

DELEGATED REPORT

Report by Dean Clapworthy	Date of report: 04/04/2022	Ref: 68034/FUL
Registration: 01/02/2022	LDfC: 18/03/2022	Expiry Date: 29/03/2022
Site Visit: 18/02/2022	Site Notice: N/A	Press Date: N/A
Objections: 1	Con Area:	Adv Type: NONE
Reason for Delay:		EIA: NA
N/A		Dec Level: DEL
		Stat Class: MIOT

Proposal: Removal of condition 2 of planning permission 58449, to allow the unit to be used as a 'health & fitness club' within use class E

Location: Unit B, Moorgate Retail Park, Bury, BL9 7AQ

Description

The site forms part of the Moorgate retail development, which is located on the edge of the main shopping area of Bury town centre. The application relates to Unit B which was most recently occupied by a carpet retailer (previously Use Class A1). The unit has been vacant for significant period (date since 2018).

The proposal is for the removal of condition 2 of planning permission 58449, which read '*The development shall be used for the sale of non-food items only, except unit A (former MFI unit) and unit D (Former Comet unit)*', to allow the unit to be used as a 'health & fitness club' within use class E (Use Class E(d)). The reason for the condition was '*To ensure the development would not impact upon the vitality and viability of the town centre, pursuant to Policy S2/1 - All New Retail Proposals: Assessment Criteria and Policy S3/1 - New Retail Development Opportunities Within or Adjoining Town Centres of the Bury Unitary Development Plan*'.

The unit was formerly classified within Use Class A1, which has since been revoked and been replaced by a new, single classification covering 'Commercial, business and service' uses, called Class E. Condition 2 applied to 58449 would prevent the occupation of Unit B by most uses that now fall within the Class E use class (which are largely Main Town Centre uses).

Relevant Planning History

58449 - Variation of Condition no. 2 of planning permission 53512 to allow the sale of food (Unit D). Approved 17/04/2015

53512 - Removal of condition no. 7 of planning permission 30363 to allow the sale of food goods (Unit A). Approved 20/05/2011

31655 - Approval of reserved matters: erection of 50,000 square feet non-food retail development (Class A1) and drive through diner (Class A3), associated parking/servicing at land at Moorgate/York Street, Bury. Approved 18/01/1996

30363 - Erection of 50,000 square feet non-food retail development and 2,500 square feet drive through diner, associated car parking/servicing at land at Moorgate/York Street, Bury. Approved 11/04/1995

Publicity

One representation has been received raising concerns about parking impacts on local

residents and customers of the other stores within the complex when the car park is already often full and impact on amenity of later evening car movements (beyond the closing times of the adjacent retail units).

Statutory/Non-Statutory Consultations

Traffic Section: No comments received

Planning Policy Manager: No comments

Unitary Development Plan and Policies

EC1/2	Land Suitable for Business (B1)
EN7	Pollution Control
EN7/2	Noise Pollution
S1/1	Shopping in Bury Town Centre
S2/1	All New Retail Proposals: Assessment Criteria
S3/1	New Retail Dev Opportunities Within or Adj Town Centres
HT2	Highway Network
Area	The Rock/Moorgate
BY8	
SPD11	Parking Standards in Bury
NPPF	National Planning Policy Framework

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.

Principle

The site is located within an existing retail park and Unit B has been vacant for a number of years. The other units are occupied by retailers, two of which have had the same condition subject to this application amended to allow the sale of food.

The site is located within the defined boundary of Bury town centre. The National Planning Policy Framework sets out a town centre first approach and the changes to the Use Classes Order to introduce the broad Class E classification were made to better enable the repurposing of buildings within town centres to allow them to be used for the majority of main town centre uses without the need for planning permission (to better reflect the evolving nature of centres to flexible commercial centres as opposed to primarily retail based destinations). The proposed health and fitness club is a main town centre use and it is the existing condition 2 that is preventing its introduction.

Given the circumstances, the proposed use would represent an acceptable and appropriate use of a long vacant town centre unit, which would support the vitality and viability of the town centre.

Access and parking

The site is served by a communal customer car park that serves all four commercial units at the development. Supplementary Planning Document (SPD) 11 stipulates lower maximum parking levels (for cars and motorcycles) for the proposed use (maximum of 1 space per 25 sq.m.) than for non-food retail uses (maximum of 1 space per 22 sq.m.). Thus, the proposal is appropriately serviced for car parking.

Concerning the objection, it has to be noted that the unit could be re-occupied by a retail business without recourse to the local planning authority and that the parking requirement would be potentially more intense (given the higher maximum parking standards).

In relation to cycle parking, SPD 11 requires the provision of 6 no. secure cycle storage spaces. The applicant has confirmed that this would be acceptable and the imposition of a condition requiring such is agreeable.

Residential amenity

The objection raises a concern about noise and disturbance from vehicles arriving/leaving the site later evening. The application is silent on the intended operating hours. However, no operating time restrictions pertain to the site (all units) through the previous planning permissions and whilst the current occupiers close between 17:00 and 20:00, they are unencumbered by any planning restrictions to operate beyond. Furthermore, the site is in a town centre location, where commercial uses are expected and encouraged to operate into the evening.

The objection concerning impacts on residential amenity cannot therefore be supported.

Conclusion

The proposed use would support the role and function of Bury town centre without detriment to highway safety or residential amenity. Given this, the proposal would be compliant with the above stated policies, SPD11 and the NPPF. Therefore, in accordance with the Section 38(6) of the Planning and Compulsory Purchase Act, the proposal merits approval.

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 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 drawing CSCP/MRP/SLP - UNITB and the development shall not be carried out except in accordance with the drawing 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 site (Unit B) shall be used only for uses within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended).
Reason. To ensure the development would not impact upon the vitality and viability of Bury town centre, pursuant to Section 7 of the National Planning Policy Framework.
- 4 The use of the building hereby approved shall not commence until four Sheffield Cycle stands have been installed at the site. The installed secure cycle storage provision shall thereafter remain available for users of the development.
Reason. To secure satisfactory cycle facilities on site and in accordance with Bury Unitary Development Policies HT6 - Pedestrians and Cyclists and HT6/1 - Pedestrians and Cycle Movement.

<u>Case Officer</u> DC	<u>Date</u> 04/04/2022	<u>Sign off Officer</u>	<u>Date</u>
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