

Appeal against the refusal by Bury MBC for a change of use 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 70461, dated 24 January 2024, was refused by notice dated 3 April 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)

Matters not in dispute.

The local planning authority (LPA), in its officer report, concludes that the following matters are not in dispute: -

‘Principle

The site falls at the periphery of, but within the defined boundary of Bury town centre. The proposed uses of the unit are defined as main town centre uses in the NPPF. UDP policies TC2/2 and BY10 states that the Council will encourage and support compatible mixed use development within the town centres, including Class E uses. Therefore, the principle of development is acceptable, subject to consideration of the following matters.

Design and layout

The existing building is utilitarian in character and appearance, with the most architecturally attractive feature being the glazed elevation to Heywood Street. The proposed extension would assimilate appropriately in relation to scale, form, proportions and finishes.

Impact upon residential amenity

There are residential neighbours on the opposing side of Heywood Street. The main sources of noise would be from deliveries and cars visiting the site. The lawful car sales use has no time limiting conditions in relation to operating hours and given the town centre location and the commercial character of the area, the area is inherently vibrant.

The proposal would not have any unacceptable impacts on nearest sensitive receptors and the proposed development would not conflict with policies EN7/2 and S2/6 of the Bury Unitary Development Plan.

The Main Issues

The main issues are (i) the impact of the proposed development upon highway safety; (ii) provisions to maximise the reduction in carbon emissions and (iii) provisions for high quality digital infrastructure.

Highway safety

The reason for refusal is 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’.

In its officer report, the LPA notes that ‘*the proposal indicates that parking would be provided for 12 no. vehicles set out within the yard area in two separate rows adjacent to the Heywood Street and Parker Street boundaries’.*

Furthermore, the officer report makes it clear that the number of off street parking spaces are sufficient to meet the requirements of its Supplementary Planning Document 11 (SDP), though it objects on grounds of their accessibility when considered against other uses on the site. It states: -

‘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. Whilst the number of spaces to be provided would meet the maximum requirements of SPD11 in relation to the proposed development, as noted by the Highway Officer, the proposal fails to demonstrate how parking would adequately and assimilate with the hand car wash use or how the site would be serviced and how vehicles could manoeuvre safely within the site without unacceptable detriment to highway safety’.

The LPA was insistent that the car wash facility should be shown on the proposed plans so that it could assess how the two uses might work together in terms of access, parking and manoeuvrability. It refused to progress the application until we did so.

The car wash has no planning approval and is therefore operating without permission. The officer report concedes that this is the case when it states :-

‘There is a large yard to the south of the building and a section of this fronting Heywood Street (including the access into the site) falls within the application site. Presently, there is an unauthorised car wash facility operating within that part of the associated yard that falls outside of the application site.

As the car wash is operating without planning permission, its continuance will either be the subject of enforcement or else a separate planning application. Its suitability in terms of access and manoeuvring would have to be assessed at that time, taking into account the current appeal proposal, if approved and implemented. A decision on the current appeal proposal should not be constrained by the unapproved activity and where the latter should be dealt with separately. In other words, the LPA is determining the current appeal proposal based on the presence of a car wash which has no planning status and it might never have. If it was to be the subject of a separate planning application, then it would have to demonstrate, if it were to be allowed, how it would fit with the current proposal in terms of parking, access and highway safety. The LPA is not, and has not been asked, to determine the acceptability of the car wash on the site.

The LPA accepts that 12 off- street spaces meet the maximum number required in the SPD and thus, there is no reason for the LPA to conclude that there would be additional on-street parking. Ignoring the cash wash (as should be the case for the reason explained) there would also be no difficulty In access to refuse bins.

Therefore, the proposed development would accord with the Bury Unitary Development Plan(1997) (UDP) policies HT6/1 and HT6/2 which aim to reduce pedestrian and vehicular conflicts. Quoted policy EN1/2 is not pertinent to the issue of highway safety in that it is concerned with the protection of the character and appearance of area, nor is policy HT2/4 which is concerned with the LPA's own commitment to physically improve the highway network. In terms of the proposed number of off-street parking spaces, it conforms with the SPD. It also accords with the National Planning Policy Framework of December 2023 (the Framework) which states that (para115) *'development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'*.

Reduction of carbon emissions

Policy JP-S2 of the Places for Everyone Joint Development Plan 2024 for Greater Manchester (2024) (JDP) states:-

'The aim of delivering a carbon neutral Greater Manchester no later than 2038, with a dramatic reduction in greenhouse gas emissions, will be supported through a range of measures including:

5. *'An expectation that new development will, unless it can be demonstrated that it is not practicable or financially viable;*

a. Be net zero carbon which applies:

- from adoption– to regulated operational carbon emissions;*
- from 2028 -to all emissions 'in construction'.*

From 2025 development should also calculate and minimise carbon emissions from unregulated emissions alongside regulated emissions.

Development proposals should set out how this has been achieved in an energy statement in accordance with the energy hierarchy, which in order of importance seeks to:

- i. Minimise energy demand;*
- ii. Maximise energy efficiency;*
- iii. Use renewable energy;*
- iv. Use low carbon energy; and*
- v. Utilise other energy sources.*

From 2025 any residual carbon emissions that cannot be fully mitigated on-site should be offset, in agreement with the relevant local planning authority through a financial contribution to a carbon offset fund.

As an interim measure, development should be consistent with the 2022 Part L Building Regulations unless superseded by changes to building regulations and/or national or local planning policies.

b. Incorporate adequate electric vehicle charging points, in line with Part S of the Building Regulations, unless superseded by relevant Local Plan policies, to future proof for the likely long-term demand, taking account of the potential maximum energy demand for the site;

c. Where practicable, prioritise connection to a renewable energy/heating/cooling network in the first instance or a low carbon energy/heating/cooling network that is adaptable to non-fossil fuels at a later date;

For renewable energy generation priority should be given to PV installation where technically feasible, alternative technologies will be appropriate where the equivalent generation is evidenced.

e. For non-residential developments, achieve at least BREEAM excellent standard (or equivalent) for the 'Ene 01 – reduction of energy use and carbon emissions' category rising to 'BREEAM outstanding' equivalent for ENE 01 from 2028.

f. Include a detailed energy statement to demonstrate via site relevant evidence how the development has sought to maximize reductions in carbon emissions in line with relevant policy targets, including the minimisation of overheating risks and appropriate measures for post occupancy evaluation. Whole life cycle emissions should be considered where possible.

Districts may set out specific carbon emission reduction and energy demand targets within Local Plans'.

The LPA has not referred to any specific carbon emission reduction and energy demand targets in its own local Plan.

Policy JP-S2 indicates that the policy does not bite until 2025, and that as an interim measure, compliance with in line with Part S of the Building Regulations would suffice, possibly together with achieving *‘at least BREEAM excellent standard (or equivalent) for the ‘Ene 01 – reduction of energy use and carbon emissions’ category rising to ‘BREEAM outstanding’ equivalent for ENE 01 from 2028’*.

While the LPA states that it has *‘insufficient information to enable the local planning authority to assess whether the proposal would maximize reductions in carbon emissions,’* there is no reasonable doubt that the terms of policy LP-S2 can be achieved. The proposed development and the site are no different to any other application site.

The condition, if applicable is perfectly capable of being dealt with by way of a condition. If this requires such a condition to be a pre-construction condition, we agree to this.

Provision for high quality digital infrastructure

Policy JP-C2 of the JDP states : -

‘Policy JP-C2: Digital Connectivity

We support the provision of affordable, high quality, digital infrastructure.

In making decisions we will support a range of measures, including:

2. *Requiring all new development to have full fibre to premises connections, unless technically infeasible and/or unviable, and to incorporate multiple-ducting compliant with telecoms standards, to facilitate future-proof gigabit-capable network connections. It is expected that internet connections will be operational and immediately accessible to network providers when occupiers move into new properties’*

While the LPA states that *'the application and submitted plans and supporting statements contain insufficient information to demonstrate that the proposal would comprise high quality digital infrastructure'*, there is no reason to doubt that the premises would have full fibre connections, so long as these are available from the network providers. The policy does state that it is required subject to technical feasibility.

There is no reason why the policy requirement for the development to *'incorporate multiple-ducting compliant with telecoms standards, to facilitate future-proof gigabit-capable network connections'* cannot be dealt with by way of a condition. If such a condition needs to be a pre-development condition, including one to be complied with prior to first occupation, then we agree to it.

Conclusion

The reason for refusal based upon highway safety is based on the assumption that the proposed development has to be assessed along with the use of an unapproved use of part of the site as a car wash. However, if the appeal were to be allowed, then any consideration for the car wash, either in the form of enforcement or a separate planning application, would be determined in the knowledge of the currently approved development.

So far as the issues relating to carbon reduction and digital connectivity are concerned, there are no reasons why these matters cannot be controlled by way of condition, and if any such conditions require them to be pre-development conditions, then we agree.

Therefore, we request that the appeal is allowed.

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HP and DA Ltd

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