

Our Ref: HB/KN0156/24

28 January 2025

Mr D Marno
Development Control
Bury Metropolitan Borough Council
3 Knowsley Place
Bury
BL9 0EJ

Via Planning Portal

Dear David ,

**Application for Retrospective Planning Permission
The Eagle and Child, Whalley Road, Bury, BL0 0DL
Planning Portal Ref. PP-13731036**

We are instructed by Daniel Thwaites Ltd to submit the enclosed application for retrospective planning permission for works within the beer garden at The Eagle and Child, Whalley Road, Bury.

Specifically, the application proposed:

“Retention of tipi and heater for a temporary period of 18 months”

The application has been submitted via the Planning Portal. In addition to the forms and Ownership Certificate A, the application comprises the following:

Drawings

- | | | |
|----------------------------|----------|---|
| • Site Location Plan | 1546.100 | A |
| • Existing Plan | 1546.101 | |
| • Existing Elevations | 1546.103 | |
| • Proposed Site Plan | 1546.102 | |
| • Proposed Elevations | 1546.104 | |
| • Tipi Plan and Elevations | 1546.105 | A |

Documents

- Carbon and Energy Statement
- Digital Connectivity Statement

The fee for this application is £1226.00 which has been paid directly via the planning portal.



Introduction

The Eagle and Child is a popular and well used local pub / restaurant serving Ramsbottom and the surrounding area. Alongside the pub/ restaurant, the premises provides 5 guest bedrooms at first floor, together with a modest sized beer garden to the rear / north and a small car park providing 12 spaces to the front/ south. Access for pedestrians and vehicles is taken from Peel Brow

As public houses go, the Eagle and Child is modest in size and would undoubtedly have historically been a traditional Public House / drinking establishment serving a very local area. In order to remain financially viable and survive the premises have however had to adapt and evolve over time such that they are something very different today than they would originally have been. Initially this was by the introduction of a food offer which has gradually expanded over time and latterly by the introduction of a small number of bedrooms/ letting rooms. More recently the premises have also begun to offer pizza from the external bar / servery and accommodate modest sized functions and events in the currently unauthorised garden tipi.

It is important to recognise that if the Eagle and Child had not evolved and adapted in the way it has it is unlikely that the premises would remain open today. It is also worth noting that the premises have experienced periods of vacancy in the past, including most recently between August 2010 and August 2011.

It is well documented that the hospitality industry is currently facing extremely challenging times (and has done so more a number of years) and that pubs are currently closing at an unprecedented rate. It is also worth noting that recent figures published in Summer 2024 indicate the Northwest as being one of the hardest hit areas <https://www.morningadvertiser.co.uk/Article/2024/06/17/pub-closures-up-51-for-first-3-months-of-2024> Given the current economic climate and impacts of the recent budget this situation is unlikely to improve in the foreseeable future and will quite possibly get even worse.

With this background in mind, it is extremely important that the planning system supports and works with pub/ restaurant operators where they want to adapt, evolve and make changes that will support the long-term future and financial viability of their business. It is also important to strike the right balance between the need to protect the pub / restaurant (as required by planning policy) and protect the amenity of adjacent residential occupiers, particularly in circumstances where the pub / restaurant was long established before the adjacent housing. In addition, there is a need for local planning authorities to work collaboratively with operators to try to find solutions and compromises to problems in order to give premises the best chance of survival in the long term. Without this support the risk being lost in the longer term.

This application is made in the context of a need for the businesses to evolve and find different ways to generate revenue in order to remain financially viable in the longer term against a background of rising costs. Specifically, this application seeks planning permission for the erection of the currently unauthorised tipi for a temporary period of 18 months. This is to allow time to evolve and secure planning permission for a more permanent and robust structure to accommodate the modest sized functions that are currently taking place within the tipi. These functions being important to the overall viability of the Eagle and Child as a whole



Site

The application site is modest in size at 86 sq. m and comprises an area of land directly to the north of the pub within the premises beer garden. Prior to the erection of the tipi the area comprised of hardstanding / patio.

The garden itself is not visible from any public vantage points other than from the footway on east side of Whalley Road. This is due to the significant difference in levels between the site and adjoining land and it being screened from view by the pub / restaurant building. However, the upper half of the tipi is visible from Manchester Road and residential properties on it as well as from residential properties on Cheshire Court to the west.

Constraints

The site receives no specific allocation on the Proposals Map accompanying the adopted development plan.

The site is not in a Conservation Area and the Eagle and Child is not a statutorily listed building. There are no trees on the site and thus no TPOs. There is no habitat within the site and thus the scheme does not trigger Biodiversity Net Gain.

The site is in Flood Risk Zone 1 and thus is not considered to be at risk of flooding.

Planning History

The site has a limited planning history which is summarised below:

- 71359 – Retrospective application for the retention of external bar, toilet block/ log store and pergola. Awaiting a decision.
- 71062 - Retrospective application for the retention of external bar, tipi, toilet block and pergola and the laying of paving and associated works. Refused 7/10/24
- 60601 - Change of use of first floor to bed and breakfast creating 5 bedrooms with Juliet balcony to 2 bedrooms and single storey extension to rear. Approved 23/11/16.
- 52053 – Decked area at side. Approved 14/01/10
- 51699 A Creation of car park extensions with associated landscaping and B Decking Area. Split decision 21/10/09
- 47962 – Increase in height of part of existing terrace and erection of roof over. Approved 25/05/07
- 90/24186 – Alterations and Extensions. Approved 17/04/90

Of relevance to this application is application Ref. 71062. This sought retrospective consent for the erection of an external bar, pergola and toilet block, together with the tipi the subject of this revised application. The application was refused for four reasons:



1. The design and appearance of the proposed permanent structures is neither appropriate to nor sympathetic with its site and surroundings and would be detrimental to the visual amenity of the area. The proposed development therefore conflicts with the following policies of the Bury UDP: EN1/1 Visual Amenity, EN1/2 Townscape and Built Design and associated guidance in SPD16 New Development in Bury and the NPPF.
2. The permanent retention of the 'tipi' structure would be seriously detrimental to the residential amenities of surrounding residents, by reason of the noise, disturbance and general activity associated with the proposed use, including customers leaving and accessing vehicles late in the evening. The proposed development therefore conflicts with the NPPF and Places for Everyone and the following policies of the Bury UDP: EC4/1 Small Businesses, S2/6 Food and Drink, EN7/2 Noise Pollution.
3. The proposed development would be seriously detrimental to the residential amenities currently enjoyed by the occupiers of the adjacent dwellings, by reason of its size and position. The proposed development therefore conflicts with the following policies of the Bury UDP: EN1/2 Townscape and Built Design.
4. The proposal would result in the significant intensification of the use of the site with limited existing off-street parking facilities, which is highly likely to lead to vehicle 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 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 the Bury UDO HT2/4 car parking and new development, EN1/2 Townscape and Built Design and Places for Everyone Joint Development Plan Policies JP-C5 Streets for All, JP-C6 Walking and Cycling and SPD 11 Parking Standards in Bury.

This application responds to these reasons for refusal.

It is also important to note that this application does not seek permanent consent for the tipi but rather only a temporary consent (for 18 months). This is to enable customers existing bookings to be honoured and to allow time for a permanent and more robust solution to be evolved in order to protect and safeguard the pubs future viability.

Proposed Development

The application seeks temporary planning permission for the installation of the existing tipi and heating for a temporary period of 18 months.

Temporary planning permission is sought to enable existing bookings to be honoured and for new bookings to be taken whilst a more robust and permanent solution is found which will enable the premises to continue to provide space for modest sized functions and events. These functions and events make an important contribution to the overall viability of the pub and this diversification and additional 'offer' has helped the premises weather the current challenging economic times being faced by the hospitality sector.



The tipi has an area of 84 sq m and a maximum width of 10.3 metres. It extends to a height of 7.3 metres. It consists of wooden support poles and a waterproof, weather resistant and breathable canvas outer. It has lightweight timber floor.

The tipi is heated by means of an externally located heater which has an area of 1.5 sq m.

Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that “*if regard is to be had to the development plan for the purposes of any determination to be made under the planning Act, the determination must be made in accordance with the plan, unless material considerations indicate otherwise*”. Any issue that relates to the use of land is capable of being a material consideration, this includes government statements of planning policy.

The development plan applicable to the site is the Places for Everyone Plan (March 2024) and saved policies from the Bury UDP (1997). There are a number of policies contained within these documents that are relevant to the development proposals, and these are considered in turn below.

Place for Everyone (March 2024)

- Policy JP-PI ‘Sustainable Places’ – this requires that development respects and acknowledges the character and identity of the locality in terms of design, siting, size, scale and materials and is durable being constructed of robust materials. Development is also required to be socially inclusive responding to the needs of all parts of society and providing opportunities for social contact and support.
- Policy JP-P3 ‘Cultural Facilities’ - states that the LPA will proactively support cultural businesses through a range of measures including protecting existing heritage, cultural and community venues, facilities and uses.

Bury Unitary Development Plan (1997)

- Policy EC4 ‘Small and Growing Businesses’ – states that the Council will ensure that the needs of small and growing businesses are met by looking favourably on proposals for such developments, where they do not conflict with other policies and proposals of the plan.
- Policy EC4/I ‘Small Businesses’ – states that proposals for small businesses will be acceptable when the scale of development is appropriate to, and the use is environmentally compatible with, the surrounding area in which it is to be located, and where they do not conflict with other policies and proposals of the Plan.
- Policy EN1/2 ‘Townscape and Built Design’ – states the Council will give favourable consideration to proposals which do not have an unacceptable adverse effect on the particular character and townscape of the boroughs towns, villages and other settlements. Factors to take into account including the external appearance and the design of the proposal and its relationship with the surrounding area, choice of materials.



- Policy S2/6 'Food and Drink' states that the Council will have regard to the following factors in assessing development associated with food and drink premises: the amenity of nearby residents; parking and servicing provision and provision of refuse storage.
- Policy EN7/2 'Noise Pollution' – states that the Council will not permit development which could lead to an unacceptable noise nuisance to nearby occupiers and / or amenity users.

National Planning Policy Framework (2024)

The aim of the document is to ensure that there is a presumption in favour of sustainable development and that positive solutions are found to ensure economic development is brought forward. Paragraph 11 requires decision takers *"to approve development proposals that accord with an up-to-date development plan without delay"*.

Paragraph 8 sets out three overarching objectives which development should support:

- *An economic objective* – development should support building a strong, responsible and competitive economy, ensuring land of the right type is available in the right places to support growth.
- *A social objective* – development should support the creation of strong, vibrant and healthy communities, by amongst other things fostering well designed and safe places with accessible services that reflect current and future needs and support communities' health, social and cultural wellbeing.
 - *An environmental objective* – development should protect and enhance the natural, built and historic environment by making effective use of land, improving biodiversity, minimising waste and pollution and mitigating and adapting to climate change.

Section 6 is concerned with *'building a strong, competitive economy'*. At paragraph 85 it states that *"decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity"*. With specific regard to the rural economy it states that decisions should support the retention and development of accessible local services and community facilities, including public houses.

Section 8 seeks to ensure that new development promotes healthy and safe communities, with paragraph 98 setting out the importance of ensuring that all communities have the social, recreational and cultural facilities and services they need, which includes public houses. It goes on to require that decisions *"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"* and that decision takers should *"ensure that established shops, facilities and services are able to develop and modernise and are retained for the benefit of the community"*.

In terms of design, paragraph 135 sets out the criteria that new development should comply with from a design perspective. Amongst other things, it requires that developments (a) will function well and add to the overall quality of the area; (b) are visually attractive as a result of good architecture, layout and landscaping; (c) are sympathetic to local character; (d) establish a strong sense of place; (e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development; and (f) creates places that are safe, inclusive and accessible, with a high standard of amenity.



Section 15 is concerned with conserving and enhancing the natural environment. With regard to pollution, paragraph 198 states that decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment as well as the potential sensitive for the wider areas to the impacts of that could arise from the development.

Assessment

The application proposal raises a number of planning issues which are considered below. However, it is important to note that any minor impact is only temporary in effect as consent is only sought for a temporary period of 18 months.

Principle of Development

The structure for which retrospective planning permission is sought is located within the premises established rear beer garden and the curtilage of The Eagle and Child. The use of the structures is for a purpose ancillary to the use and operation of the site as a public house /restaurant i.e. for modest sized functions and events.

It is material to the Council's consideration of this application that the Eagle and Child benefits from permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015, Part 2 Class G to erect one moveable structure within the curtilage of the pub. Whilst permitted development rights restrict the height of the structure to no more than 3 metres; no more than 50 sq. m and the structure must not be within 2 metre of the boundary of residential properties on Cheshire Court, it is the case that a moveable structure is permissible permanently within the garden of the pub and that this structure could be used, unrestricted, to hold functions and events. This fact represents a important baseline position and a material consideration to which significant weight should be given in the determination of this application.

It also shows that such structures are accepted by the planning system as being appropriate within pub beer gardens. The installation of such structures is also permissible without reference to design, noise or car parking considerations or indeed any other matter. They are simply permitted.

Having regard to these facts, it is our view that the proposed development is acceptable in principle and that there are no valid planning grounds for refusing planning permission for the structure, particularly have regard to the fact that consent is sought only on a temporary basis.

Planning policy at all levels (paragraph 98 of the NPPF and Policy JP-P3 '*Cultural Facilities*' of the Places for Everyone Plan) provide support for structures and development which enables public houses / restaurants to develop and modernise and supports their overall financial viability thereby helping to guard against their failure and loss in the longer term. Policy support is also provided by paragraph 85 of the NPPF and Policy EC4 '*Small and Growing Businesses*' and Policy EC4/I '*Small Businesses*' of the Bury UDP.

Accordingly, the development receives clear 'in principle' policy support from the Town and Country Planning (General Permitted Development) (England) Order 2015 as well as the adopted development plan and government guidance.



Design

With regard to design matters, it is considered that the tipi is of a good and high-quality design and constructed of good quality materials. We are of the view it is entirely unoffensive.

Accordingly, we consider the structure to comply with Policy JP-PI 'Sustainable Places' of the Places for Everyone Plan, Policy EN1/1 'Visual Amenity' and EN1/2 'Townscape and Built Design' of the Bury UDP and Paragraph 135 of the NPPF, all require new development to be of a high standard of design and contribute positively to the overall quality of a place and be constructed of good quality materials that are in keeping with local character.

Notwithstanding this fact, planning permission is sought only for a temporary period of 18 months, which would appear to immediately address reason for refusal 1 and 3 as the structure is not intended to be in position permanently. Indeed, reason for refusal 1 refers specifically to the permanence of the structure being the main issue.

Car parking

It must be accepted that pubs like this, which were historically drinking establishments before evolving into pub / restaurants and which often have ancillary uses such as hotel rooms and functions spaces, have little or no on-site car parking provision and don't meet current car parking standards. If as a society we want establishments like this to survive, then there needs to be a level of acceptance that much of their parking need will need to be met off site. Whilst on site provision is preferable, off-site provision should be tolerated in order to protect and retain the use.

In this case, much of the premises additional parking demand is met on Manchester Road to the east of the site in a substantial area of informal parking and not on neighbouring streets as is suggested. That is not to say there isn't some on street parking on neighbouring residential streets, but we believe that a large proportion of this is generated by residential properties without off street parking and overspill and not the pub.

As such, it is considered that the proposed tipi should not have to provide additional parking in order to be acceptable. We would also question the applicability of the Council's parking standards given the tipi is not a permanent building.

Notwithstanding this fact, we draw attention to the fact that the pub could erect a 50 sq m moveable structure permanently within the beer garden, or indeed on the existing car park for that matter, without the need for planning permission under permitted development rights and that there would be no requirement or means by which to require additional car parking provision. We consider this fact to be a material planning consideration to which significant weight should be given in the determination of this application, alongside the fact that consent is sought on a temporary basis only.

We accordingly conclude that there is no valid planning reasons for refusing planning permission for the tipi on the basis of a lack of additional car parking provision.

Residential Amenity

It is not disputed that the tipi creates some noise, this is to be expected. However, we are of the firm view that it does not create additional noise over and above those which could reasonably be expected from a sizeable pub beer garden. We also consider that adjacent objectors are overstating the noise



issues in attempt to restrict use of the garden. In this regard, it is material to the Council's consideration of this application that the garden is not subject to any existing restrictions other than those in the premises license; the Council Environmental Health officer has been content for a long time that the tipi is not giving risk to unacceptable levels of noise and disturbance and that the pub and its beer garden was there long before the houses.

Notwithstanding this fact, planning permission is sought only on a temporary basis for 18 months whilst a more permanent solution is brought forward. Furthermore, the Council is well aware that the tenant of the premises manages the tipi and garden in a manner which is respectful to the presence of adjacent residential occupiers. Indeed, he voluntarily doesn't allow functions in the tipi after the hours of 10pm and he limits the playing of music.

The applicant would also raise no objection to a planning condition being imposed on any grant of temporary planning permission requiring the submission and adherence to an Operational Noise Management Plan.

Accordingly, we consider the application compliant with Policy EN1/2 and EN7/2 of the adopted Bury UDP as well paragraph 198 of the NPPF.

Conclusions

To conclude, the above assessment demonstrates that the proposed development is appropriate and acceptable on a temporary basis. Accordingly, we respectfully request that planning permission is granted for the tipi and external heating for a temporary period of 18 months in order to enable the Eagle and Child to continue accommodating modest sized functions and events whilst a more permanent solution evolved, and planning permission sought.

The applicant wishes to work with the Council in respect of these proposals and as such, should you have any queries or require any additional information, please do not hesitate to contact me. The applicant will also be seeking to enter into pre-application discussions with the Council with regard to a permanent proposal for the site.

Yours sincerely,



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Cc Jim Francis, Daniel Thwaites

