

DELEGATED REPORT

Report by Helen Pressley	Date of report: 30/05/2023	Ref: 69486/FUL
Registration: 21/03/2023	LDfC: 25/05/2023	Expiry Date: 16/05/2023
Site Visit: 15/05/2023	Site Notice: N/A	Press Date: N/A
Objections: 1	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: MIOT

Proposal: Variation of condition no. 3 following approval of planning permission 68612 - Opening hours to be extended from: Sunday-Thursday 10:00-00:00 hrs and Friday-Saturday 10:00-02:00 hrs (Approved) to Sunday-Thursday 10:00-01:00 hrs and Friday-Saturday 10:00-03:00 hrs (Extended)

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).

The current application seeks variation of condition no. 3 of approval 68612 to extend the opening hours as follows:

Sunday-Thursday 10:00-01:00 hrs

Friday-Saturday 10:00-03:00 hrs

Relevant Planning History

58310 - Change of use from retail (A1) to hot food takeaway (A5); erection of extract duct and new shop front) - Approve with Conditions 03/02/2015

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-Thursday 10:00-00:00 hrs (as approved) Friday-Saturday 10:00-02:00 hrs (extended) - Approve with Conditions 22/08/2022

Publicity

Neighbour letters sent 30/03/2023 and 03/05/2023

1 objection recieved in relation to:

- The closing times are far too late. They should not be later than 1am on Friday and

Saturday evenings and 12am on other nights.

- It is a residential area with houses, places of worship, etc. It will cause noise and possibly asb.
- Also as nowhere else is open until so late at weekends, it may become a focal point for people to meet due to nowhere else being open which will encourage noise and asb.

Statutory/Non-Statutory Consultations

Environmental Health - Pollution Control - No complaints received in relation to existing hours. Looking on google maps it doesn't look like any of the flats above shops on this row are residential.

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

S1/4	Local Shopping Centres
S2/6	Food and Drink
EN7/2	Noise Pollution
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.

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.

Impact upon residential amenity

The proposed development involves the increase in the opening hours from midnight to 1am Sunday-Thursdays and from 2am to 3am Friday - Saturdays.

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 are also 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. The applicant has also been asked to confirm whether there is a flat above the first floor of host site as this is what is indicated on application 58310. No response has been received confirming whether or not a flat is located at first floor.

It is acknowledged that 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 for the residential properties at the rear. The properties to the front would also be located approximately 43 metres from the site and be separated by a main road. It is also noted that 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. No

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assessment has been submitted in relation to noise, to confirm if any level of mitigation would be required for any of the residential properties within proximity of the site.

Whilst an increase of an hour may appear to be minimal, given the close proximity of residential properties to the site and the lack of information in relation to potential noise it is considered that the additional opening hours proposed would be excessive in this location.

The agent acting on behalf of the applicant was written to and asked to amend the proposed opening hours, to reduce them during the weekend but no response was received.

In this instance it is considered that the development would be seriously detrimental to the residential amenities of nearby occupiers, by reason of the noise, disturbance and general activity associated with the proposed extended hours. The proposed development therefore conflicts Policies EN7/2 and S2/6.

Response to objection

It is considered that the issues in relation to residential amenity have been considered within the main body of the report.

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

The Local Planning Authority offered solutions to the applicant in order to make the development acceptable. The applicant was however unwilling to amend the plans. Without these amendments the development would not improve the economic, social and environmental conditions of the area and therefore does not comprise sustainable development. 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 development would be seriously detrimental to the residential amenities of nearby occupiers, by reason of the noise, disturbance and general activity associated with the proposed extended hours. The proposed development therefore conflicts with the following policies of the Bury Unitary Development Plan: EN7/2 - Noise Pollution and S2/6 - Food and Drink.

<u>Case Officer</u> HP 30/05/2023	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
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