

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 11/05/2022	Ref: 68014/FUL
Registration: 21/02/2022	LDFC: 14/03/2022	Expiry Date: 18/04/2022
Site Visit: 23/03/2022	Site Notice: N/A	Press Date: N/A
Objections: 0	Con Area: N/A	Adv Type: NONE
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: MIOT

Proposal: Amended opening hours for cafe (Class E): Installation of extraction flue at side/rear; New shop front to include shutters

Location: 185 Rochdale Road, Pimhole, Bury, BL9 7BB

Description

The application relates to a shop premises which is situated within a row of shops and businesses comprising a mix of uses and which is allocated within a neighbourhood Shopping centre.

The unit is situated fronting a main road through the Borough and there is an unmade access road which runs along the rear of these properties, beyond which are residential properties opposite the site.

The premises was formally a pharmacy which according to the application form has been vacant since 2019.

The application seeks to amend the current opening hours for a cafe use from 11am to 1am daily. It is also proposed to install an extraction flue at the rear and carry out alterations to the shop front to include roller shutters.

For clarity, a cafe/restaurant use now falls within the same use class as a shop (pharmacy) Class E, and as such a change of use of the premises is not required.

Relevant Planning History

60503 - Change of use of 1st & 2nd floor from living accommodation to pharmacy dispensary (Class B1) in relation to the ground floor pharmacy - Approve with Conditions 18/10/2016

68015 - Internally illuminated fascia sign - concurrent application

Publicity

Letters sent on 21/2/22 to 39 adjacent properties
No response received

Statutory/Non-Statutory Consultations

Traffic Section - No objection subject to conditions

Environmental Health - Pollution Control - No comments received

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

NPPF	National Planning Policy Framework
EC4	Small and Growing Businesses
EN1/2	Townscape and Built Design

EN7/1	Atmospheric Pollution
EN7/2	Noise Pollution
S1/5	Neighbourhood Centres and Local Shops
S2/6	Food and Drink
EN1/5	Crime Prevention
EN1/8	Shop Fronts

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.

Proposed hours - It is proposed to operate the cafe from 11am to 1am daily. The premises is located within a row of other shops and commercial uses of a mix of types,

including public house and takeaways which can open to similar times of the evening/night and it is also located on a main road and through route, linking the motorway and town centre and which tends to carry traffic at later times of the day. It is therefore considered there is already activity, noise and comings and goings from patrons to these later operating premises as well as from traffic.

Whilst the increase in use of the hours by a new cafe would add to this activity and noise, the premise itself is relatively small in size comparative to other businesses premises and as such the number of clientele who could patronise the cafe at one time would not be excessive.

Given the location of the premises on a main road and within a shopping centre and with other operators open until later times, it is considered the additional footfall to the premises would not add significantly to activity and noise in the area and as such would not create unacceptable nuisances to those living above adjacent shops or nearby.

As such, it is considered the proposed hours would be acceptable and comply with EC4/1 and EN1/2.

Proposed flue - This would be located on the rear elevation and would be a slimline design comparable to other extraction systems found on eateries/takeaways. The closest window of the attached property (No 183) is a bathroom and as such the flue would not impact on habitable living space. The upper floor of the application premises would be used for storage as shown on the proposed plans and not residential accommodation.

The EH Pollution Control Department have been consulted but no response has been received. The plans show that the proposed flue would project 1m past the eaves height which is usually acceptable in terms of dispersing fumes/smells.

An condition would therefore be included that the proposed flue/extraction system be installed to regulatory standards.

It is therefore considered the proposed development would be acceptable.

Shop front - It is proposed to alter the existing shop frontage which would involve the installation of a fully glazed frontage comprising full height windows and central entrance door. The proposed alterations would maintain an open shop frontage and as such considered acceptable.

It is also proposed to install a new external roller shutter. Specification details have not been submitted and an open lathe type is preferred as it would appear less obtrusive and strident within the street scene and maintain a view inside the shop for security purposes. Details of the roller shutter would be required by condition.

As such, it is considered the proposed shop front would be acceptable.

A new sign is proposed to the front fascia.

This is to be dealt with under an application for advertisement consent ref 68015

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

The Local Planning Authority worked positively and proactively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local

DELEGATED REPORT

Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Approve with Conditions

Conditions and Reasons:

- 1 The development must be begun not later than three years beginning with the date of this permission.
Reason. Required to be imposed by Section 91 Town & Country Planning Act 1990.
- 2 This decision relates to drawings Red edge site plan received 25/1/22; Existing elevations EE-BL9 7RG 01; Existing floor plans EP-BL9 7RG 01; Revised proposed plans PP-BL9 7RG 02; Revised proposed elevations PE-BL9 7RG 03; Proposed shop front dated 23/10/21 (received 25/1/22) and the development shall not be carried out except in accordance with the drawings hereby approved.
Reason. For the avoidance of doubt and to ensure a satisfactory standard of design pursuant to the policies of the Bury Unitary Development Plan listed.
- 3 The bin storage facilities indicated on the approved plans shall be implemented prior to the development hereby approved being brought into use and maintained thereafter.
Reason. To ensure adequate provision for the storage and disposal of refuse within the curtilage of the site, clear of the adopted highway pursuant to Bury Unitary Development Plan Policies EC4/1 - Small Businesses and EN1/2 - Townscape and Built Design.
- 4 Prior to the installation of the roller shutter hereby approved, details of the roller shutter shall be submitted to and approved by the Local Planning Authority. The approved details only shall thereafter be implemented and maintained.
Reason. In the interests of visual amenity and for security purposes pursuant to Bury Unitary Development Plan Policies EN1/2 - Townscape and Built Design, EN1/5 - Crime Prevention and EN1/8 - Shop Fronts.
- 5 The use hereby permitted shall not be open to customers outside the following times: 11.00 to 01.00 daily.
Reason. To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to Policies S1/5 - Neighbourhood Centres and Local Shops and S2/6 – Food and Drink of the Bury Unitary Development Plan.
- 6 The extraction system/flue hereby installed shall comply with or exceed the 'Minimum Requirements For Odour Control' provided by the Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems : DEFRA 2005 (or if applicable such superseding guidance as shall prevail at the time of commencement of the development) and thereafter maintained whilst it shall serve the development.
Reason. In the interests of amenity pursuant to Policies EN7/1 - Atmospheric Pollution, EN7/2 - Noise Pollution, S1/5 - Neighbourhood Centres and Local Shops and S2/6 – Food and Drink of the Bury Unitary Development Plan.

<u>Case Officer</u> JT 11/5/22	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
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