

DELEGATED REPORT

Report by Helen

Date of report: 09/12/2020

Ref:65878/FUL

Goldsbrough

Registration: 29/10/2020

LDfC: 30/11/2020

Expiry Date: 24/12/2020

Site Visit: 05/11/2020

Site Notice: N/A

Press Date: N/A

Objections: 2

Con Area: N/A

Adv Type: N/A

Reason for Delay:

EIA: NA

N/A

Dec Level: DEL

Stat Class: COUS

Proposal: Change of use from rear residential flat to hot food takeaway (delivery only service) (sui generis)

Location: Flat C, 732 Walmersley Road, Bury, BL9 6RN

Description

The application relates to a residential unit located to the rear of No. 732 Walmersley Road. The unit comprises of a property, with a mixture of uses. The ground floor is largely utilised for commercial use with a retail unit, and hairdressing salon directly facing onto Walmersley Road. The first floor appears to be utilised for residential use. There is a car park located to the rear of the site. Residential properties are located to all boundaries of the site.

Planning permission is sought to change the use of the existing ground floor residential unit to a takeaway. The proposal seeks opening hours from 17:00 hrs to 23:30 hours all week.

Relevant Planning History

34616 - Retention of internally illuminated free standing sign - Refuse 10/09/1998

Publicity

Neighbour letters sent 2/11/2020. 2 objections received from No. 2 and No. 3 Palatine Drive in relation to:

- There are enough takeaway/delivery services without adding another here.
- Concerns are around the noise from industrial fans and general operation of the business.
- Disturbance from employees leaving late at night, delivery drivers coming and going throughout the evening until late at night as well as delivery drivers supplying the takeaway.
- Concerned about potential smells from commercial scale cooking.
- Point 18 states that number of employees will not change. There are currently no employees, so this will surely be an increase.
- Shop currently closed at 9pm not 10pm. 11.30 is likely to be the time the new business stops trading but would likely be much later when all cleaning etc completed.
- Sharing the bins with the shop seems inadequate & waste food and cooking oil must require specialist arrangements.
- There is a small car park at the back of the property in question, which is always full of vehicles. With the proposed change of use, the amount of vehicles in this carpark will increase as a result of the staff required within the kitchen and then the delivery drivers on top of that. This brings me to the error within the application.
- We already have a number of large trucks delivering stock to the shop and with the addition of a takeaway, these deliveries will increase too. The street does not have adequate turning facilities and is not wide enough for these trucks to pass down the street.
- With the increase with vehicles delivering stock to the takeaway, delivery drivers and

employees, on top of the traffic that the shop and hairdressers already generate, traffic generation will be worse.

- We already have a number of takeaway restaurants in the area and although Mr Iqbal states that " This will be an additional service to help out the local community during the ongoing Covid -19 pandemic" I believe that it will increase residents mental health issues due to the amount of disturbance from increased noise as a result of vehicles and the general running of such an establishment.

Statutory/Non-Statutory Consultations

Environmental Health - Pollution Control - request conditions in relation to - extraction and filtration system, home delivery only, limitation to food preparation activities and noise insulation.

Traffic Section - recommendation of refusal due to the intensification of use of a site with inadequate existing parking and servicing facilities, which is likely to lead to vehicles parking and carrying out manoeuvres on the highway to the detriment of the free flow of traffic and road safety.

Waste Management - No response

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

EC4/1	Small Businesses
S2/6	Food and Drink
EN1/2	Townscape and Built Design
HT2/4	Car Parking and New Development
NPPF	National Planning Policy Framework
EN7/2	Noise Pollution

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 victimization;

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.

Policies

Chapter 7 of the National Planning Policy Framework relates to town centres and indicates that Local Planning Authorities should take a positive approach to growth, management and adaptation in maintaining the vitality and viability of town centres.

UDP Policy EC4/1 Small Businesses. 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 S2/6 - Food and Drink and states that in considering proposals, regard be given to the following factors:

- the amenity of nearby residents by reason of noise, smell, litter and opening hours;
- whether or not the proposal would result in an over concentration of these types of uses;
- parking and servicing provision and traffic generation;
- provision for the storage and disposal of refuse and customer litter;
- environmental impact of any ventilation flues and/or ducting.

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.

Policy EN7/2 - Noise Pollution does not permit development which could lead to an unacceptable noise nuisance to nearby occupiers and/or amenity users.

Policy HT2/4 - Car Parking and New Development requires all applications for development to make adequate provision for their car parking and servicing requirements.

Residential Amenity

The proposal would see part of the ground floor change use to Sui Generis, take away use. The application site has self contained flats above it. There are also residential properties to the rear of the site with the shared boundary of No. 2 Palatine Drive located approximately 9 metres from the rear of the proposed take away unit. The proposed unit would also be located approximately 1 metre off the shared boundary with No. 730 Walmersley Road. As such there are a number of residential properties within close proximity of the site that need to be taken into consideration.

The proposal seeks opening hours from 17:00 hrs to 23:30 hours all week. Whilst the

application states that they will operate as a delivery only take away, it is unclear how this will be regulated or how many trips/deliveries will take place in order to maintain the proposed use. No information is provided in relation to the number of staff that will be required in relation to running the business (food prep and delivery) and it is unclear if deliveries and food prep will continue until 23:30 with staff leaving later than this and causing further disturbance to the adjoining residential land uses. It is likely that delivery vehicles will utilise the car parking area to the rear of the unit that is adjacent to residential properties to the front and side and the deliveries have the potential to cause disruption to residents if a number of trips are required up until 23:30. No assessment has been submitted with the application in relation to noise to confirm the level of mitigation that would be required in order to implement the proposed use without impacting detrimentally on the neighbouring properties.

In addition to the above no information has been submitted in relation to whether flues or ducting are required in association with the mechanical ventilation fans, or where this ventilation will be located in relation to the neighbouring residential properties and their shared boundaries. These details are required to ensure that the proposal would comply with the requirement of UDP Policy S2/6 to ensure that the environmental impact of any ventilation flues and/or ducting are taken into consideration when assessing the use of the proposal.

The Pollution Control Section have been consulted and have concerns about the impact of noise and disturbance associated with this type of use within such close proximity to residential properties and concluding that the premises would not be suitable for a bar. The Pollution Control recommend a number of conditions to be attached in relation to limiting the premises to flues, home delivery only, limitation to food preparation activities outside of certain hours and noise insulation. In this instance however it is considered that a condition would not be adequate to ensure that the proposed use would not adversely impact on the neighbouring residential uses and that this information should be provided up front. It is therefore considered that insufficient information has been provided by the applicant in relation to the potential noise disturbance and as such the proposal is contrary to UDP Policies EN7/2 and S2/6.

Use

The proposal site is an isolated pocket of commercial development within a largely residential setting with an existing shop, and hair dressers also occupying the location. It is therefore considered that the proposal would not result in an over concentration of take away uses and as such complies with UDP Policy S2/6 in this respect.

Parking

The existing parking to the rear of the site is not demarcated, and it is unclear how the parking is divided up between the mixed uses that currently utilise the site as no parking plan has been submitted with the application. A site plan shows only 2 cars located within the rear car park. The application form states that the site currently has provision for 4 parking spaces and these will be retained, but does not specify if these are solely for the use of the proposed take away or if they will be shared with the other uses.

The proposal would retain a shop, hairdressers and 2 residential units (of unknown bedrooms) as well as the additional take away use. Whilst no assessment of existing parking requirements has been undertaken taking into consideration the parking standards set out by SPD 11 maximum parking for the site is assumed to be:

- 3 spaces for the residential uses (1 per unit assuming each unit is 1 bedroom)
- 5.6 spaces for the retail food use
- 1.3 spaces for the non-food retail use (hairdressers)

As such, there is already an under provision for the existing units that provides 4 spaces instead of 9.9 spaces. The proposed take away use would require 1 space per 8.55 square metres internal floor measured at approximately 22.5 square metres. As such the proposal

would require an additional 1.6 spaces at the site when taking away the need for 1 space for the existing residential unit. Whilst SPD 11 confirms that car parking for takeaways will be assessed on an individual basis as they rely on short stay parking in close proximity and the amenity of surrounding properties needs careful consideration as no information has been provided in relation to the number of parking spaces required for the delivery vehicles and the other uses within the site, this assessment can not be made.

The proposed change of use would therefore result in the intensification of use of a site with inadequate existing parking and servicing facilities, which is likely to lead to vehicles parking and carrying out manoeuvres on the highway to the detriment of the free flow of traffic and road safety. The proposal is therefore considered to be contrary to UDP Policy S2/6 and HT2/4.

Bin Storage

The proposed change of use would be serviced in the same way as the existing use. There is space to the rear of the site within the car park that can be utilised for bin storage and as such the proposal is considered to comply with UDP Policy S2/6 in this respect.

Visual Amenity

The proposed drawings state that there will be no external alterations resulting from the change of use however it does state that fans and a ventilation system will be required. As confirmed above however no information has been submitted in relation to whether flues or ducting are required in association with the mechanical ventilation fans, or where this ventilation will be located. As such the impact of the proposal in terms of visual amenity can not be adequately assessed. The proposal therefore fails to comply with UDP Policy EN1/2.

Response to Neighbours

The concerns in relation to use, noise, smells, parking and bin storage 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 application and submitted plans contain insufficient information to enable them to be properly assessed in relation to the impact of the proposal on the residential amenities of nearby occupiers, by reason of the noise, disturbance and general activity associated with the proposed take away use. The proposed development therefore conflicts with the following policies of the Bury Unitary Development Plan: EN7/2 - Noise Pollution and S2/6 - Food and Drink.
- 2 The application and submitted plans contain insufficient information to enable the impact of any potential flues/ducting to be properly assessed in terms of environmental impact and visual amenity. The proposed development therefore

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conflicts with the following policies of the Bury Unitary Development Plan: EN1/2 - Townscape and Built Design and S2/6 - Food and Drink.

- 3 The proposed change of use would therefore result in the intensification of use of a site with inadequate existing parking and servicing facilities, which is likely to lead to vehicles parking and carrying out manoeuvres on the highway to the detriment of the free flow of traffic and road safety. The proposed development therefore conflicts with the following policy(ies) of the Bury Unitary Development Plan: HT2/4 - Car Parking and New Development and S2/6 - Food and Drink.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
Helen Goldsbrough	9/12/2020	Dave Marno	16/12/2020