



Serviam Planning

PLANNING STATEMENT

**Proposed Change of Use of Training Centre (Class E)
to 6 HMO Flats**

**PREMISES SITUATED AT HEATON HOUSE
BRIERLEY STREET, BURY BL9 9HN**

HEATON HOUSE (BURY) LTD

MAY 2022

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1. INTRODUCTION

1.1 This Statement has been prepared on behalf of Heaton House (BURY) LTD in support of the change of use of former Training Centre (Class E) to 6 No Flats to be used as HMO's.

1.2 The Statement will consider the site and its surroundings, planning history of the site, planning policy, heritage and the current legal position of the building and permissions afforded.

1.3 The Statement sets out the compliance with Local and National Planning Policy for the creation of 6 No. HMO's comprising 23 bedrooms in total. The proposed rooms are for sole occupancy only.

2. THE SITE AND ITS SURROUNDINGS

2.1 The site comprises 2 storey building known as 'Heaton House' which currently has a lawful use for Training Centre (formally D1, now Class E). Such is located on Brierley Street which is predominantly residential, however there are some adjacent commercial buildings to the north which comprise of workshops and associated car parking area(s).

2.2 The building is considered to be a non-designated heritage asset given its local importance as a historical building. Further details regarding this aspect is considered further within this Statement.

2.3 There are important original features such as bay windows to the facade which are based on the ground floor. To the rear of the building is a triangular piece of land which historically was used as a car park. Later, is it believed that this land was used as a training area associated with the former D2 use. Such is now a parking area as implemented through Planning Permission Reference No. 63186. There is also an area used for bin storage/recycling.

2.4 The Car Parking area is served by an internal sliding gate and through the implementation of a TRO, double yellow lines have been provided ensuring parking does not occur in areas which could give rise to highway safety issues.

3. PLANNING HISTORY

3.1 Planning History of the site provides the following planning applications: -

- i) Planning Reference: 43991 - Change of Use from Photographic Studio to Education Provision and Ancillary Offices;
- ii) Planning Reference 49445 - Erection of 3.34m Fencing and Double Gates;
- iii) Planning Reference 63186 - Change of Use from Training Centre to 6 No. Flats;
- iv) Planning Reference 66603 - Variation of Condition No. 2 (63186), and;
- V) Planning Reference 66913 - Non-Material Amendment of 63186.

3.2 Permission was granted (63186) for the change of use from Training Centre (then Class D2) to 6 No. Flats (Class C3). Although it is considered that the permission has been implemented by way of the undertaking of operational development, the internal area of the building was not built in accord with the approved plans. Subsequently, although it is considered that the permission for the change of use is extant, the lawful use of C3 has not been implemented.

3.3 The Applicant attempted to remedy the breach by way of further planning application (66603), however this was refused by the Local Planning Authority. One of the reasons for refusal was: -

“the Applicant has failed to demonstrate that the development has been lawfully implemented and therefore, cannot benefit from any permitted development rights to lawfully change the building from a Class C3 dwelling house to a Class C4 House of Multiple Occupation”.

3.4 It should be noted that the Applicant did not apply, nor ask to benefit from permitted development rights and it is considered that this reason for refusal was not subject to the actual planning application submitted. This reason was not within the scope of the planning application and, it is further considered that such had no place being included within the reason(s) for refusal.

3.5 Planning Permission Reference No. 63186 has been implemented and is considered to be extant. At this stage no material breach has taken place. The permission could be fully implemented and the change of use from D2 (now Class E) to C3 could take place without the need for further planning consent. This could be achieved by ensuring the internal works match those of the existing drawings. Should this occur, the premises would have lawful use as C3 dwelling house and would be afforded lawful permitted rights to become Class C4 without the need for further express grant of planning consent.

4. PLANNING POLICY

4.1 Of relevance in determination of this planning application are the following policies: -

UNITARY DEVELOPMENT PLAN: -

4.2 The following Policies are considered of relevance: -

Policy H2/1
Policy H2/2
Policy H2/4
Policy EN1/2
Policy EN7/2
Policy HT2/4
Policy HT6/2
Policy SPD11
Policy EN7/2

4.3 Policy H2/1 states that all new residential development will be expected to make a positive contribution to the form and quality of the surrounding area. Factors to be considered when assessing proposals will include, but are not limited to, the impact of developments on residential development, the density and character of the surrounding area, the position and proximity of neighbouring properties and the materials to be used in proposed developments.

4.4 Policy H2/2 goes on to state that new residential development will be required to demonstrate acceptable standards of layout and factors such as car parking provision, traffic calming measures and density will be considered.

4.5 With regard to conversions, Policy H2/4 states that the conversion of two or more self-contained units of the conversion or as building into a HMO will be considered with regard to several factors. These include, but are not limited to, the effect on the amenity of neighbouring properties, the general character of the area and the existing concentration of flats, residential amenity of occupiers and car parking/service requirements.

4.6 Policies EN1/2 and EN1/7 relate to townscape/built design and throughroutes and gateways. Such state that the Council will give favourable consideration to proposals which do not have an unacceptable adverse effect on the particular character and townscape of the Borough's towns, villages and other settlements. It is stated that the Council is concerned to improve the quality of development along throughroutes and will require new proposals fronting major throughroutes to display a high standard of design and landscaping.

4.7 Policies HT2/4 and HT6/2 relate to highways and transportation. Such advise that the Council will require all applications for development to make adequate provision for their car parking and service requirements in accordance with the council car parking standards.

4.8 SPD11 dictates parking standards in Bury. Such details that levels of available parking can be an influential factor in determining peoples choice of mode of transport. The objectives of the SPD are to ensure levels of car parking is appropriate, to set specific standards for appropriate levels of parking provision, to take an integrated approach to specific land uses and to ensure that parking facilities are inclusive and cater for end users in a safe manner.

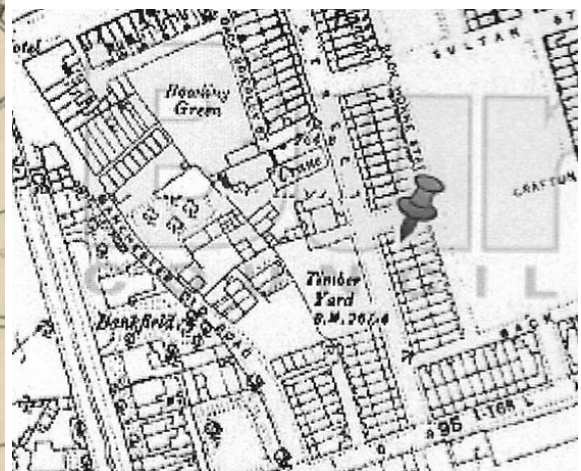
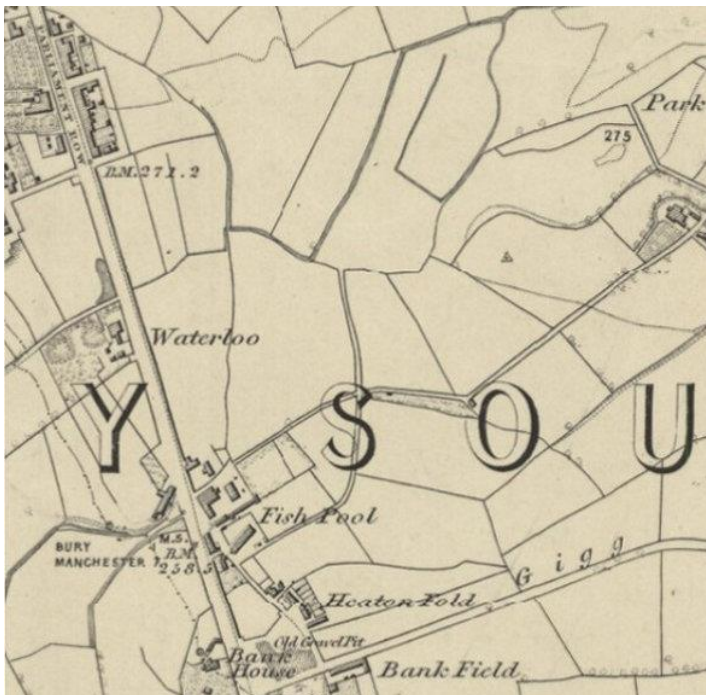
NATIONAL PLANNING POLICY FRAMEWORK NPPF: -

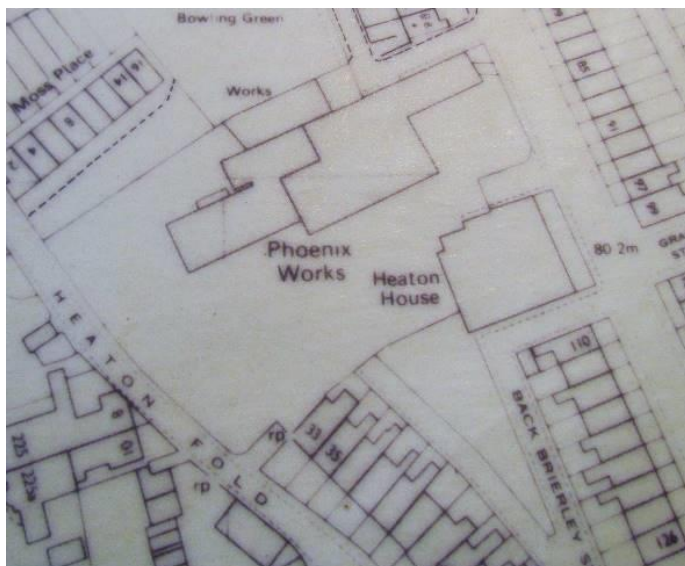
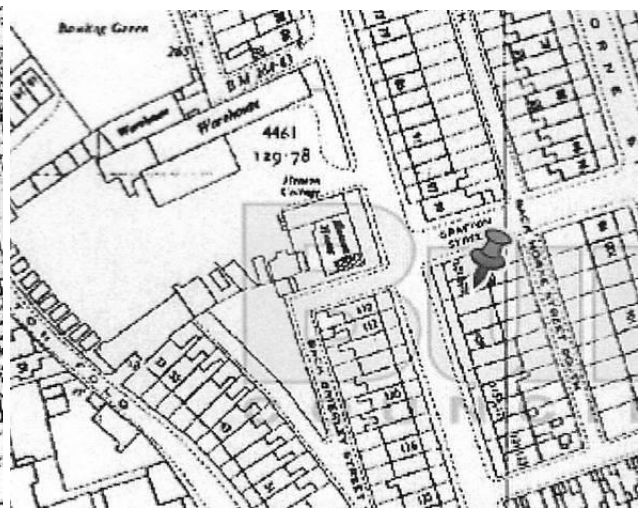
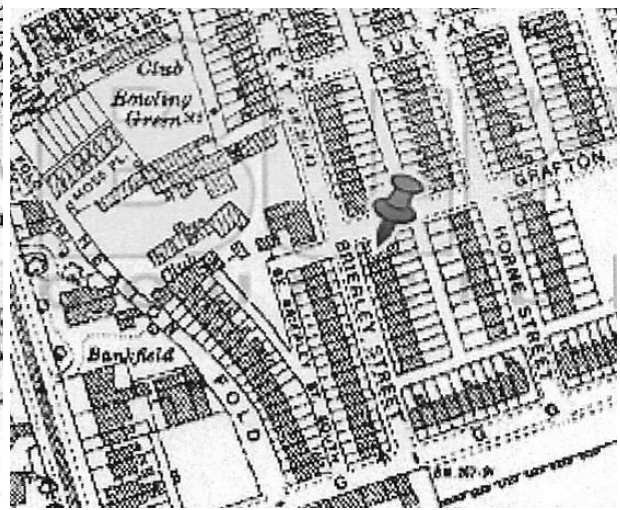
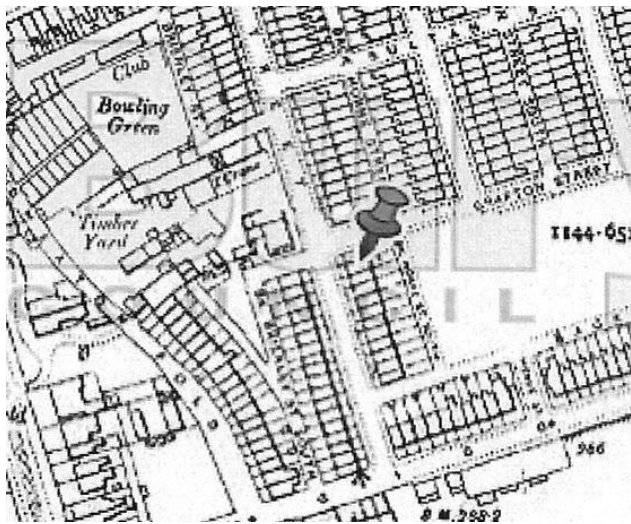
4.9 Details provided within the Heritage Section.

5. HERITAGE

5.1 Heaton House lies in the historic area of Fishpool, which is shown on the 1847 map. The site of Heaton House is shown as a field to the east of Heaton Fold. The building first appears on the 1893 map, as an L-shaped building on Brierley Street, possibly divided into two, with outbuildings to the rear and a building containing a crane to the north. The 1880 Directory lists Charles Brierley as a joiner and builder on Brierley Street; in 1871 he was listed as a shopkeeper in Fishpool Place, Manchester Road. The Leeds Engine Builders website lists a 2-ton Hand Derrick Crane being made in 1884 by Thomas Smith for Charles Brierley of the Brierley Street Saw Mills, Fishpool, Bury. Brierley is also listed on Brierley Street in the 1891 Census as a builder and contractor, with his wife and family and one servant. By 1901, his residence was called Heaton Cottage.

5.2 By 1910, the house had been extended at the rear and the plot to the south, previously occupied by a timber yard, had been developed for terraced housing and the timber yard appears to have taken over a garden to the west of Heaton House. By 1911, Charles' son Charles Henry is listed at Brierley Cottage with his brother.





5.3 There was no change to the building by 1937. On the 1961 map, the building is shown marked Heaton House in the main part and Heaton Cottage in the northern wing and the rear infill extension had been removed; the timber merchants' warehouse had been extended into the yard. By 1982, the building had been significantly extended to the rear and on the south side and had its present footprint.

5.4 In 2005, the building was granted permission for change of use from a photographic studio to educational use and offices.

5.5 Although no historic plans were available for this study, some conclusions can be drawn from inspection of the building. The former house now consists of a roughly- rectangular building with modern extensions to the rear and south side. The historic two-storey brick building with stone detailing is covered by a hipped slate roof; the modern rear and side extensions have flat roofs.

5.6 The historic part of the building is four bays across the front and retains a canted bay and a rectangular bay, both with moulded cornices and plain pediments, flanking a doorway with a timber panelled surround, a panelled door and moulded cornice topped by a semi-circular arch. At the north end of the ground floor and on the first floor are windows with segmental-arched and keyed heads; all the windows are modern replacement sashes. There is a stone sill band between ground and first floors. The single-storey south side elevation has modern timber windows with stone heads and sills

5.7 The south elevation of the side extension is formed by a former boundary wall which is stone in the lower part and red brick above. Former gateways or doorways have been infilled with modern brick and the wall extended upwards, with modern windows inserted. The upper part of the south elevation of the historic house retains a window with a stone head and sill and external bars but has fans added; the upper storey of the first-floor of the rear extension is built of modern red brick.



5.8 The north elevation retains a keyed arched doorway with a wide-segmental arched window to the right. The sill band continues along the width of the elevation and there are two keyed arched windows above. The rear wing retains a doorway with a stone head now approached by concrete steps, the sill band continues and there are further segmental-arched windows, but all the windows are again modern. The rear elevation is entirely obscured by the modern extension but can be seen internally. On the ground floor an inserted opening in the main house has been infilled with modern block and what may have been the original rear entrance is retained; on the first floor there is an infilled opening and openings have been inserted to what may have been a rear chimney and the wall.

5.9 Assessing significance is a key principle for managing change to heritage assets, and is embedded within current government policy; NPPF policies 127 and 128 (CLG, *National Planning Policy Framework*, 2012). A key objective in the NPPF is ‘the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation ...’ (NPPF Para. 126). The NPPF advises that the more significant the heritage asset the greater the presumption in favour of its conservation (policy 132). English Heritage issued *Conservation Principles* in 2008 to explain its philosophical approach to significance and managing change and identified four main aspects of significance: evidential, historical, aesthetic and communal. There are three levels of significance as well as neutral and an intrusive grade:

Exceptional Level of Significance

5.10 The element is relatively intact, has a special interest, and makes an important contribution to the wider significance of the site. This would correspond to an individual grade I or II* listing. The NPPF advises that substantial harm should be wholly exceptional.

High Level of Significance

5.11 A designated asset important at national and regional level, including Grade II listed buildings. The NPPF advises that substantial harm should be exceptional.

Medium Level of Significance

5.12 An undesignated asset important at a local to regional level, including locally (non-statutory) listed buildings. The element has been altered, has less special interest, and its contribution to the wider significance of the site is less important. May include less significant parts of listed buildings. Buildings and parts of structures in this category should be retained where possible, although there is usually scope for adaptation.

Low Level of Significance

5.13 An undesignated asset important at a local level, including buildings which make a positive contribution to a conservation area. The element has been significantly altered, has a low level of integrity, the special interest has been lost and it makes little contribution to the wider significance of the site. Buildings and parts of structures in this category should be retained where possible, although there is more scope for adaptation.

Neutral

5.14 The element is historically unimportant but does not have a negative visual impact on the surrounding buildings. May include insignificant interventions to listed buildings and buildings that do not contribute positively to a conservation area. The removal or adaptation of structures in this category is usually acceptable where the work will enhance a related heritage asset.

Intrusive

5.15 The element is historically unimportant and has a negative visual impact on the surrounding buildings. Wherever practicable, removal of negative features should be considered, taking account of setting and opportunities for enhancement.

Significance of Heaton House

5.16 Following the methodology for assessment of cultural significance set out in the English Heritage *Conservation Principles*, Heaton House can be identified to have the following heritage values:

Evidential Value:

5.17 Heaton House dates from around the late 1870s with substantial late-20th century extensions to the rear and south side, which obscure these parts of the historic building and significant alterations have been made to the floor plan internally, with openings inserted to the modern extensions and to the northern wing and between rooms in the main part of the house. A staircase has also been inserted in the north wing; the 1961 map appears to show an external staircase on the west end.

5.18 The main part of the building functioned as a house until the late 20th century when it was used as a photographic studio and later a training facility. The northern wing appears only to have been heated at the east end, the first floor was historically accessed externally and the walls here are not plastered. It is possible that the north wing was built as offices and storage for the timber yard.

5.19 There is no record of the site on the Greater Manchester Historic Environment Record.

Historical Value:

5.20 The former house is illustrative of the growth of Fishpool as a residential area of Bury and has an association with Charles Brierley who was an Alderman and Mayor of Bury from 1889 to 1891².

Architectural Value:

5.21 The former house retains designed architectural detail and a main entrance on the front elevation with some detailing on windows on the north elevation. Internally, some historic fittings have survived, particularly in the entrance, stair hall and front rooms on both floors, indicating the higher significance of these rooms and including a historic glazed screen, staircase, moulded cornices, dado rails, door cases and moulded skirtings; the cornice in the north-east room on the ground floor is more elaborate and presumably this was the principal reception room. All the doors appear to have been replaced and all the fireplaces have gone. The north wing has been significantly altered but also retains a cornice in one room, which may have been intended as an office, and exposed brick external walls in the first-floor rooms.

5.22 The building is in apparently good condition overall although there was some evidence of damp at the time of survey for this report, especially on the south side of the historic house, although this was limited to stained decoration.

Social Value:

5.23 The building has provided a home and a place of work for local people for over 100 years.

Summary of Significance

5.24 The chief aspect of significance is the architectural interest of the front elevation and the decoration of the stair hall and front rooms of the historic house. The difference in treatment of the north wing is also of interest.

5.25 The front elevation and the front rooms on both levels are considered to be of **medium significance, but the rest of the building is of not more than low/neutral significance due to the degree of alteration; the rear and side extensions are considered to be intrusive.**

5.26 Although the building does **constitute a non-designated heritage asset** in planning terms, it is largely the front elevation and the front rooms on both levels which are of interest.

Contribution Made by Setting to Significance of Buildings

5.27 The NPPF defines the setting of a heritage asset as ‘the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral’. The area around Heaton

5.28 House was all developed by the late 19th century, surrounded on three sides by contemporary terraced housing, with a warehouse to the north and a timber yard immediately to the south and more historic development along Heaton Fold to the west.

5.29 The historic Heaton Fold retains a tall stone boundary wall running between the late 19th century terraced housing at the south end and Moss Place, thereby obscuring views towards Heaton House and limiting the setting which can now be defined as Brierley Street in both directions, Back Brierley Street South and Grafton Street looking west.

5.30 Heaton House is fronted by a narrow garden with a stone boundary wall and decorative gateposts, giving it a more formal presence within the street scene; the building’s name has been added more recently. Adjacent to the south is Back Brierley Street South which is a narrow service street retaining historic setts and rear yards. To the rear is the poor-quality yard defined by a largely historic red brick wall with a historic entrance at the north end and concrete copers. The yard is surfaced in concrete but has been partially landscaped, although this is much neglected.

5.31 Heaton House forms part of the late 19th century development along Brierley Street although there is some late 20th century development in the northern part. The terraces retain segmental-arched heads to windows and doors although many have been replaced, and some small front gardens with low stone boundary walls and

5.32 Grafton Street to the east retains historic setts. Adjacent to the north is a modern industrial unit which is totally out of character with the 19th century development on either side.

5.33 The National Planning Policy Framework (NPPF) was updated in 2018 replacing all former planning policy statements (1st edition NPPF, PPS5 etc). Local policies are also relevant, and the 1990 Planning (Listed Buildings and Conservation Areas) Act continues to provide the legal basis for decision-making about heritage assets. In relation to a listed building, local authorities have a ‘duty to have special regard to the desirability of preserving the building or its setting or any features of ...special interest’ under section 66 (1) of the Act. *The Planning Practice Guide: Conserving and Enhancing the Historic Environment* should be read in the light of the NPPF, and does not comprise policy.

5.34 The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. The Government has three interdependent objectives to sustainable development: economic, social and environmental. The latter objective includes contributing to ‘protecting and enhancing our natural, built and historic environment.’ So that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development**. Policies 184-202 are related to conserving and enhancing the historic environment.

5.35 The *Planning Practice Guide* states: ‘In the case of buildings, generally the risks of neglect and decay of heritage assets are best addressed through ensuring that they remain in active use that is consistent with their conservation. Ensuring such heritage assets remain used and valued is likely to require sympathetic changes to be made from time to time.’

5.36 Policy 188 states: ‘Local planning authorities should make information about the historic environment, gathered as part of policy-making or development management, publicly accessible.’

5.37 Policies 189 and 190 of the NPPF require planning applicants and local planning authorities to assess the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be appropriate to the assets’ importance and no more than sufficient to understand the potential impact of the proposal on their significance. Local planning authorities should take this assessment into account when the potential impact of proposed development to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal.

5.38 Policy 192 states: ‘In determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.’

5.39 Policy 197 sets out the policy principle guiding the consideration of applications for consent relating to undesignated assets. It states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

5.40 The *Planning Practice Guide* defines non-designated heritage assets in Paragraph 039: 'Local planning authorities may identify non-designated heritage assets. These are buildings, monuments, sites, places, areas or landscapes identified as having a degree of significance meriting consideration in planning decisions but which are not formally designated heritage assets. In some areas, local authorities identify some non-designated heritage assets as 'locally listed'.

5.41 A substantial majority of buildings have little or no heritage significance and thus do not constitute heritage assets. Only a minority have enough heritage interest for their significance to be a material consideration in the planning process.'

5.42 Policy 199 states 'Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.'

Bury Unitary Development Plan

EN1/2 - Townscape and Built Design

5.43 The Council will give favourable consideration to proposals which do not have an unacceptable adverse effect on the particular character and townscape of the Borough's towns, villages and other settlements. Factors to be considered when assessing proposals will include:

- the relationship of the proposal to the surrounding area;
- the external appearance and design of the proposal in relation to its height, scale, density and layout; the choice and use of materials;
- access and other design features for the mobility impaired;
- the design and appearance of access, parking and service provision;
- landscaping, including the use of natural landscape features, and open space provision, and;
- the use of lighting.

5.44 The existing buildings are considered to constitute a non-designated heritage asset in planning terms, but it is largely the front elevation and front rooms which are of interest.

5.45 Externally, there are no changes proposed to the more important front elevation. Both doorways on the north elevation are to be replaced and a window inserted in the rear wing. On the south elevation, two windows are to be inserted to the historic house and one window in the modern extension replaced with five windows to be inserted to the south wall, largely in the modern top part. **The proposals will have a limited effect on historic fabric in less important parts of the exterior and the impact is considered to be neutral overall.**

Internally on the ground floor, some further subdivision is proposed to the front rooms and new openings to be inserted to historic walls. The glass screen to the entrance lobby should be re-sited but the door could be replaced with a high-quality timber door. Surviving historic door cases should be retained in situ or re-used elsewhere nearby and historic brickwork should be re-used where possible. In the northern wing, changes will be made to the openings to the main house and again, historic brickwork should be re-used where possible. An opening is proposed between the central room and the teaching kitchen; the difference in the thickness of the wall here may indicate an infilled earlier opening. Other changes on the ground floor affect the late 20th century extensions and have no impact on the historic building. **With the proposed mitigation, the impact is considered to be mildly harmful, due to the changes in the floor plan.**

5.46 On the first floor, there will again be subdivision of other rooms and changes made to walls and doorways. As before, historic door cases should be retained in situ or re-used elsewhere nearby and historic brickwork should be re-used where possible. Where partitions are proposed, these should be stud-walls to allow for later removal and historic cornices should be left open to view. The external walls of the first-floor rooms of the northern wing should be left unplastered. **With the proposed mitigation, the impact is again considered to be mildly harmful, again due to the changes in the floor plan.**

5.47 Although alterations are proposed to the floor plan, including in the more important front rooms, the more important front elevation will be unchanged, and the historic main staircase will be retained in use. Mitigation has been proposed to ensure the retention of as much historic fabric and decoration as possible. Other alterations are proposed to the modern extensions which have no impact on the historic part of the building.

The principal benefit of the proposals is that they ensure a sustainable future for the building which has been vacant for over a year.

5.48 The information in Sections 3, 4 and 5 of this report provides an assessment of the significance of Heaton House and its setting. The chief aspect of significance is the architectural interest of the front elevation and the internal decoration of the front rooms. The front elevation and the front rooms on both levels are considered to be of medium significance, but the rest of the building is of not more than low/neutral significance due to the degree of alteration; the rear and side extensions are considered to be intrusive.

5.49 Although the building does constitute a non-designated heritage asset in planning terms, it is largely the front elevation and the front rooms on both levels which are of interest.

5.50 Section 6 outlines the heritage planning context. The assessment of impact on the heritage asset is set out in Section 7 of the report. Policy 135 of the NPPF requires local authorities to take a balanced judgement on the effect of an application on non- designated heritage assets or their setting, having regard to the scale of any harm or loss and the significance of the heritage asset. Although the proposals would result in changes to the floor plan and some limited loss of historic fabric, the principal front elevation would be unchanged, and the main staircase retained. Mitigation has been proposed to ensure the retention of as much historic fabric and decoration as possible. Other alterations are proposed to the modern extensions which have no impact on the historic part of the building. The principal benefit is that they ensure a sustainable future for the building. They also provide an additional six homes for local people.

5.51 With the proposed mitigation, the impact of the proposals is considered to be beneficial overall and they are considered to sustain the significance of the building and to put it to a viable use consistent with its conservation, in line with guidance in the NPPF.

6. LEGAL POSITION

6.1 It is considered that the property benefits from planning permission granted by Bury Metropolitan Borough Council on the 15th November 2018 (Planning Permission Reference No. 63186).

6.2 The Permission was granted subject to 10 conditions and permits both a change of use and operational development:

“the change of use from training centre (Class D1) to 6 no. flats (Class C3) and associated car park” (“the Development”).

6.3 Whilst readily apparent from the reference to “associated car park” in the description of development that operational development was proposed, it is entirely clear from a review of the Permission and its associated documents that operational development in the form of works to the car park and its access, and works to the external elevations of the building was proposed and approved.

6.4 Counsel has been consulted in this matter and, for the reasons given below, it is concluded that the Permission has been lawfully implemented. Whilst there are certain internal works undertaken which are inconsistent with the Permission, such works do not affect lawful implementation of the Permission and could only be considered a breach of a condition only and could readily be addressed by undertaking internal works to ensure that the internal arrangement is consistent with the Permission.

6.5 The Permission was granted subject to the following conditions of relevance to this Opinion:

- Condition 1 - Development to be begun within 3 years;
- Condition 2 - Development to comply with specified drawings (“the Approved Drawings”)
- Condition 4 – approved windows to be double glazed;
- Condition 6 – vehicular access alterations including widening of car park access, provision of sliding gate and highway remedial works to be implemented before occupation;
- Condition 8 – car park to be surfaced, demarcated and available for use before occupation;
- Condition 9 – details of glazing to existing and proposed new windows to be approved by the local planning authority and fitted before occupation;

6.6 No pre-commencement of development conditions were imposed on the Permission.

6.7 Following the grant of the Permission, the following works were undertaken at the Property:

- Surfacing of the car park in accordance with the Approved Drawings;

- Installation of the sliding gate;
- Installation of new windows;
- Provision of bin and cycle storage;
- Refurbishment of the roof

6.8 Following the commencement of the above works, an application for a non-material minor amendment was submitted to and approved by the Council on 13 May 2021 (“**the NMA**”). The NMA approved an amendment to the width of the car park entrance gate.

6.9 An application for the approval of details reserved by conditions was also submitted and subsequently determined on 14 May 2021.

6.10 Internal works were also undertaken at the Property. These works, however, did not comply with the Approved Drawings in that a different floor plan including additional bathrooms and bedrooms was created within each approved flat.

6.11 Section 57 (1) of the Town and Country Planning Act 1990 (“the Act”) stipulates that planning permission is required for any development of land.

6.12 **Section 91 of the Act** limits the duration of planning permissions by requiring the imposition of a condition which requires the development to be begun within a specified period.

6.13 **Section 56 (2) of the Act** provides: “... development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out”.

6.14 **Section 56(4) of the Act** confirms that the following constitutes a “material operation” for the purposes of sub-section (2):

- “(a) any work of construction in the course of the erection of a building; (aa) any work of demolition of a building;
- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any change in the use of any land which constitutes material development”.

6.15 Accordingly, development will be taken to be begun as a matter of law on the earliest date on which any material operation comprised in the development is begun.

6.16 The Courts have considered in a number of cases the general approach to be adopted to the construction of the above provisions of the Act.

6.17 The test under section 56 of the Act is objective¹. The intention of the person carrying out the operations is irrelevant to the question of whether the development has commenced. The key questions are:

- a) whether what has been done (in terms of the material operation) has been done in accordance with the relevant planning permission; and
- b) whether what has been done is material, in the sense of not being 'de minimis' (more than insignificant or trivial).

6.18 The test of whether works implement a permission is a matter of fact and degree in the circumstances of each particular case having regard to the above considerations.

6.19 In considering the first limb of the above criteria, it is necessary that any works undertaken must be related to the permission.

6.20 This could be established by a comparison between the works comprised in the development as shown within the submitted plans and documents and the works undertaken on the ground. In ***Commercial Land Ltd/Imperial Resources SA v Secretary of State for Transport, Local Government and the Regions*** [2003] J.P.L. 358 (Admin)) it was established that slight inconsistencies between the approved plans and operations relied on are not necessarily fatal.

6.21 A genuine, albeit incorrect commencement of development was held to be sufficient to implement the permission in ***Spackman v Secretary of State for the Environment*** [1977] 1 All E.R. 257 where the appellant had intended the works to comply with the approved plans but the contractor had erred in his execution of them.

6.22 The requirements for compliance of conditions was summarised in ***Leisure Great Britain Plc v Isle of Wight Council*** (2000) 90 P.&C.R. 370 that where works have been undertaken in breach of an operative planning condition, they cannot be taken to be works of "material development" for the purposes of Section 56 (4).

6.23 The second limb of the test requires works to be more than de minimis. An example of where works undertaken were insufficient and were found to be de minimis is in ***R. (Connaught Quarries Ltd) v Secretary of State for the Environment, Transport and the Regions*** [2001] 4 P.L.R. 18 where the scooping out of a section of a hedge in the rough position of the new access was considered to be de minimis.

6.24 However, in the case of ***Malvern Hills DC v. Secretary of State for the Environment*** [1982] 3 WLUK 272 upheld (by majority) a finding that the making out of the line and width of a road with pegs amounted to an 'operation' in the course of laying out part of a road as defined in Section 56 (4)(d).

6.25 In ***Thayer v Secretary of State for the Environment*** [1992] J.P.L. 264 the Court considered that the opening of a 12 foot gap in the hedge and limited ground preparation would constitute a specified operation in relation to a planning permission for the erection of a house and garage.

6.26 It has also been established (*High Peak Borough Council v Secretary of State for the Environment* [1981] J.P.L. 366) that the digging of a trench may suffice to keep a planning permission live even though the trench is subsequently backfilled and the intention was not to proceed with the whole development immediately.

6.27 It was concluded in the case of *United Refineries Ltd v Essex CC* [1978] J.P.L. 110 that works carried out are not de minimis simply because their cost is small by comparison with the overall cost of the projected development. It is a question of fact and degree.

6.28 It should also be noted that there is a general principle that before lawful implementation of a development, all pre-commencement conditions should have been discharged,² albeit this principle is subject to a number of exemptions identified by the Courts. Given that the Permission does not contain any pre-commencement of development conditions, review of the authorities in this regard is outside of the scope of this Opinion.

6.29 If a planning permission has been lawfully implemented, development may be undertaken and completed pursuant to that permission at any point thereafter as the permission would enure for the benefit of the land and all persons for the time being interested in it.³

6.30 Condition 1 of the Permission requires commencement of development within 3 years of the date of the Permission, so a material operation must be begun before 15 November 2021.

6.31 A number of conditions require works to be undertaken prior to first occupation, however, none of the conditions of the Permission prevent the commencement of development.

6.32 Consequently as no pre-commencement conditions need to be discharged prior to commencement, **any material operation** that is directly related to the development in accordance with the Permission and not de minimis will be taken to have lawfully implemented the Permission if undertaken prior to 15 November 2021.

6.33 The works undertaken including the surfacing of the car park (an engineering operation which also could be considered part of an operation in the course of laying out part of a road), the installation of the gates (a building operation) and the works to the windows (a building operation) in accordance with the Approved Drawings are all works that are clearly material operations that are directly related to the development and which are more than de minimis.

6.34 There can be no doubt that these works have lawfully implemented the Permission. Whilst it is noted that the sliding gate was initially installed contrary to condition 6 of the Permission, the NMA addressed this inconsistency and therefore the installation of the sliding gate would have lawfully implemented the Permission.

6.35 Non-compliance with all of there Approved Drawings could not have the lawful effect of preventing any material operations carried out in accordance with the Approved Drawings from implementing the permission. As set out above, works in accordance with Approved Drawings were undertaken and would have lawfully implemented the Permission. A failure, therefore, to comply fully with the remainder of the Approved Drawings would represent a breach of condition but would not and could not alter the lawful implementation of the permission.

6.36 It should be noted that the failure to accord with the Approved Drawings with regard to internal layout could readily be addressed by undertaking works to remedy those inconsistencies or by seeking approval of the revised layout by submission of a s73 application to substitute revised floorplans. Such an application has been previously refused, however the fact that the Council has refused this application has no bearing on whether or not the permission has been lawfully implemented.

7. PLANNING CONSIDERATIONS/CONCLUSION

7.1 As previously rehearsed, it is considered that the building benefits from an extant planning consent for the change of use from Training Centre (Class E) to 6 No. Flats (Class C3). Although the change of use has not occurred, due to the internal works not being in accord with the approved drawings, the external operational development was implemented and, therefore, the permission remains in extant perpetuity.

7.2 Given the position, the Applicant would be able to implement the lawful change of use to C3 by undertaking further internal works in order to regularise the 'as built position'. Were they to do such, they would then benefit from permitted rights to change from C3 to C4 without the need for further planning permission. In this scenario, the Local Authority would have no powers to give further considerations to aspects such as car parking, bin storage and cycle storage. The determination of this planning application should therefore be seen as an opportunity to partake in good planning practice which secures the needs of those in the present as well as those in the future.

7.3 With regard to planning policies contained within the Unitary Development Plan, it is considered that the Applicants' proposals are in accord and not in any way in conflict with such. Policies H2/1 and H2/2 require all new residential development to make a positive contribution to the surrounding area and that such demonstrates acceptable standards of layout. Parking and traffic calming measures should be considered also.

7.4 Parking measures are already in effect at the site with the passing of a TRO associated with Planning Reference 63186. There are also private parking spaces provided to the rear with sufficient space for cycle and bin storage. SPD11 does not provide any standards for parking requirements within HMO's and such should therefore be considered on a practical basis. Although the parking spaces provided constituted an under-provision for the proposed C3 use, such was still considered acceptable given the sites location within an area of high sustainability.

7.5 It is highly likely that habitants of the proposed HMO's are unlikely to be owners/user of private motorcars, given the very nature of a HMO. The site is located close to public service routes and within walking distance of the local centre. There may be scope/justification for an increase in cycle storage provision given the nature of the intended use and the Applicant is more than willing to consider such as part of the application process.

7.6 Similarly, an increase in bin storage, given the proposed use, may also be a matter to be considered by the Local Authority as part of the application process. It should be reiterated once more that should the Applicant implement Planning Reference 63186 lawfully, no further increase in either provisions would be required were they to use lawful rights to use the building as C4 HMO. This application should therefore be seen as an opportunity for the Local Planning Authority to achieve betterment where they usually would not have such opportunity.

7.7 The layout of the proposed HMO's comprise a total of 23 bedrooms. Such are intended to be occupied on a sole basis only in order to ensure no over-occupancy occurs and that impacts on both residential amenity of occupiers and those within the locality is protected. The layout is considered to be acceptable in policy terms, as demonstrated on the submitted drawings.