serve 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.

- 6 The extraction installation shall be designed such that the maximum noise emitted does not exceed NR25 (Noise Rating) in the bedrooms of the nearest residential property, with the windows of that residential property being open in the normal manner for ventilation purposes.

All equipment installed shall be used and maintained in accordance with the manufacturers and installers instructions.

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.

- 7 The approved hot food takeaway shall not operate outside the hours of 09:00 to 22:00 on any day

Reason. To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to Policies S2/6 – Food and Drink, EC4/1 – Small Businesses, EC6/1 – Assessing New Business, Industrial and Commercial Development and H3/1 – Assessing Non-Conforming Uses of the Bury Unitary Development Plan.

<u>Case Officer</u> DSC	<u>Date</u> 08/07/2022	<u>Sign off Officer</u>	<u>Date</u>
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