



Section 78 Town and Country Planning Act

Appeal Statement - Hearing Procedure

1-5 PORTER STREET, BURY

Partial conversion of existing building to form 1x7 bedroom HMO and 1x 8 Bedroom HMO with associated car parking, system storage, refuse storage and external alterations to provide new windows and doors and lightwell.



Site Information

Consultant	Jonathan McDermott
Client	Owen Small
Site Address	1-5 Porter Street Bury
LA	Bury
Description of Development	Partial conversion of existing building to form 1x7 bedroom HMO and 1x 8 Bedroom HMO with associated car parking, system storage, refuse storage and external alterations to provide new windows and doors and lightwell.
Pathway (PD/Application/Appeal)	Appeal

Constraints Review

Flood Risk Zone	1
Contaminated Land	No
Tree Preservation Order	No
Heritage Assets	No
Noise Abatement Areas	No
Explosive Hazard Areas	No
National Landscape	No
Special Protection Area	No
Site of Special Scientific Interest	No
RAMSAR Convention Site	No
Site of Importance to Nature Conservation	No
Article 4(2) Directions	No

Local Policy Requirements

Local Plan/Core Strategy

Adopted Bury Unitary Development Plan 1997
Places for Everyone Joint Development Plan

Effective Policies in Development Control

H1 - Housing Land Provision
H2 - Housing Environment and Design
H2/1 - The Form of New Residential Development
H2/2 - The Layout of New Residential Development
H2/4 - Conversions
H3 - Incompatible uses in residential areas
H3/1 - Assessing Non-Conforming Uses
EN1 - Built Environment
EN1/1 - Visual Amenity
EN1/2 - Townscape and Built Design
S1/5 - Neighbourhood Centres and Local Shops
HT1 - A balanced transportation strategy
HT2/4 - Car Parking and New Development
HT4 - New development
HT6 - Pedestrians and Cyclists
HT6/1 - Pedestrian and Cyclist Movement

JP-H3 -Type, Size and Design of New Housing
JP-H4 -Density of New Housing.
JP-C5 Streets For All,
JP-C6 Walking and Cycling

SPG/SPD's

Supplementary Planning Document 11 - Parking Standards in Bury

Planning History

Relevant History

70830
Lawful development certificate for proposed change of use
from 4 no. flats (Class C3) to 4no. HMO's (C4)
Flats 1-4, 1-3 Porter Street, Bury, BL9 5DZ
Status Decided
Decision Lawful Development



70536

Part change of use of former showroom/laundrette and 1no. flat (Use Class E/Sui Generis/Class C3) to form 1no. 7 bedroom (single occupancy) HMO (Sui Generis) and 1no. 8 Bedroom (single occupancy) HMO (Sui Generis) with associated parking and refuse storage and external alterations
1-5 Porter Street, Bury, BL9 5DZ

Status Decided

Decision Refused

Report Date

28 October 2024



1. Introduction

1.1. The site, the subject of this appeal, relates to a short terrace of three properties located on the south side of Porter Street and at the junction with Back Walmersley Road. The property comprises four existing flats and three commercial units that have an authorised use as a Glazing Suppliers showroom, Carpet Fitter's showroom and a Launderette. The Launderette is permanently vacant. Unauthorised uses within the other two units have emerged however no planning permission has ever been granted for these uses.

About Town Planning Expert

1.2. Town Planning Expert is a general needs planning consultancy formed in 2012 and practising as a Chartered Planning Practice. Town Planning Expert is instructed to submit a planning application for development as set out below.

Our VICTORY © Framework

1.3. Our VICTORY Framework applies a policy, plan lead, approach to development with the intent of gaining planning permission in a manner that complies with National and Local Planning Policy in accordance with S38 of the Planning and Compulsory Purchase Act 2004.

The Development Subject to this Appeal

1.4. Following an initial refusal of planning permission the application, subject to this appeal, sought a revised scheme for the partial conversion of existing building to form 1x7 bedroom HMO and 1x 8 Bedroom HMO with associated car parking, cycle storage, refuse storage and external alterations to provide new windows and doors and lightwell. Three of the four existing flats within the building are to be retained. The fourth flat will form part of the 8 bedroom HMO.

1.5. The application was supported by a technical assessment carried out by Mode Transport to address three of the reasons for refusal. That assessment concluded that the reasons had been overcome.

1.6. Planning permission was summarily refused again for the five reasons as set out within the attached decision notice. Given that the parties significantly disagree on the principles outlined within the reasons for refusal the appellants feel that they have no other option but to challenge the reasons on appeal.

Executive Summary

1.7. This proposal, now subject to this appeal, has been subject to a previous planning decision. The applicant sought to demonstrate how they had grappled with the previous reasons for refusal and how the circumstances of the application site have now changed.

1.8. It remains the case that the existing uses within the building fall outside of the protected uses within policy S1/5 - (Neighbourhood Centres and Local Shops) and are not employment uses as defined within the Local Plan. As such the loss of the retail units within this wholly residential area is considered acceptable. Furthermore, the creation of 2 larger HMO's would not result in the loss of family housing overall and would comply with the thrust policy H2/4 (Conversions). As such the proposed development is considered to accord with the Local Plan.

1.9. It is noted that the LPA has, at face value, added a reason for refusal to those repeated from the previous scheme. The appellant notes that this is demonstrably unreasonable behaviour and as such an application for the award of appeal costs is made within this appeal.

2. National and Local Development Frameworks.

National Planning Policy Framework

2.1. The National Planning Policy Framework was revised in response to the Levelling-up and Regeneration Bill: reforms to national planning policy consultation on 19 December 2023 and sets out the government's planning policies for England and how these are expected to be applied. On 5 September 2023 the Secretary of State for the Department for Levelling Up, Housing and Communities issued a written ministerial statement to update policy on planning for onshore wind development in England. This revised Framework replaces the previous National Planning Policy Framework published in March 2012, revised in July 2018, updated in February 2019, revised in July 2021 and updated in September 2023.

2.2. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The relevant sections of the NPPF are set out below:

Introduction

1. The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans can provide for sufficient housing and other development in a sustainable manner. Preparing and maintaining up-to-date plans should be seen as a priority in meeting this objective.

2. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

3. The Framework should be read as a whole (including its footnotes and annexes). General references to planning policies in the Framework should be applied in a way that is appropriate to the type of plan being produced, taking into account policy on plan-making in chapter 3.

4. The Framework should be read in conjunction with the Government's planning policy for traveller sites, and its planning policy for waste. When preparing plans or making decisions on applications for these types of development, regard should also be had to the policies in this Framework, where relevant.

5. The Framework does not contain specific policies for nationally significant

infrastructure projects. These are determined in accordance with the decision making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and may be a material consideration in preparing plans and making decisions on planning applications.

Achieving sustainable development

7. The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs. At a similarly high level, members of the United Nations – including the United Kingdom – have agreed to pursue the 17 Global Goals for Sustainable Development in the period to 2030. These address social progress, economic well-being and environmental protection.

8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural

resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

9. These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.

10. So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11).

11. Plans and decisions should apply a presumption in favour of sustainable development. For plan-making this means that:

a) all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;

b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

7 The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); and areas at risk of flooding or coastal change.

8 This includes, for applications involving the provision of housing, situations where: (a) the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years.

Development Contributions

34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

Decision Making

38. Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

Pre-Application engagement and front-loading

39. Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality preapplication discussion enables better coordination between public and private resources and improved outcomes for the community.

40. Local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up of any pre-application services they offer. They should also, where they think this would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community and, where relevant, with statutory and non-statutory consultees, before submitting their applications.

41. The more issues that can be resolved at pre-application stage, including the need to deliver improvements in infrastructure and affordable housing, the greater the benefits. For their role in the planning system to be effective and positive, statutory planning consultees will need to take the same early, pro-active approach, and provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.

Determining Applications

47. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on

applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

48. Local planning authorities may give weight to relevant policies in emerging plans according to:

a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

Planning conditions and obligations

55. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

56. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

Delivering a sufficient supply of homes

60. To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that

the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

61. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance. The outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area (see paragraph 67 below). There may be exceptional circumstances, including relating to the particular demographic characteristics of an area which justify an alternative approach to assessing housing need; in which case the alternative approach should also reflect current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

63. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes).

70. Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:

a) identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved;

b) seek opportunities, through policies and decisions, to support small sites to come forward for community-led development for housing and self-build and custom build housing;

c) use tools such as area-wide design assessments, permission in principle and Local Development Orders to help bring small and medium sized sites forward;

d) support the development of windfall sites through their policies and decisions –

giving great weight to the benefits of using suitable sites within existing settlements for homes; and

e) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.

72. Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

79. To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below the local planning authority's housing requirement over the previous three years, the following policy consequences should apply:

a) where delivery falls below 95% of the requirement over the previous three years, the authority should prepare an action plan to assess the causes of under-delivery and identify actions to increase delivery in future years;

b) where delivery falls below 85% of the requirement over the previous three years, the authority should include a buffer of 20% to their identified supply of specific deliverable sites as set out in paragraph 77 of this framework, in addition to the requirement for an action plan.

c) where delivery falls below 75% of the requirement over the previous three years, the presumption in favour of sustainable development applies, as set out in footnote 8 of this Framework, in addition to the requirements for an action plan and 20% buffer.

80. The Housing Delivery Test consequences set out above will apply the day following the annual publication of the Housing Delivery Test results, at which point they supersede previously published results. Until new Housing Delivery Test results are

published, the previously published result should be used.

83. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

84. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;

c) the development would re-use redundant or disused buildings and enhance its immediate setting;

d) the development would involve the subdivision of an existing residential building; or

e) the design is of exceptional quality, in that it:

- is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and

- would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area

Promoting healthy and safe communities

97. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;*
- b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;*
- c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;*
- d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and*
- e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.*

Promoting sustainable transport

108. Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:

- a) the potential impacts of development on transport networks can be addressed;*
- b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;*
- c) opportunities to promote walking, cycling and public transport use are identified and pursued;*
- d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains;*

and e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.

110. Planning policies should:

a) support an appropriate mix of uses across an area, and within larger scale sites, to minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities;

b) be prepared with the active involvement of local highways authorities, other transport infrastructure providers and operators and neighbouring councils, so that strategies and investments for supporting sustainable transport and development patterns are aligned;

c) identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice and realise opportunities for large scale development;

d) provide for high quality walking and cycling networks and supporting facilities such as cycle parking (drawing on Local Cycling and Walking Infrastructure Plans);

e) provide for any large scale transport facilities that need to be located in the area 42, and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements;

and f) recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government's General Aviation Strategy.

111. If setting local parking standards for residential and non-residential development, policies should take into account:

a) the accessibility of the development;

b) the type, mix and use of development;

c) the availability of and opportunities for public transport;

d) local car ownership levels; and

e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.

112. Maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport (in accordance with chapter 11 of this Framework). In town centres, local authorities should seek to improve the quality of parking so that it is convenient, safe and secure, alongside measures to promote accessibility for pedestrians and cyclists.

113. Planning policies and decisions should recognise the importance of providing adequate overnight lorry parking facilities, taking into account any local shortages, to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance. Proposals for new or expanded distribution centres should make provision for sufficient lorry parking to cater for their anticipated use.

115. 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.

116. Within this context, applications for development should:

a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;

b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;

c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;

d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and

e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

Making effective use of land

123. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.

124. Planning policies and decisions should:

a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;

b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;

c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure); and

e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers.

Achieving well-designed places

131. The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

132. Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable. Design policies should be developed with local communities so they reflect local aspirations, and are grounded in an understanding and evaluation of each area's defining characteristics. Neighbourhood planning groups can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development, both through their own plans and by engaging in the production of design policy, guidance and codes by local planning authorities and developers.

133. To provide maximum clarity about design expectations at an early stage, all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, and which reflect local character and design preferences. Design guides and codes provide a local framework for creating beautiful and distinctive places with a consistent and high quality standard of design. Their geographic

coverage, level of detail and degree of prescription should be tailored to the circumstances and scale of change in each place, and should allow a suitable degree of variety.

134. Design guides and codes can be prepared at an area-wide, neighbourhood or site specific scale, and to carry weight in decision-making should be produced either as part of a plan or as supplementary planning documents. Landowners and developers may contribute to these exercises, but may also choose to prepare design codes in support of a planning application for sites they wish to develop. Whoever prepares them, all guides and codes should be based on effective community engagement and reflect local aspirations for the development of their area, taking into account the guidance contained in the National Design Guide and the National Model Design Code. These national documents should be used to guide decisions on applications in the absence of locally produced design guides or design codes.

135. Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁴⁹; and where crime and disorder, and the fear of crime, do not undermine the

quality of life or community cohesion and resilience.

Local Policy

2.3. The relevant policies are located within the significantly dated Adopted Bury Unitary Development Plan (1997). The LPA has undertaken an exercise to assess compatibility with the NPPF (2012) but has not repeated this exercise for the most recent NPPF (2023). As such the weight that can be afforded each policy must be considered in light of the most recent NPPF.

2.4. In addition to this the Council scored 46% Housing Delivery within the 2022 Housing Delivery Test. This places the council in Presumption and the tilted balance within para 11d of the 2023 Framework is engaged. The site is not within one of the policy areas set out within sub-para 7 (page 6) of the framework and therefore the weight that is afforded to a local plan policy restricting the development is reduced against the benefits of housing delivery as a whole.

2.5. In delivering 2 HMO's with a total of 15 bedrooms the HDT Rulebook confirms that the development would deliver an equivalent of 8.3 dwellings calculated as.

15 bedrooms / 1.8 = 8.3 new dwellings equivalent

2.6. Notwithstanding the lower weight afforded to the Local Plan by virtue of its age and the presumption status of the LPA the appellant sets out below their reasons why this development complies with the noted policies in full.

Policy	Comment
H1 - Housing Land Provision	The proposal results in an increase in the number of homes on the site from the existing 4 dwellings to a proposed 5 dwellings. In addition the proposal would provide for a range of accommodation types meeting the need for low cost, high quality homes for people that are leaving their family home for the first time. As such the proposal complies in full.

H2 - Housing Environment and Design	The policy simply requires the provision of good quality residential design which this development achieves by exceeding the requirements of the Bury MBC HMO Licence Guidance.
H2/1 - The Form of New Residential Development	The proposed development does not seek alterations to the scale, height or arrangement of the building on the site. Whilst alterations are proposed to remove the shop-fronts and replace with residential windows the LPA has suggested improvements and these have been implemented within the proposed scheme. As such the form of the proposed development respects the character and appearance of the building and Porter Street.
H2/2 - The Layout of New Residential Development	The building and site is otherwise constrained however the layout of the development reflects the block form and pattern of development within Porter Street and as such is considered acceptable in this respect.
H2/4 - Conversions	This policy provides the sole control within the Local Plan for the creation of HMO's and will be discussed within section 9 of this Design and Access Statement.
H3 - Incompatible uses in residential areas	The proposal seeks residential uses within a residential area and as such is considered compatible with its surroundings.
H3/1 - Assessing Non-Conforming Uses	The proposal results in the loss of commercial uses within this overtly residential area and as such does not seek to create a non-conforming use here.
EN1 - Built Environment	Aside from the alterations to the front elevation by the removal of the shopfronts

	and replacement with windows the proposal would preserve the appearance of the building in its current form. Looking at the windows themselves the alterations proposed by the LPA are an improvement and reflect the character and appearance of the streetscene.
EN1/1 - Visual Amenity	The building and site does not fall within one of the two categories as set out within policy EN1/1. That being said the building is somewhat prominent within Porter Street and as such could be assessed in this respect. Given this the proposed alterations are considered to preserve the visual amenity of the building within its setting.
EN1/2 - Townscape and Built Design	Given the limited alterations proposed in this case the development is not considered to have an effect on the wider townscape of Bury.
S1/5 - Neighbourhood Centres and Local Shops	The proposal does not result in the loss of local shops for local need. The Proposal therefore complies.
HT1 - A balanced transportation strategy	HT1 supports a balanced transport strategy where the LPA ensures that there is a coordinated approach to the formulation of policies and proposals for the alteration, upgrading or improvement of the transport network. Whilst this development cannot, in isolation, develop this approach to policy making the approval of schemes that are in wholly sustainable locations and within appropriate means of transport other than the private car can facilitate some of these goals. As such

	the residential use of the building in this location would be wholly compatible with these aspirations and this is discussed in depth within the Highways Technical Note that accompanies this scheme.
HT2/4 - Car Parking and New Development	The proposal provides three off-street parking spaces for the proposed development.
HT4 - New development	The proposal provides three off-street parking spaces for the proposed development.
HT6 - Pedestrians and Cyclists	The proposal provides for 8 cycle parking spaces.
HT6/1 - Pedestrian and Cyclist Movement	The proposal provides for 8 cycle parking spaces.

2.7. Within the reasons for refusal the LPA also included policies within the Places for Everyone Joint Development Plan. Places for Everyone is a long-term plan of nine Greater Manchester districts (Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan) for jobs, new homes, and sustainable growth. It has been published by the GMCA on behalf of the nine districts.

2.8. Notwithstanding the lower weight afforded to the Joint Development Plan by virtue of the presumption status of the LPA the appellant sets out below their reasons why this development complies with the noted policies in full.

Policy	Comment
JP-H3 -Type, Size and Design of New Housing	This policy states that development across the plan area should seek to incorporate a range of dwelling types and sizes including for self-build and community led building projects to meet local needs and deliver more

	inclusive neighbourhoods. At no point does the policy prohibit the form of development sought here. As such the proposal is not contrary to this policy.
JP-H4 -Density of New Housing.	This policy requires that new housing development should be delivered at a density appropriate to the location, reflecting the relative accessibility of the site by walking, cycling and public transport and the need to achieve efficient use of land and high-quality design. The proposed development does not fall below the net minimum density and is therefore not contrary to this policy.
JP-C5 Streets For All,	This policy states: "Streets will be designed and managed to make a significant positive contribution to the quality of place and support high levels of walking, cycling and public transport. Targeted improvements to the highway network will be supported through studies and scheme development, where they complement the aim of securing a significant increase in the proportion of trips made by walking, cycling and public transport (as set out in Policy JP-C6 'Walking and Cycling' and Policy JP-C3 'Public Transport')" This policy is therefore relevant to the formation of new streets and infrastructure and not relevant to the determination of this application.

JP-C6 Walking and Cycling	Whilst tangentially relevant this proposal is in full accordance with this policy by locating the proposed HMO's in a position where they can utilise public transport opportunities and cycling opportunities with Greater Manchester.

3. The Planning History

3.1. The relevant planning history of the site is as follows:

70830

Lawful development certificate for proposed change of use from 4 no. flats (Class C3) to 4no. HMO's (C4)

Flats 1-4, 1-3 Porter Street, Bury, BL9 5DZ

Decision Lawful Development

70536

Part change of use of former showroom/laundrette and 1no. flat (Use Class E/Sui Generis/Class C3) to form 1no. 7 bedroom (single occupancy) HMO (Sui Generis) and 1no. 8 Bedroom (single occupancy) HMO (Sui Generis) with associated parking and refuse storage and external alterations

1-5 Porter Street, Bury, BL9 5DZ

Decision Refused

4. Site, Context and Comparable Forms of Development

4.1. The site comprises an enlarged end terrace corner block that was formerly used as a newspaper printers works and latterly as a Glazing Suppliers showroom, Carpet Fitter's showroom and a Launderette. The Launderette is permanently vacant. Unauthorised uses within the other two units have emerged however no planning permission has ever been granted for these uses.



4.2. The site has a substantial rear yard which is accessed from Back Walmersley Road and has a garage that will be removed in favour of off-street car parking.

4.3. The surrounding context is two-storey terraced housing with short yards accessed by back streets.

5. The Development Team

5.1. The developer in this case is a small development company operating with Bury.

6. Alternative Forms of Development Considered

6.1. The existing array of uses fall within either Class E or within sui-generis and benefit from prior approval allowances within Class MA and Class M of Part 3 of Schedule 2 of the GPDO 2015 respectively. As such this would comprise the appropriate fallback position for this building.

6.2. The applicant has established through a Lawful Development Certificate that the existing flats within the building can become HMO's under the provisions of Class L of Part 3 of Schedule 2 of the GPDO 2015. This now comprises the fallback position for this building in accordance with the provisions recently refined under:

Mansell v Tonbridge & Malling Borough Council [2016] EWHC 2832 (Admin) (10 November 2016)

and

Mansell v Tonbridge And Malling Borough Council [2017] EWCA Civ 1314 (08 September 2017)Download

An alternative GPDO development can be considered a 'fallback' position and given material planning consideration by the council in granting the permission.

Comments from Lindblom LJ:

“This restriction is stated to be a restriction on the change of use, not on the size of the building or buildings in which the change of use occurs. Sub-paragraph Q.1(b) relates to a single act of development in which the building in question, or part of it, is “changing use”. The floor space limit set by it relates not to the total floor space of the building or buildings concerned. It relates, as one would expect, to the permitted development rights themselves, which apply to the “cumulative” amount of floor space actually ‘changing use under Class Q”.

Lindblom LJ confirmed the legal considerations in determining the materiality of a fallback position as a planning judgement were:

the basic principle is that for a prospect to be a “real prospect”, it does not have to be probable or likely: a possibility will suffice;

there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker’s planning judgement in the particular circumstances of the case in hand.

7. Constraints to Development

7.1. The site is not within any of the following constraints:

- A habitats site or designated as Sites of Special Scientific Interest;
- Land designated as Green Belt,
- Local Green Space,
- An Area of Outstanding Natural Beauty,
- A National Park (or within the Broads Authority) or defined as Heritage Coast;
- An Irreplaceable habitats;
- A designated heritage assets (and other heritage assets of archaeological interest
- Or areas at risk of flooding or coastal change.

8. The Social Benefit to Development

8.1. A sustainable development reduces their environmental impact and promotes health and well-being.

8.2. In 2015 the House Builders Federation reported that housebuilding nationally:

- Supports 600,000 jobs
- Contributes £19.2bn a year to the UK economy
- Spends £5.5bn with suppliers, 90% of which stays in the UK
- Generates £1.4bn per year in tax revenues for the Exchequer
- Provides 32,000 affordable homes – worth £2.3bn – built or financed by private house building with a further £1bn paid to local authorities as a contribution to more affordable housing
- Pays £576M towards community facilities including;
- £225M towards education facilities alone - enough to fund 52,000 classroom places;
- £131m in open spaces and community and sports facilities, and
- Generates a £3.8bn spend in local shops and services

8.3. A Sustainable building has the following ten advantages:

- Efficiency in energy use: One of the primary benefits of sustainable building is increased energy efficiency. It can reduce carbon footprints because they use less energy. In addition, energy-efficient technologies such as double-paned windows and insulation are utilised.
- Water Efficiency: Sustainable buildings also conserve water. They use low-flow toilets, showers, and faucets and implement rainwater harvesting systems. As a result, water is saved, water bills are reduced, and local water resources are less strained.
- Enhanced indoor air quality: Indoor air quality is improved by sustainable buildings. They use low-emission materials, have sound ventilation systems, and promote healthy indoor air by reducing pollutants and allergens.

- **Durability:** Durable materials are often used in sustainable buildings. The result is both a reduction in waste generation and a reduction in the need for frequent maintenance and repairs.
- **Better Health:** Sustainable buildings promote better health for those who use them. The air quality is better, natural light is encouraged, and green spaces are available. This can lead to reduced stress levels and improved mental and physical health.
- **Increased Productivity:** Sustainable buildings have been shown to increase productivity. A healthier, more comfortable work environment leads to higher motivation and engagement.
- **Cost Savings:** Although Sustainable buildings may have a higher upfront cost, they can result in significant cost savings in the long term. Energy-efficient buildings reduce energy bills, and water-efficient buildings reduce water bills.
- **An increase in property value:** Sustainable buildings are often more valuable than conventional ones. They are in high demand and can fetch a higher rent or sale price.
- **Environmental Sustainability:** Environmentally friendly buildings reduce the impact on the environment. They conserve resources, reduce waste, and promote sustainable practices.
- **Increased Market Demand:** There is a growing demand for sustainable buildings from consumers and businesses alike. As a result, sustainable building technologies and practices have attracted more investment.

8.4. Ultimately, sustainable building offers a multitude of benefits to both individuals and the environment. It promotes energy efficiency, water conservation, improved indoor air quality, durability, better health, increased productivity, cost savings, increased property value, environmental sustainability, and increased market demand.

8.5. To this end modern development on sites such as that as presented by this application assists the government in achieving the 18 global sustainability goals and improves the sustainability of the wider area as a whole.

9. Statement of Common Ground

9.1. In considering the remaining reasons for refusal the appellants proposed the following as common ground.

- a. That the principle of HMO type uses within the building is acceptable and established through the granted Certificate of Lawful Development.
- b. That, as a matter of fact, the proposed development would result in less HMO's on the site than the Certificate of Lawful Development allows.
- c. That the proposed development would not result in an unacceptable outward appearance.
- d. That the proposed development would not result in an impact on the amenity of the adjoining and surrounding occupiers.
- e. The reasons for refusal 2, 3, 7 and 8 of planning permission 70536 have been addressed in full.
- f. All other matters not addressed within the 5 reasons for refusal are taken as acceptable.

10. Grounds of Appeal

10.1. Given the recent planning decision on this site under application Number: 70536 it was wholly reasonable for the appellant to attempt to grapple with the reasons for refusal and wholly reasonable for the appellant to expect that the LPA would be consistent and not seek to add to the reasons for refusal. Sadly in this case reason for refusal 2 is a new reason for refusal added post the initial decision. Adding to the reasons for refusal is unreasonable behaviour and contrary to the principles of consistency in decision making set out within *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137; *R (Midcounties Co-Operative Limited) v Forest of Dean District Council* [2017] EWHC 2050 and *Baroness Cumberlege v Secretary of State for Communities & Local Government* [2017] EWHC 2057.

10.2. An application for the award of appeal costs is made on this basis.

10.3. I shall continue to address the reasons directly below.

1 The proposal would result in a development within the locality that would intensify the use and occupancy of the site, resulting in a high concentration of such uses within the vicinity of the site particularly on the corner of Porter Street and Walmersley Road. The application has therefore failed to demonstrate that the proposal would not have a detrimental impact on the character of the area contrary to Bury Unitary Development Plan Policies H1/2 - Further Housing Development, H2/4 - Conversions and Places for Everyone Joint Development Plan Policy JP-H3 - Type, Size and Design of New Housing and JP-H4 -Density of New Housing.

10.4. The appellant has demonstrated to the council through the grant of a Lawful Development Certificate that the change of use of the four existing flats within the building to individual HMO's can be carried out as permitted development and this now forms the fallback position for this building in the event that planning permission were not forthcoming for the conversion of the building to (inter-alia) 2 HMO's

10.5. Given that the change of use of the building to a larger number of HMO's is not beyond question the proposal would result in a lower number of HMO's on the site and a lower number of HMO's within the wider area.

10.6. Given this the appellant has demonstrated that the permitted development solution is worse than the proposed development in terms of the density of HMO's within the areas as a whole and reason for refusal 1 is therefore unfounded. Further, as demonstrated within the policy analysis policies H1/2, JP-H3 and JP-H4 are either not relevant to or support the proposed development and as such reliance on these policies is also unfounded.

10.7. The LPA has a sole planning policy that addresses conversion to HMO.

10.8. Policy H2/4 states:

*Applications for the conversion of buildings into two or more self contained units, **or the conversion of a building into a house of multiple occupation**, will be considered with regard to the following factors:*

*the effect on the amenity of neighbouring property through noise,
visual intrusion,
the position of entrances,
impact of parking areas, extensions and fire escapes;*

***the general character of the area and the existing concentration of flats;
the amenity of occupants;
the effect on the street scene of any changes to the external appearance of the building;
car parking and servicing requirements.***

10.9. It was established within the previous decision making process that the sole concern within policy H2/4 was that the high concentration of such uses within the immediate area would result in an impact to the character and appearance of the area. In support of this the LPA cited that there were two HMO's within the immediate area and the addition of two further HMO's would result in an impact to the character of the area.

10.10. The adopted Places for Everyone Joint LP does not include an HMO specific policy either although policy Policy JP-H4: Density of New Housing directs to a density of a minimum of 35 dwellings per hectare which this proposal would otherwise achieve.

10.11. Unlike other LPA's Bury MBC do not have an HMO specific policy. The Council relies on the dated Conversion of Buildings to Houses In Multiple Occupation DC Guidance Note Adopted May 2007. In respect of Character and Appearance of the area the SPD states:

3.15 One of the Council's main concerns when assessing planning applications for HMO will be the impact the proposal would have on the character and appearance of an area. Traditionally, HMO have received a poor reputation in terms of their impact on the character of the street scene. This sometimes stems from poor standards of maintenance of the properties themselves and within the buildings' curtilage (gardens and gates etc). Absent landlords are often unaware of problems or are too slow to react to maintenance issues causing them to get worse. The occupants themselves often do not have the desire or the means to take care of areas of the building that fall outside their immediate living accommodation and see such responsibilities as falling on the landlord or other residents. Poor maintenance standards can sometimes have a considerable impact on an area's character.

3.16 In addition to poor maintenance issues, the nature and operational requirements of HMO can sometimes cause harm to the character of an area. Examples of this include unsightly pipework that may be required to conform to specific requirements in terms of services, or unsightly fire escapes that may be required to meet Building Regulations. These often have a greater impact where surrounding properties are clearly absent of such features. Even things

like diverse curtaining and multiple door-bells/letter boxes can detract from an area's character, particularly if done unsympathetically.

3.17 Therefore, if it is considered that a proposal for HMO in an area would cause harm to the character of that area it will be refused planning permission. Such decisions will be based on the individual merits of each proposal and the particular characteristics of each scheme, assessed against the overall street scene and character of an area.

10.12. The key concern that stems from the DC Guidance Note is one of the degradation of the appearance of the locality rather than the overall impact to the balance of the community. This is a perception of the harm of an HMO which comes from the position that the HMO market was in in Bury in 2007 and not the reality of the market as it stands today. In this regard the proposal would overtly avoid all of the problems as set out within the guidance note as none of the key harms are present within this scheme. This is further supplemented with an HMO Management Strategy which sets out how the applicants will both manage, maintain and address the anti-social elements that are feared from an HMO conversion.

10.13. Turning to the question of density of similar HMO uses the DC Guidance note provides the following:

3.7 The scale of a proposed HMO (either individually or cumulatively) is a concern for the Council. Large buildings being converted into HMO can often cause management problems, whereby it is more difficult to maintain the property and regulate the residents. Similarly, a concentration of HMO within an area can pose additional management problems, whereby issues associated with one building can have a knock on effect on the rest of the HMO in an area which may start to deteriorate as a result.

3.8 Therefore, the Council will seek to ensure that HMO, wherever possible, are generally limited to up to 10 bed spaces. HMOs of this size pose fewer management problems and may be more readily integrated into the local community. Smaller HMO also tend to have less impact on neighbouring properties and the general character of an area than larger HMO.

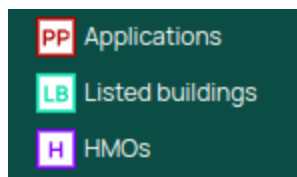
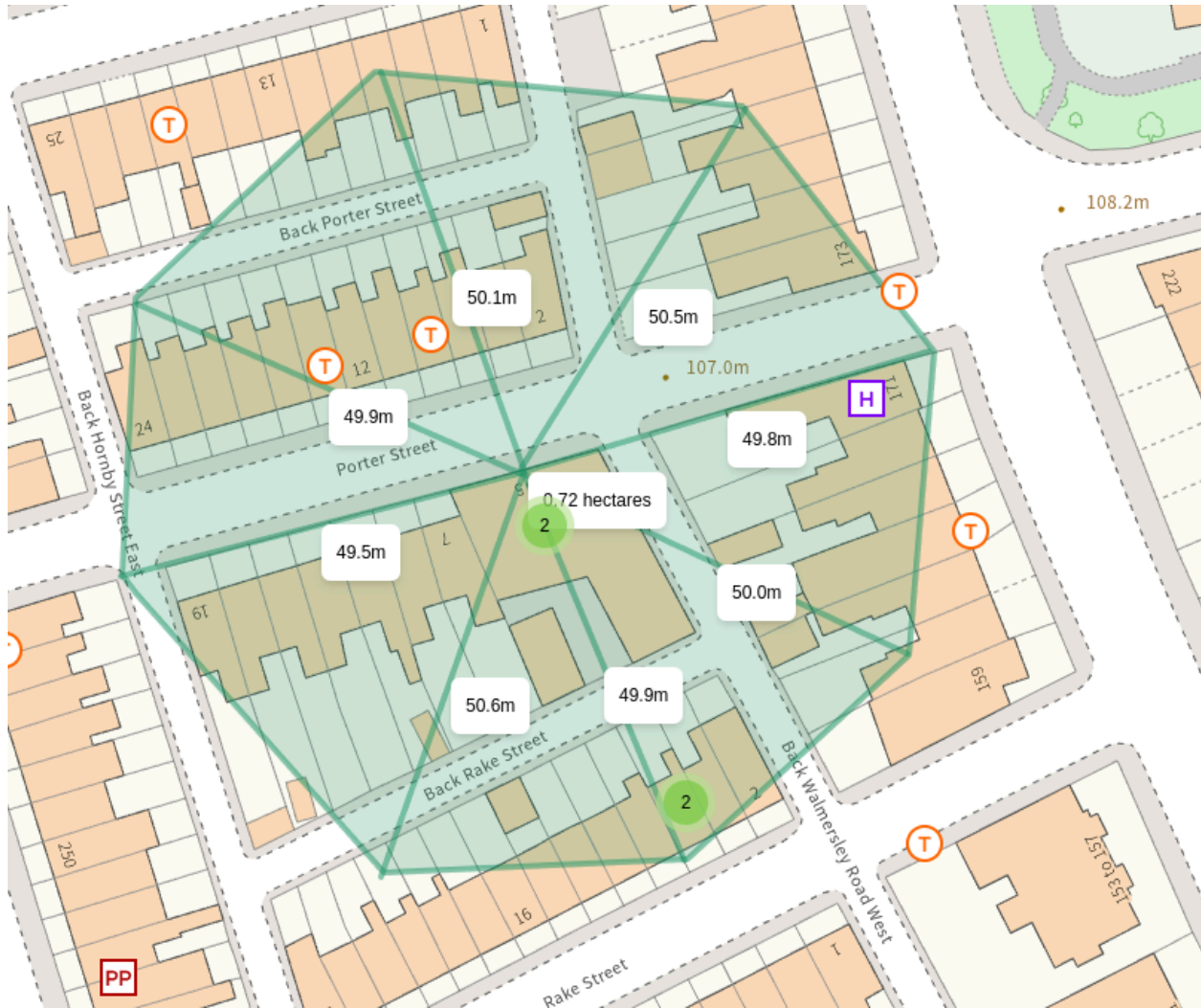
3.9 Although HMO are often most suited to particular locations (see para 3.10 below), the Council considers that an undue concentration of such uses can cause amenity problems such as noise or an increase in on street car parking. Therefore, the Council will seek to avoid the



concentration of HMO accommodation and where it is considered that additional HMO would lead to or worsen problems within a particular area, planning permission will normally be refused.

10.14. This policy stance is vague as it does not set out how much of an overconcentration is considered an overconcentration. There is no further assistance to be found in the retained Bury MBC Plan or the Joint Local Plan.

10.15. The Inspectorate commonly accepts a proportional model of HMO assessment akin to the assessment models used within other urban areas such as Portsmouth, Southampton, Bristol, Liverpool and Manchester. In order to assess concentration and thereby impact character I have used the most common approach which is the 10% proportion of HMO's within 50m ratio.



10.16. Looking at an area some 50m from the application site there is one known HMO at No171 Walmersley Road. This is the only HMO within a 50m radius of the application site.

10.17. There are 55 properties within 50m of the application site including the 4 existing flats within the host building. The existing proportion of HMO's to homes is 1.81%

10.18. Following the proposed development there will be 56 properties as this proposal results in the net increase in 1 dwelling. There will be 3 HMO's within the test area comprising 1 existing HMO and 2 proposed HMO's. The proposed proportion of HMO's to homes would therefore be 5.35%. It will therefore remain the case that some 94% of all properties within the test area will be homes within Class C3.

10.19. As such the development would not, as a matter of fact, result in a high concentration of HMOs that would have an outward effect on the character and appearance of the surrounding area given that some 94% of all of the remaining properties within 50m (a 100m diameter) of the host property would remain family homes.

10.20. Given this the proposed development would not give rise to the impact as set out within policy H2/4 and is therefore acceptable in principle.

10.21. As such the reason for refusal is, taken as a whole, completely unfounded and based on vague and unsubstantiated opinions of the harm that the development would not in fact create. Given this the LPA have met the very high bar as set out within the Costs PPG and will not be able to substantiate this reason for refusal on appeal with objective analysis. An award of appeal costs is therefore wholly justified.

2 The proposed development, by virtue of the proposed density and layout would lead to a poor arrangement of individual accommodation available for the future occupiers of HMO1 and HMO2 and as such would have a detrimental impact on residential amenity of the occupiers contrary to Bury Unitary Development Plan Policy H2/4 - Conversions.

10.22. As the inspector will note this is an additional reason for refusal that has been added by the LPA and is inconsistent with their previous decision making process. The Costs PPG makes clear that adding to the reasons for refusal is behaviour that renders the LPA vulnerable to an award of appeal costs on grounds of acting contrary to, or not following, well-established case law and not determining similar cases in a consistent manner. This is further exacerbated by there being no change in case officer between the first application and the second.

10.23. The appellant naturally states that the density and layout of the proposed HMO's was considered as part of the previous decision making process and only **Bedroom 3 of HMO 1 was highlighted as a point of concern.** Drawing (0-)A006 Revision B shows that the bedroom 3 within HMO 1 has been removed from the basement and replaced with a shared kitchen. As such the addresses in full the harm identified within the previous reason for refusal (3).

10.24. There have been no other substantive changes that would lead the LPA to a different conclusion other than their need to somehow defend this matter on appeal. Given this the reason added to this case is unreasonable and inconsistent with the previous decision making process and as such is wholly unfounded..

10.25. An award of appeal costs in this respect is also requested.

3 The proposal would result in the significant intensification of the use of a building with limited existing off-street parking facilities, which is highly likely to lead to vehicles parking and carrying out manoeuvres on the surrounding residential streets where on-street parking facilities are at a premium at all times of day, which would have a significant impact on existing parking facilities for existing residents and be detrimental to the free flow of traffic and road safety. The proposed development therefore conflicts with Bury Unitary Development Plan Policies HT2/4 - Car Parking and New Development, H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design, H2/4 - Conversions and Places for Everyone Joint Development Plan Policies JP-C5 Streets For All, JP-C6 Walking and Cycling and Supplementary Planning Document 11 - Parking Standards in Bury.

4 The proposed access and parking arrangements are sub-standard, with inadequate levels of visibility at junction with Back Rake Street and at the back edge of the footway and inadequate arrangements to maintain vehicles clear of the adopted highway, which is likely to lead to the creation of conflicts on the adopted highway between emerging and parked vehicles and pedestrians, to the detriment of highway safety. The proposed development therefore conflicts with Bury Unitary Development Plan Policies HT2/4 - Car Parking and New Development, H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design, H2/4 - Conversions and Places for Everyone Joint Development Plan Policies JP-C5 Streets For All, JP-C6 Walking and Cycling and Supplementary Planning Document 11 - Parking Standards in Bury.

10.26. Reasons 3 and 4 relate to highway safety and are therefore taken together.

10.27. The application, subject to this appeal, is supported by a Technical Note and Parking Survey which confirms that there is sufficient capacity within the surrounding road network to accommodate the parking needs of the proposed development and that the development would not give rise to an impact on the safety and convenience of the highway. As such these reasons for refusal were addressed in full.

10.28. For reasons that are wholly unclear and not supported by any evidence of their own the LPA have persisted in objecting to this scheme contrary to their own parking standards and evidence presented by the appellant.

10.29. The appellant directs the LPA to the statement of case presented by Mode Transport to support this appeal. This statement of case provides factual and objective evidence and concludes that the council's objection in respect of reasons 3 and 4 does not rely upon any evidence to substantiate either of the reasons and no evidence will be presented at appeal stage. In addition the reasons for refusal are based on vague, generalised or inaccurate assertions about a proposal's impact, which are wholly unsupported by any objective analysis.

10.30. Given this, again the appellant asserts that the very high bar for award of appeal costs has been exceeded in this case.

5 The application and submitted plans contain insufficient information to ensure that adequate off-highway bin storage arrangements can be provided for the number of flats and HMO's proposed within the curtilage of the site in order to ensure that the adjacent adopted highways are not used for refuse collection purposes or the storage of communal bins. The proposed development therefore conflicts with Bury Unitary Development Plan Policies H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design, H2/4 - Conversions and Places for Everyone Joint Development Plan Policy JP-C5 Streets For All.

10.31. The Technical Note and submitted plans address this reason in full and sufficient off-highway refuse storage is shown within the proposed site layout plan. As such this reason was addressed.

10.32. Notwithstanding this the LPA are seeking an enhanced provision for refuse storage at the site. To this end the appellant demonstrates with plans (0-)A004C and (0-)A006C how additional refuse storage can be accommodated within the site so that there is no need for the adjacent adopted highways to be used for refuse collection purposes or the storage of communal bins. This, notwithstanding the fact that Back Rake Street is used for this purpose already.

10.33. As such the appellant asserts that the LPA did not have to include this as a reason for refusal and this objection could have been dealt with as a condition.

11. Appeal Conclusion

11.1. Given the overriding benefits of bringing a vacant property back into use and providing the equivalent of 8 homes the development is considered wholly acceptable and is not in conflict with the saved parts of the 1997 Local Plan.

11.2. As such the development should have been granted planning permission. For their own, and not entirely obvious reasons, the LPA have sought to refuse the application. The appellant now must turn to the Inspector for recourse in this matter.

11.3. An application for the award of appeal costs is set out below.

12. Application for Appeal Costs

12.1. The PPG advises that costs may be awarded against a party who has behaved unreasonably and where this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The general principle embodied within the PPG is that the parties involved should normally meet their own expenses. Examples of unreasonable behaviour by planning authorities include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
- failure to produce evidence to substantiate each reason for refusal on appeal

- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
- refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead
- acting contrary to, or not following, well-established case law
- persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
- not determining similar cases in a consistent manner

12.2. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

12.3. The main thrust of the appellants case is that the reasons for refusal either attempt to wrestle control of an existing situation which is beyond the scope of control of a Planning Application and therefore contrary to established caselaw, or seek to take control of a matter that is permitted development or latterly rely on vague and unsubstantiated assertions on the impact of the development to justify a reason for refusal.

12.4. The appellant further alleges that the LPA did not determine similar cases in a consistent manner by adding reason for refusal 2 to the appeal decision which relates to matters that they had previously determined to be acceptable.

12.5. Unfortunately for reasons that are not at all obvious, officers chose to depart from the very clear and cogent guidance set out within case law and sought to refuse this application without substantive evidence of their own to support the decision. This is exemplified within the Highways Consultation response which states reasons for refusal and a matter of fact objection without any presented analysis.

12.6. In this respect it is considered that the high bar set by the PPG for the award of appeal costs has been more than exceeded in this case and given the abject failure of the authority to perform its duty under the act to determine the application in accordance with planning law or practise the appellant requests a full award of appeal costs be granted in this case.



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