

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 19/12/2023	Ref: 69815/FUL
Registration: 03/10/2023	LDFC: 27/10/2023	Expiry Date: 02/01/2024
Site Visit: 10/10/2023	Site Notice: 10/10/2023	Press Date: 12/10/2023
Objections: 1	Con Area: N/A	Adv Type: MD
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: MADW

Proposal: Change of use from existing offices (Class B1(a) to: 3 No. flats and 2 no. retail units (Class E) to ground floor, 4 no. flats to first floor and 3 no. flats to second floor; 7 Bedroom (single occupancy) house in multiple occupation (HMO) (Sui Generis) to first/second floors; Conversion of roof space with dormers at front and rear to form second floor; External alterations including new windows/doors and shop front/entrances

Location: 1-7 Taylor Street, Bury, BL9 6DT

Description

The application relates to a vacant 2 storey building which was previously in use as offices. The site is located in Freetown Industrial Estate allocated under UDP Policy EC2/1/5.

The site is surrounded by industrial/commercial/business units to the east, south and west and there is a residential development to the north.

The building has an "L" shape form and attached to the north eastern side is a building which is in a separate use as an electrical wholesaler and distributor. Between the two buildings is the service yard area which is accessed off Back Topping Street which is used as the serving and bin storage for both business uses. This yard area has been included in the blue edge site location plan submitted as part of the application and the applicant has signed Certificate A on the application form.

The building has been used as offices at both the ground and first floor and there are two existing entrances, one fronting Taylor Street and the other from Topping Street.

The application seeks the change of use of the building to a mix use development for the following -

3 No. flats and 2 no. retail units (Class E) to ground floor, 4 no. flats to first floor and 3 no. flats to second floor; 7 Bedroom (single occupancy) house in multiple occupation (HMO) (Sui Generis) to first/second floors; Conversion of roof space with dormers at front and rear to form second floor; External alterations including new windows/doors and shop front/entrances

The 2 retail shops would front Topping Street and each would have a double fronted full height window and central entrance. There would be an access door opening into the year service yard. The shops would have a Class E use.

Also at the ground floor fronting Taylor Street would be 3 x 1 bed flats. There would be a window and entrance door into the bedroom off Taylor Street and kitchen/lounge and bathroom facilities at the rear of each unit. From this area would be a door opening out into a small sectioned off area of the service yard area.

Above the retail units at the first floor would be 4 x 1 bed flats accessed from an entrance off Topping Street and Taylor Street and 4 bedrooms and a communal lounge/kitchen

associated with the HMO would occupy the remainder of the first floor.

At the second floor, accommodation would be located in the roofspace and two dormers which would be located in the roofplanes facing Topping Street and Back Topping Street. It is proposed to provide 3 no flats and a further 3 bedrooms and a small communal kitchen in association wit the HMO unit.

Other external alterations would comprise the formation of windows and door entrances.

The proposed site plan shows that the existing yard area as a shared space. A small area is shown to be sectioned off behind the ground floor flats with 3 commercial size bins located against this rear elevation.

A further 3 bins are shown behind the retail shops.

No information has been provided to show how the a service yard would be shared between the different occupiers of the proposed development or with the occupier of the attached commercial unit.

As the development proposed to create 10 individual flats, a recreation contribution in accordance with SPD1 would be required.

No proforma has been completed by the applicant.

The application form has been incorrectly filled in as it state there are no residential units to be created.

Relevant Planning History

N/a

Publicity

Letters sent to 22 properties on 4/10/23 and 10/10/23.

site notice posted 10/10/23.

press advert 12/10/23.

One objection received which raises the following issues -

- Inadequate and flawed submission based on incorrect.
- Land ownership drawings, lacks justification, and fails to provide key information. It demonstrates multiple policy conflicts with the Bury Unitary Development Plan, Bury Supplementary Planning Documents and the NPPF 2023, and contains many oversights, omissions and contradictions. The application is plainly incapable of being approved and should be rejected without negotiation.

Conflict with the development plan and national planning policy -

- The application site is within the Freetown Employment Generating Area where new development proposals must be managed in accordance with saved Policy EC2/1/5 of the Bury UDP. It cannot be said that it will not 'substantially detract from the value of the Freetown Employment Generating Area.' The reason for this is the unavoidable conflict and incompatibility, both physically and legally , with the long-established commercial use of our client's premises.
- The residential use is incompatible with the adjacent established commercial/business use which would prejudice the continued trading operation and force either relocation or closure, resulting in loss of jobs and investment.
- Negative impact on the local economy and EGA.
- Noise nuisance - daily activity of the adjacent business premises would cause nuisance to future residents of the development - no noise report submitted.
- Multiple use of the yard - cannot accommodated commercial uses and the proposed development. . A site management and servicing plan for parking, deliveries and refuse collection has not been submitted
- Health and safety - The yard is not a safe location for residents of the proposed

- development to use. Not compatible with the other business.
- Security and crime risk issue to the existing adjacent business by opening up the yard area . A crime impact assessment has not been submitted.
- Inaccurate references made to NPPF policies - the Council has not declared an intention to reallocate or de-designate the EGA. The emerging PfE supports this.
- Saved Policy EC2/1/5 therefore operates in the interest of protecting the Freetown Employment Generating Area. This is consistent with paragraph 81 of the NPPF 2023.
- The absence of a five year housing land supply also does not provide justification to grant planning permission under the presumption in favour of sustainable development.
- Conflict with the retail policies of the development plan and NPPF 2023. The proposed development contains two Class E commercial units which, as main town centre uses, are not in an existing centre and not in accordance with an up-to-date local plan.
- Conflict with the affordable housing policy of the NPPF - should be providing an affordable unit.

Failure to consider technical requirements -

- The planning application contains many technical errors and oversights - incorrect understanding of our client's and the applicant's respective land ownerships and rights of access over the yard and entrance at the rear of the properties. The applicant does not own the whole of the yard and it is not shared space. The cars shown on the plan therefore cannot be provided.
- No space for bike storage.
- No rights of access over the yard for the applicant - therefore cannot provide access for residents, bins etc.
- It is not demonstrated that the proposed apartments, HMO and Class E commercial units can be suitably and safely accessed for residential and commercial purposes and provided with suitable and safe arrangements for residential and commercial servicing, deliveries, refuse storage and collection, and means of escape and emergency access/exit.

Failure to achieve good design and a good standard of residential amenity -

- The scheme is not good design and is over development. Unsuitable living environment and no amenity space.
- The applicant refers to Class O permitted development rights as supporting justification for the proposed development but this has no relevance as the application is made for planning permission and not to determine whether prior approval is needed to carry out permitted development.
- The Government removed Class O permitted development rights on 1st August 2021 and replaced it with Class MA. To improve the standard of living accommodation, permitted development carried out under Class MA must provide adequate natural daylight to all habitable rooms and must meet the Nationally Described Space Standards. - the application is deficient.
- Does not comply with SPD13 or SPD15.

Conclusion

There is much that is wrong and deficient with this planning application. It is based on an incorrect understanding of the applicant's land ownership and rights of access and use of the rear yard; it contains incorrect plans and incorrect details on the application form; it lacks and is not supported by technical assessments and information to show that the proposed development will not have an adverse impact upon our client's adjoining commercial premises and the continued viability of its tenant's business. The application is consequently contrary to the adopted development plan and Government policy in the NPPF 2023, and does not achieve sustainable development.

Statutory/Non-Statutory Consultations

Adult Care Services - No comments

Traffic Section - Recommend refusal

Environmental Health - Pollution Control - Require a noise assessment

Greater Manchester Police - designforsecurity - Raise concerns about the proposed layout

Waste Management - No comments received.

Housing - Public Protection - Raise concerns regarding sub-standards facilities and accommodation.

Planning & Building Regs consultation Fire Protection Dept Bury Fire Station (Part B) - No response received.

Design for Security - Raise issues of safety and security of the property and potential occupiers.

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

NPPF	National Planning Policy Framework
EC2/1	Employment Generating Areas
H1/2	Further Housing Development
H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
H2/4	Conversions
H3/2	Existing Incompatible Uses
EN1/2	Townscape and Built Design
EN1/5	Crime Prevention
EN1/8	Shop Fronts
EN5/1	New Development and Flood Risk
EN7/2	Noise Pollution
S2/1	All New Retail Proposals: Assessment Criteria
S2/5	New Local Shopping Provision
HT2/4	Car Parking and New Development
HT6/2	Pedestrian/Vehicular Conflict
HT5/1	Access For Those with Special Needs
HT6/2	Pedestrian/Vehicular Conflict
SPD6	Supplementary Planning Document 6: Alterations & Extensions
SPD11	Parking Standards in Bury
SPD13	Conversion of Buildings to Houses in Multiple Occupation

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.

Policies

UDP Policy EC2/1 - Employment Generating Areas will only allow development for uses specified. Other uses will only be permitted where they constitute limited development or do not substantially detract from an area's value as an EGA. The following uses specified for this EGA are B1, B2 and B8 uses.

UDP Policy H1/2 states that the Council will have regard to various factors when assessing a proposal for residential development, including whether the proposal is within the urban area, the availability of infrastructure and the suitability of the site, with regard to amenity, the nature of the local environment and the surrounding land uses.

UDP Policies H2/1 - The Form of New Residential Development and H2/2 - The Layout of New Residential Development takes into consideration factors relating to the height and roof type of adjacent buildings, the impact of developments on residential amenity, the density and character of the surrounding area and the position and proximity of neighbouring properties. Regard is also given to parking provision and access, landscaping and protection of trees/hedgerows and external areas.

H3/2 - Existing Incompatible uses states that where incompatible uses operate within residential areas, the Council will seek to ensure that any existing conflicts are resolved where possible and where opportunities arise. where appropriate, the council will implement measures to control future land uses so as to minimise or remove conflicts; control the intensification or expansion of non-conforming uses where possible; control the operation of adjacent uses where possible to minimise areas of conflict and potential uses; introduce environmental improvements or traffic management schemes where appropriate.

Principle

Employment

The application site is located within the Freetown Employment Generating Area (EGA) as defined by UDP Policy EC2/1 (EC2/1/5). Policy EC2/1 states that Business (formally B1), General Industrial (B2) and Warehousing (B8) uses will be permitted within the Freetown

EGA. Other uses will only be permitted where they constitute limited development or do not substantially detract from an area's value as an EGA.

The site sits within an established area of employment uses and it is considered that the introduction of residential uses into this area has the potential to substantially detract from the area's value as an EGA. The proposed development is therefore contrary to Policy EC2/1.

Whilst there is a row of terraced houses to the south west of the site, these would have been built prior to the area being allocated as an EGA.

Retail

The application site is not located within a town, district or local centre as defined by the UDP.

Paragraph 87 of the NPPF states that a sequential test should be applied to planning applications for main town centre uses (including retail uses) which are not located within an existing centre.

A sequential test has not been submitted with the application and therefore the proposal does not comply with the NPPF paragraph 87.

In terms of land uses, the proposed development would be contrary to policy and therefore not acceptable in principle.

Proposed uses and layout issues

The building forms an 'L' shape and is set parallel and directly at the back edge of pavement of Taylor Street and Topping Street. Attached on the western side is a wholesale and distribution company and between the two 'legs' of the building is the service yard area which is annotated as shared and used by both the application building and the connecting business.

Retail shops

The two proposed retail shops would be accessed via Topping Street and each would have access to the service yard at the rear for servicing and for bin storage facilities. However there are no details provided to show what part of the yard would be available to the retail operators or where and how many bins would be available for this use. No details of deliveries, types of delivery vehicles or frequency of deliveries have been provided.

Residential units

Turning to the residential units and the layout of the 3 flats at the ground floor, the main entrances to the flats would be from Taylor Street straight into a bedroom, the only bedroom window would directly overlook Taylor Street, the rear exit would open out onto a shared commercial/industrial yard area and the commercial sized bins would be located directly in front of kitchen/lounge windows.

Stepping directly into a bedroom from the street and public area would afford the occupiers little privacy, is a poorly designed arrangement and locating residential units directly next to and overlooking a commercial service yard would be inappropriate and would offer poor standards of living conditions. The proposed site plan also suggests that part of the service yard would be used as amenity space for residents, which again is inappropriate and offers little in the way of acceptable living conditions.

At the first floor, bedrooms for both the HMO units and flats would overlook the service yard area and at second floor one of the flats would overlook the service yard area. Again, the relationship of the residential units to a commercial site would be unacceptable.

The existing service yard is currently shared by both the application site and the connecting

commercial unit for servicing requirements including deliveries, the loading and unloading of goods, bin storage and parking. The application shows that this area would continue to be shared.

Introducing different uses within the building and particularly residential uses within a site which is already occupied and used by a commercial and business unit would cause conflicts between the different occupiers which would not only be harmful to the future amenity of future residents in terms of the activities, noise and disturbances generated by a commercial business, but would compromise the operations of the existing commercial unit as mitigation measures would be required to outweigh harm caused by the introduction of what is considered to be a new and conflicting use. Para 187 of the NPPF states that planning decision should ensure that new development can be integrated effectively with existing businesses which should not have unreasonable restrictions placed on them as a result of development permitted after they were established.

The proposed development and layout of the site and the introduction of the residential use in particular has resulted in a poorly designed and ill-thought out scheme and one which cannot be supported due to the reasons above.

The proposed development would therefore be contrary to policies H1/2, H2/1, H2/2, H2/4 and the principles of the NPPF.

Impact on residential amenity

Impact on existing residents

The nearest residential properties would be to the north and west more than 20m away. Given the separation distance and that the character of the surrounding area is largely industrial and commercial in character, it is considered that the proposed development would not be harmful to existing residential amenity.

Impact on future residential occupiers

In terms of the number of residential units proposed, there would be 10 no self contained flats and a 7 bedroom (single occupancy) HMO within the building.

The flats would be located over the 3 floors (3no at ground floor, 4no at first floor, 3no at 2nd floor). Apart from 3 flats, all would have a main habitable room window directly overlooking the service yard area used by the adjacent commercial operator and proposed retail use. This relationship to a commercial use which would generate noise and activity by deliveries and the general operations of the business would be unacceptable and significantly harmful to the amenity for those residents.

Similarly accessing the ground floor bedrooms directly from a public highway is considered poor design and would afford little privacy to a future occupier.

In terms of living space standards, 7 out of the 10 flats would provide sub-standard levels of accommodation as well as a poor outlook and access arrangements.

For the HMO's, albeit marginal, the bedroom areas would comply with HMO licensing standards but the en suite facilities would be below the standard requirements. There would be a communal kitchen/lounge on each of these floors but again and especially on the second floor, the areas are cramped and would provide a relatively small space for occupiers to cook food, relax and spend time outside their bedroom areas.

Furthermore, the bins would be located in the shared yard area which would be difficult for the majority of the residents to access, requiring them to walk round the building. The residents would also have to negotiate the shared service yard area where heavy vehicles and the general operations of the commercial unit would be a regular and daily occurrence, which would be dangerous and harmful to pedestrian safety.

Paragraph 130 (f) of the NPPF states that development should 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 users. In this case, the proposed development would be deficient in providing future residents with adequate and reasonable standards of living and together with the inappropriate location for a residential development, the proposal would intensify the use and occupation of the building to an unacceptable degree.

There is no noise impact assessment which would help determine the level of noise the proposed retail units would produce and how this could be reduced and a noise assessment has not been carried out to establish the level of noise generated by the adjacent commercial building. In any event, an existing commercial occupier should not be penalised by allowing an incompatible use which would be affected by an established business.

In conclusion, the arrangement and layout of the proposed flats would afford the occupiers little privacy, have been poorly designed and would provide sub-standard, unacceptable and unsuitable living conditions for future occupiers, particularly in consideration of the relationship and proximity to an existing commercial unit.

The proposed development would therefore be contrary to policies H1/2; H2/1; H2/2 and H3/2.

HMO licensing comments

- The toilet/bathroom opening into the kitchen would not be ideal for the ground floor bedsits. It would be preferable if the bathrooms were accessed from the bedroom rather than the kitchen/living area.
- A number of the shower rooms do not have wash hand basins marked on the plans. and reasonable sized wash hand basins should be provided to all bedrooms. The wash hand basins located on top of the toilet cistern would not be accepted as suitable provision.
- First floor flat appears to have access to HMO. No fire door to HMO provided on first floor landing.
- A full Fire Risk Assessment for the building would be required. Recommend consultation is carried out with GMFRS as mixed commercial / residential unit. Need confirmation that commercial units, HMO and self-contained flat fire detection system is all interlinked as the escape route is shared.
- The second-floor bedrooms appear of the HMO appear to have velux window openings, how will these be operated to ensure natural ventilation to these rooms. The head height is also of concern in these rooms as anything below 1.5m can not be classed as useable space. All of the bedrooms would need to be a minimum of 6.5m².
- Concern is also raised as the existing pitched roof appears to possibly be corrugated asbestos sheeting.

The property would require a HMO licence upon completion.

From the comments above, it would appear that the facilities and standards provided for the HMO use would be sub-standard and at this time the building, or parts thereof, would not comply with HMO licensing requirements could not be facilitated within the

Design and appearance

External alterations would comprise alterations to the elevations to form window and door openings and two dormers in the roofplanes which front Topping Street and Back Topping Street.

The dormer at the rear would not be highly visible to the main streetscene and at the front dormer would be set below ridge level and above the eaves and not project significantly to be obtrusive to the street scene.

In terms of the design and appearance, the alterations are generally acceptable.

Highways issues

In terms of the highway considerations there are a number of issues with the application. The proposed site plan does not show any details of how each user would access the service yard, does not show designated areas within the service yard for each operator, lacks any details to show the tracking of vehicles or how they would manoeuvre into and out of the site without causing conflicts with other occupiers/operators, does not propose any parking for the different operators and occupiers and provides insufficient details for bin storage provision.

The proposed site plan also appears to show part of the yard area directly behind the ground floor residential flats would be accessible to residents which would cause conflicts with the commercial operators and which would be harmful to pedestrian safety.

Furthermore, there would not be a level access to the ground floor flats as the proposed doors (to the flats) on the elevation fronting Taylor Street are shown to the 'floating' above the pavement level by up to 0.5m.

As such, the proposed development would be unacceptable and contrary to policies H2/2, H2/4, HT2/4 and HT6/2.

Design for security (DfS)

The DfS Team have been consulted and have raised issues with the proposed development as follows -

- The ground floor bedsits have windows that directly abut the public footway and could leave them vulnerable to antisocial behaviour. DfS recommend that some form of protection or defensible space is provided (i.e. railings, ornamental belly bars, window sill planters).
- The bedsits bedrooms will likely have the curtains/blinds drawn at all times due to privacy concerns and the result will be a lack of active frontage to the street. It is recommended that the bedrooms are positioned to the rear of the properties and living space at the front.
- There should be a video intercom and secure postal delivery to the flats and HMO.
- All alterations to the building should be in accordance with Secured by Design standards.

The plans would need to be revised to address the issues raised above.

Recommendation: Refuse

Conditions and Reasons:

- 1 The proposed development would introduce a residential use into an Employment Generating Area (EGA) which would detract from the area's value as an EGA and would be contrary to Bury Unitary Development Plan Policy EC2/1/5 and would introduce a retail use and a main town centre use outside of a recognised centre which would be detrimental to the vitality and viability of such recognised centres without a sequential test demonstrating otherwise and would be contrary to paragraph 87 of the NPPF.
- 2 The proposed development would introduce a residential and non-conforming use into a building which is directly adjacent and connected to an industrial and commercial unit which conflict with the operations of that business by way of the noise and activity and disturbances created by the business which would be harmful to future occupiers of the residential units and would compromise and conflict with the operations of that business. The proposed development would therefore be contrary to Bury Unitary Development Plan Policies EN1/2 - Townscape and Built

Design, H2/2 - The Layout of New Residential Development, H2/4 - Conversions and H3/2 - Existing Incompatible Uses and the principles of the NPPF.

- 3 The size of the building and site is inadequate to accommodate the residential development proposed and would result in sub-standard and unacceptable levels of accommodation and facilities, shared facilities, external amenity space and refuse provision for the future occupiers of the property and as such would have a detrimental impact on residential amenity of the occupiers. The proposed development would therefore be contrary to Bury Unitary Development Plan Policies H1/2 - Further Housing Development, H2/1 - The Form of New Residential Development, H2/2 - The Layout of New Residential Development and H2/4 - Conversions and the principles of the NPPF.
- 4 The proposal would result in the significant intensification of the use of a building with no 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 would therefore be contrary to Bury Unitary Development Plan Policies H2/2 - The Layout of New Residential Development, H2/4 - Conversions, HT2/4 - Car Parking and New Development and HT6/2 - Pedestrian/Vehicular Conflict.
- 5 The proposal does not provide level pedestrian accesses to the building from the adjacent adopted highway, which is likely to lead to the creation of unauthorised steps/measures on the adopted highway to overcome the level differences proposed to be created, to the detriment of highway safety and contrary to the Highways Act 1980. The proposed development would therefore be contrary to Bury Unitary Development Plan Policies H2/2 - The Layout of New Residential Development, H2/4 - Conversions, HT2/4 - Car Parking and New Development and HT6/2 - Pedestrian/Vehicular Conflict.
- 6 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/retail uses 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 would therefore be contrary to Bury Unitary Development Plan Policies EN1/2 - Townscape and Built Design, H2/2 - The Layout of New Residential Development, H2/4 - Conversions.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	19/12/23	DM	19/12/23