

DELEGATED REPORT

Report by Helen Pressley	Date of report: 05/06/2024	Ref: 70617/FUL
Registration: 16/04/2024	LDFC: 14/05/2024	Expiry Date: 11/06/2024
Site Visit: 24/05/2024	Site Notice: N/A	Press Date: N/A
Objections: 1	Con Area: N/A	Adv Type: NONE
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Change of use of existing residential dwelling (Class C3) to prayer hall (Class F1(f)) to ground floor and self-contained flat (Class C3(a)) to first floor with rear balcony; installation of air-conditioning units.

Location: 52 Albert Avenue, Prestwich, Manchester, M25 0LX

Description

The application relates to a semi detached dwellinghouse, No 52 Albert Avenue which is located on a residential street. The dwelling is attached to No 50 and on the other side to No 54 there is a pedestrian access between the two gable walls which leads to the rear garden of No 52.

Planning permission was granted in 2021 for a two storey rear extension. The ground floor extension was 4.5m in depth and the 1st floor extended 3m in depth with a juliet balcony to the window opening to prevent the ground floor roof being used as a balcony. The development has been completed but a railing has been constructed around the perimeter of the 1st floor balcony which does not have planning consent. Air conditioning units have also been installed at the upper level on the side wall which overhangs the access without planning consent.

This application seeks the change of use of the existing dwelling house (No 52) to a prayer hall at ground floor and a self-contained flat at first floor. The application is retrospective.

The application follows a refusal due to insufficient information in relation to the number of members attending the prayer hall, opening times and modes of travel and lack of information in relation to the installation of a balcony and air conditioning units. The amended application includes an updated planning statement and as built plans that show the property as existing.

Relevant Planning History

67418 - Two storey rear extension with juliet balcony - Approve with Conditions 20/10/2021

69959 - Change of use of existing residential dwelling (Class C3) to prayer hall (Class F1(f)) to ground floor and self-contained flat (Class C3(a)) to first floor - Refused 18/10/2023

Publicity

Neighbour letters sent 18/04/2024. Amended neighbour letters sent 03/05/2024.

1 objection received in relation to:

- loss of privacy
- air con should be sited away from shared boundary.
- no issue with prayer hall - less than a normal home.
- rarely any parking issues.

Statutory/Non-Statutory Consultations

Traffic - Insufficient information in order for the parking provision required for the proposed use to be properly assessed.

Environmental Health - Pollution Control - No comments to make.

Waste Management - No response.

Pre-start Conditions - Not relevant

Development Plan and Policies

NPPF	National Planning Policy Framework
CF1/1	Location of New Community Facilities
EN1/2	Townscape and Built Design
EN7/2	Noise Pollution
HT2/4	Car Parking and New Development
H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
H1/2	Further Housing Development
H3	Incompatible Uses in Residential Areas
H3/1	Assessing Non-Conforming Uses
JP-C2	Digital Connectivity
JP-C5	Streets For All
JP-C6	Walking and Cycling
JP-S2	Carbon and Energy
JP-H3	Type, Size and Design of New Housing
JP-H4	Density of New Housing
JP-H1	Scale of New Housing Development
SPD6	Supplementary Planning Document 6: Alterations & Extensions
SPD11	Parking Standards in Bury

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), the adopted Places for Everyone Joint Development Plan Document (PfE) and the saved policies within 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 and PfE Policies 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.

Principle (Residential)

The National Planning Policy Framework (NPPF) should be treated as a material planning consideration and it emphasises the need for local planning authorities to boost the supply of housing to meet local housing targets in both the short and long term. The Framework states that unless they have an adopted plan that is less than five years old that identified a five year supply of specific deliverable sites at the time of conclusion of the examination, then local planning authorities should identify and update annually a supply of specific developable sites to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing in certain circumstances set out in NPPF paragraph 226.

Bury's Strategic Housing Land Availability Assessment sets out the latest housing supply position, which is made up of sites that have an extant planning permission and sites that have potential to obtain planning permission in the future.

This shows that there are a number of sites within the Borough with the potential to deliver a significant amount of housing. However, not all of these sites will contribute to the deliverable land supply calculations as many sites will take longer than five years to come forward and be fully developed (e.g. some large sites could take up to ten years to be completed). In addition to the housing land supply in the SHLAA, the joint Places for Everyone Plan was adopted with effect from 21 March 2024 and allocates significant strategic sites for housing within Bury.

The adopted joint Places for Everyone Plan Policy JP-H1 sets a requirement for an average of 452 homes per year over the plan period, with stepped targets starting from a minimum housing target of 246 homes per year from 2022-2025 (increasing in future years of the plan). Following the adoption of PfE the Council is able to demonstrate a 5 year supply with a 20% buffer.

The National Planning Policy Framework also sets out the Housing Delivery Test, which is an assessment of net additional dwellings provided over the previous three years against the homes required. Where the test indicates that the delivery of housing was substantially below (less than 75%) of the housing requirement over the previous years, this needs to be taken into account in the decision-taking process. The latest results published by the

Government show that Bury has a housing delivery test result of less than 75%, and therefore, this needs to be treated as a material factor when determining applications for residential development.

Therefore, paragraph 11d) of the National Planning Policy Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless:

- i. The application of policies in the 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 the Framework, taken as a whole.

The site is in a sustainable location for housing within the urban area and sitting outside the Green Belt.

Due to the housing delivery test result, the 'tilted balance' applies and planning permission should be granted unless the above points Para 11(d) i or ii apply. However, the adoption of the Places for Everyone Joint Development Plan has resulted in new housing targets for the Borough and the allocation of strategic sites housing sites, which along with the identified housing land supply within the urban area enable the Council to demonstrate a deliverable 5 year supply of housing land, and will accelerate housing delivery within the Borough to meet housing needs.

The proposal would see the retention of 1 no. dwellings at the site as existing. As such the proposal would not lead to a loss or gain in residential properties. The proposal is therefore considered to be acceptable.

Layout and Design

Policy JP-H4 - Requires new housing development to 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. Policy JP-H4 sets out minimum densities that should be considered. In this instance however, given that there would be no net gain or loss in dwellings at the site the current density would be maintained. As such the proposal is considered to be acceptable.

Policies H2/1 and H2/2 provide the assessment criteria for detailed matters relating to height, appearance, density and character, aspects and finishing materials for new residential developments. Policy JP-H3 - Seeks to provide an appropriate mix of dwelling types and sizes reflecting local plan policies and having regard to relevant local evidence. Development across the plan area should seek to incorporate a range of dwelling types and sizes, including for self-build. Policy EN1/2 - Townscape and Built Design seeks to ensure that any proposals would not have an adverse impact on the particular character and townscape of an area.

The amendments to the original dwelling are largely in accordance with the previously approved householder extensions (67418) however an additional door has been introduced to the front elevation, handrails have been added around the flat roof to the rear and 2no. air conditioning units have been added to the side elevation.

The 2no. doors are located within the original arched entrance to the dwelling and have a minimal impact on the character of the dwelling. The railings are located to the rear of the property and the air conditioning units are set well back from the road so as to not impact on the character of the street scene. As such no objections are raised to the physical alterations to the dwelling in relation to design.

Policy JP-H3 also states that all new dwelling must:

1. Comply with the nationally described space standards; and

2. Be built to the 'accessible and adaptable' standard in Part M4(2) of the Building Regulations unless specific site conditions make this impracticable.

It is noted that there is already a residential use at first floor. The overall GIA and Bedroom 1 and 2 would comply with NDSS. A condition could be attached to ensure compliance with M4(2).

Amenity

Prayer hall

Policy CF1/1 - Location of New Community Facilities states that factors to be considered in an application include -

- impact on residential amenity and local environment
- traffic generation and parking
- scale and size of development
- suitability of the location in relation to the catchment or community it intends to serve
- needs and requirements of the disabled.

Policy H3 - Incompatible Uses in Residential Areas seeks to restrict the development of incompatible uses in areas which are primarily residential in nature and where possible will seek to resolve existing conflicts. Policy H3/1 - Assessing Non-Conforming Uses states that proposals will not be supported where they are considered incompatible in residential areas. Factors taken into consideration are noise, vibration, smells, fumes, visual intrusion, traffic generation and parking arrangements and hours of operation.

The existing property (prior to the unauthorised conversion) is a modest dwelling, that has been extended at two storey to the rear to provide additional living and bedroom accommodation. The site is located within a residential setting, with no off street parking provided for the existing single residential unit.

The proposal at ground floor would fall under use Class F1. Whilst noted that the applicant states that the proposal would lead to a lower intensity than a regular F1 use, to fulfill a specific need and is not open to the public once granted the proposal would be for an F1 use and as such needs to be assessed accordingly.

It is accepted that currently the use of the prayer hall is limited to the times, and numbers set out within the planning statement and that one of the neighbouring properties has stated that they have no issues with the prayer hall use. This appears to be due to the way that the prayer hall is currently managed. The Use Class Order defines Class F1 as:

- (a)for the provision of education,
- (b)for the display of works of art (otherwise than for sale or hire),
- (c)as a museum,
- (d)as a public library or public reading room,
- (e)as a public hall or exhibition hall,
- (f)for, or in connection with, public worship or religious instruction,
- (g)as a law court.

The ground floor unit could therefore move between the above uses without planning permission and beyond the existing described prayer hall use. Given that the proposal includes the provision of the entire ground floor, and utilises a separate entrance this would be a self contained unit that could easily be adapted to any of the above uses which would not be acceptable within a residential setting due to the potential for noise, traffic generation and parking contrary to UDP Policy H3/1.

The applicant has stated within their planning statement that they would invite the LPA to condition use, restricting attendance at the premises, hours of use and any potential noise generating activities.

Paragraph 55 of the NPPF makes it clear that conditions should be kept to a minimum and only imposed should they meet the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

In order to support the proposal, and to ensure that it does not go beyond the existing any condition would therefore need to meet the above tests.

Whilst the LPA could condition the use to F1 (f) for, or in connection with, public worship or religious instruction this would not address the potential for noise, traffic generation and parking should the ground floor unit be utilised by anyone other than the existing users and as such would not be reasonable.

Restricting the numbers, or the particular members in attendance at the premises would not be enforceable. Hours of use could reasonably be conditioned, however conditioning "any potential noise generating activities" would not be precise. As such it is considered that any potential conditions would not meet the requirements of paragraph 55 of the NPPF.

Whilst noted that the current occupiers of the unit appear to manage the use effectively it is considered that an F1 use, even if restricted to F1(f) would not be acceptable within a half of a modest sized property within a run of similar other modestly sized dwellings and that conditions can not be utilised effectively in this instance to govern the main concerns. The impact of the proposal on the amenity of the locality through the introduction of this proposed use is considered to be inappropriate.

A sound insulation test report has been submitted with the application that assesses airborne sound insulation in source and receptor rooms within No. 52 and the attached property at No. 50. Sound Insulation Testing is the process of measuring how much noise a building element, normally a wall or a floor, stops from travelling through to a neighbouring property. The submitted report describes the process taken and the results obtained from the sound insulation testing. The noise assessment states that the rooms pass the airborne sound insulation test. The sound insulation test report however does not appear to assess the impact of potential noise on from the proposed use on the neighbouring properties and no assessment or recommendations are provided in relation to this.

It is accepted that justification on sensitive issues, and the need for the proposal is reasonably made and access is required for less mobile members of the family. The proposed use however has the potential to significantly intensify the use of part of a residential dwelling which would go far beyond a general and 'normal' residential use and the usual functions and activities associated with a modest sized semi detached dwelling. Whilst there are specific special needs, the information submitted has not justified the need for the scale of the proposal. A less intensive approach, with a more modest ancillary use of the residential of accommodation may be more suitable at this location.

It is therefore considered that the proposed use would introduce a non-conforming use into a predominantly residential area that would cause a nuisance to the occupiers of the surrounding residential properties by means of increased traffic, disturbance and parking. The proposed development therefore conflicts with H3, H3/1 and CF1/1.

First floor flat

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. This is further supported

by Policy H2/1 that requires an assent of the impact of developments on residential amenity and the position and proximity of neighbouring properties.

There are no adopted aspect standards for new residential properties created through subdivision however, Supplementary Planning Document 6 provides guidance on aspect standards between residential properties and as such, would be a reasonable guide in this case. This document would also be reasonable guide for the assessment of the proposed extensions to the rear of the property given the context of the site.

For clarity the following aspect standards would be applicable:

- 20 metres between directly facing habitable room windows;
- 13 metres between an existing habitable room window and a proposed two storey blank wall
- 6.5 metres between an existing habitable room window and a proposed single storey blank wall
- 7 metres between a proposed first floor habitable room window and a directly facing boundary with a neighbouring property.

The application proposes to provide a self-contained residential flat above the ground floor prayer hall. The flat would be accessed via a separate entrance at the front of the property.

The property has recently been extended at the rear on the ground and first floor (67418). A juliet balcony was approved to the door opening at the 1st floor to restrict access to the ground floor roof as this would have caused issues of overlooking and privacy impacts on the adjacent neighbours. There was no handrail to be installed around the roof.

Following a site visit, it transpires that the handrail to the flat roof has been installed and this is indicated on the as built, proposed plans. Whilst the planning statement states that there is no intention of utilising the roof area above the ground floor as amenity space for the flat, and that there is a glass balustrade currently preventing access from the juliet balcony it is unclear as to why hand rail is required. The agent has been asked about this via email and confirmed that they do not consider this area to be a balcony and stated that "these railings have been installed as a safety measure."

If no amenity space access is proposed to the roof then there is no need for this additional "safety measure" and the railings should be removed. Whilst there is currently a glass balustrade in place the current or future occupiers could remove this and access the roof creating a balcony area. The introduction of the hand rails makes this area accessible and inviting as a balcony. By its nature, a balcony is intended to facilitate informal outdoor use when the weather permits. Given that this area is less than 7 metres from the shared side boundaries with No. 50 and No. 54 Albert Avenue the proposal would therefore fail to comply with the aspect standards set out above and would lead to undue overlooking of the private amenity space/gardens of the adjacent property.

Air conditioning units

The main consideration in relation to this installation will be in relation to the noise created. In addition to the policies set out above, Policy EN7/2 - Noise Pollution is required to be considered for this application. This policy states that the Council will not permit development which could lead to an unacceptable noise nuisance to nearby occupiers and or/amenity users or development close to a permanent source of noise.

No noise assessment has been submitted with the application in relation to the air conditioning units. No details have been submitted in relation to the specification of the air conditioning units to assess their noise output and potential impact on the neighbouring properties. As such insufficient information has been submitted in relation to the air conditioning units to enable them to be properly assessed with regards to the impacts of the development on the adjacent occupiers. The development would therefore be contrary to Bury Unitary Development Plan Policies EN7/2 - Noise Pollution, CF1/1 - Location of New

Community Facilities, H3/1 - Assessing Non-Conforming Uses.

Highways

UDP Policy EN1/2 - Townscape and Built Design requires the consideration of the design and appearance of access, parking and service provision. Policies JP-C5 and JP-C6 require streets to be well designed and managed to make a significant positive contribution to the quality of place and support high levels of walking, cycling and public transport. In terms of parking standards UDP Policy HT2/4 requires all applications for development to make adequate provision for their car parking and servicing requirements. Supplementary Planning Document 11 provides parking standards for developments.

Car parking in the locality relies on, on street parking, and the introduction of an additional use would impact on availability of on street parking for existing residential units.

The Planning Statement states that all of the invited attendees of the prayer hall live within the immediate proximity or in very close walking distance of the site and as such would not have any negative impact on the current parking provision in the area and will not increase parking pressure on the street. As set out above, whilst this may be the situation with the current management of the prayer hall this may not always be the case.

There are already parking pressures on the street and in the vicinity and given the unknown numbers of people who could be visiting the site if approved for an F1 use, car travel to the site would further add to the parking pressures on this street, and to such a degree which would cause highway safety issues to both drivers and pedestrians in the area.

The applicant has failed to provide sufficient information demonstrate that the proposed use would not impact on the parking provision in the area.

As such, the application cannot be supported in this regard and would be contrary to policies CF1/1, H3/1, HT2/4 JP-C5 and JP-C6.

Carbon and Energy

Policy JP-S2 sets out the steps required to achieve net zero carbon emissions.

The applicant has confirmed that the development has been designed to fully comply with Part L of the 2022 Building Regulations. As the proposal is for a mixed-use dwelling, the proposal will comply with both Volume 1 and Volume 2 of the Approved Document L. As such the proposal would comply with Policy JP-S2.

Digital Connectivity

Policy JP-C2 requires all new development to have full fibre to premises connections unless technically infeasible and / or unviable.

The existing property currently benefits from a full fibre connection. This ensures that the inhabitants of the self-contained flat and users of the synagogue will access high speed internet connections complying with Policy JP-C2.

Response to representations

It is considered that the material planning considerations have been addressed within the main body of the report.

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

The proposal would not improve the economic, social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable

and it was therefore not possible to approve the application. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Refuse

Conditions and Reasons:

- 1 The proposed ground floor use would introduce a non-conforming use into a predominantly residential area that would cause a nuisance to the occupiers of the surrounding residential properties by means of increased traffic, disturbance and parking. The proposed development therefore conflicts with Bury Unitary Development Plan Policies H3 - Incompatible Uses in Residential Areas, H3/1 - Assessing Non-Conforming Uses, CF1/1 - Location of New Community Facilities, HT2/4 - Car Parking and New Development and Places for Everyone Joint Development Plan Policies JP-C5- Streets For All and JP-C6 - Walking and Cycling.
- 2 The retention of the handrails to the rear flat roof and potential use of the roof would create a balcony area that would result in an unacceptable reduction in the level of privacy currently enjoyed by the occupiers of No. 50 Albert Avenue and No. 54 Albert Avenue by reason of the sub-standard distances between the balcony area and existing shared boundaries. The proposed development therefore conflicts with Bury Unitary Development Plan Policies H1/2 - Further Housing Development , H2/1 - The Form of New Residential Development and Supplementary Planning Document 6: Alterations and Extensions to Residential Properties.
- 3 The application and submitted plans and documents contain insufficient information in relation to the air conditioning units to enable them to be properly assessed with regards to the impacts of the development on the adjacent occupiers. The development would therefore be contrary to Bury Unitary Development Plan Policies EN7/2 - Noise Pollution, CF1/1 - Location of New Community Facilities, H3/1 - Assessing Non-Conforming Uses.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HP 05/06/2024			