

DELEGATED REPORT

Report by Helen Pressley	Date of report: 21/02/2025	Ref: 71435/FUL
Registration: 08/01/2025	LDFC: 10/02/2025	Expiry Date: 05/03/2025
Site Visit: 12/02/2025	Site Notice: N/A	Press Date: N/A
Objections: 1	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Change of use of an existing dwelling space (Use Class C3) into a commercial unit (Use Class E) with gated entrance at rear

Location: 212A Bell Lane, Bury, BL9 6HS

Description

The application relates to an end terraced property located on Bell Lane. The property currently comprises of a cafe at ground floor, a first floor flat, and a yard area to the rear. The yard is separated into an area for the existing flat and an area for the existing cafe. The flat is accessed from it's own entrance door to the side of the property.

The existing plans show a ground floor storage area located internally to the rear of the existing cafe that can only be accessed via a door from the rear yard. A previous application at this site showed this ground floor storage area to be a bedroom associated with the first floor flat that could be accessed internally.

Planning permission is sought to convert the ground floor storage area from residential use to Class E with a gated entrance to the rear. The proposal would include further subdivision of the yard to the rear of the unit to provide a yard and bin storage for the existing flat and a separate yard, bin storage and parking area accessed from Back Bell Lane. Access to the proposed Class E unit would be via this rear yard area.

Relevant Planning History

70259 - Single storey extension at rear to form 1 no. ground floor flat - Refused 17/01/2024. Dismissed at appeal.

Publicity

Neighbour letters sent to 11 neighbouring properties 14/01/2025.

1 objection received in relation to:

- Would make the area more untidy
- Waste from customers already attracts rats.
- Parking is becoming an issue. No where for residents to park due to existing customers.

Statutory/Non-Statutory Consultations

Traffic Section - Recommendation for refusal due to substandard parking arrangements, inadequate parking and servicing facilities, insufficient bin storage for both uses.

Waste Management - No response

Environmental Health - Pollution Control - No response

Pre-start Conditions - Not relevant

Development Plan and Policies

S1	Existing Shopping Centres
S2	Control of New Retail and Non-Retail Development
S2/1	All New Retail Proposals: Assessment Criteria
EN1/2	Townscape and Built Design
EN7/2	Noise Pollution
H3	Incompatible Uses in Residential Areas
H3/1	Assessing Non-Conforming Uses
HT2/4	Car Parking and New Development
JP-P1	Sustainable Places
JP-C5	Streets For All
JP-C6	Walking and Cycling
JP-C8	Transport Requirements of New Development
JP-C2	Digital Connectivity
JP-S2	Carbon and Energy
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), the adopted Places for Everyone Joint Development Plan Document (PfE) and the saved policies within the adopted Bury Unitary Development Plan (UDP), together with other relevant material planning considerations.

The policies of the UDP that have been used to assess this application are considered to be in accordance with the NPPF and as such are material planning considerations. For simplicity, just the UDP and PfE Policies will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

The elimination of discrimination, harassment and victimisation;

The advancement of equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

The fostering of good relations between persons who share a relevant protected characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in

accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Principle (use)

The application form states that the applicant wishes to change the use of the ground floor room to Class E(c)(iii). The planning statement considers that this would include operations such as a small start up space for a new business, or a nail salon space, hairdresser, or consultancy.

Use Class E(c) iii is for the provision of the following kinds of services principally to visiting members of the public—

- (i) financial services,
- (ii) professional services (other than health or medical services), or
- (iii) any other services which it is appropriate to provide in a commercial, business or service locality.

Traditionally nail salons have been considered to be sui generis, but the wording in Use Class E says 'any other services which it is appropriate to provide in a commercial, business or service locality' which would bring several other local uses into Use Class E including beauty/nail salons.

UDP Policy S1 confirms that the Council will seek to protect, maintain and enhance the role and function of the existing hierarchy of shopping centres within the Borough. This is further supported by UDP Policy S2 that seeks to protect and enhance the vitality and viability of the Borough's shopping centres by encouraging and controlling the type and location of retail and non-retail development to benefit the retailing activities of the centres. UDP Policy S2/1 states that the Council will support new retail development proposals which accord satisfactorily with the following factors:

- are within or immediately adjoining the main shopping area of existing centres;
- sustain or enhance the vitality and viability of a centre;
- are accessible by and would encourage greater use of public transport;
- are in conformity with other policies and proposals of the Plan.

It is acknowledged that a condition can be utilised, to restrict the use of the site to E(c)iii the proposed use is still considered to be a main town centre use that would sustain and enhance the vitality and viability of the existing identified centres within the UDP.

The site is not located within a local, or neighbourhood shopping centre as set out within the UDP although there is a cafe to the front of the site, and an existing post office to the side. The nearest Local Shopping Centre is located on Walmerslery Road some 820m from the site (as the crow flies) with the nearest neighbourhood centre located on Topping fold Road and approximately 520 metres away (as the crow flies) The site would therefore not be located within or adjacent to an identified centre.

Paragraph 91 of NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or

expected to become available within a reasonable period) should out of centre sites be considered.

The submission is not supported by a sequential test or statement, which is a requirement given that the site does not fall within a defined town or local centre. Therefore, the application contains insufficient information to demonstrate that the proposed development would comply with the locational requirements of the NPPF paragraph 91 and UDP Policy S2/1.

Layout and Design

UDP Policy EN1/2 seeks to ensure that development proposals would not have a detrimental effect on the visual amenity and character of a particular area. PfE Policy JP-C5 states that proposals should provide appropriate places and routes for servicing, deliveries and "drop-off". PfE policy JP-C6 includes the provision to create, where needed, dedicated separate space for people walking and cycling. In addition when considering layouts PfE Policy JP-P1 states that all development should be functional and convenient, enabling people and uses to act efficiently with minimal effort, and responding to needs relating to servicing, recycling facilities, refuse collection and storage.

This is further supported by PfE Policy JP-C8 that states that the LPA should prioritise convenient and safe access to the site and buildings for all users and ensuring that the layout, design and landscaping of development prioritises the provision of safe, secure and attractive access to local services and facilities for pedestrians, cyclists and people with a disability.

The proposal would seek to utilise an existing storage area that was previously utilised in association with the first floor flat. The proposed unit would be accessed from the rear of the site via a proposed parking area and bin storage area, which would be subdivided from the existing yard. The proposed access, both pedestrian and vehicular, is to the rear of the site from Back Bell Lane, which would have less natural surveillance than an entrance on an active frontage. It is considered that the location of an access through an enclosed yard, off a back street would not meet the policy tests to provide a safe, secure and attractive access.

It is unclear from the submission documentation whether the single parking space is for customers, or for staff however the parking and bin storage would utilise the majority of the space within the yard. There does not appear to be a dedicated pedestrian route through the yard for any future customers. In addition there does not appear to be adequate space retained within the constrained yard area to allow disabled access to the proposed unit if a car is parked within the proposed space which would also fail to meet the policy considerations set out above.

The users of the first floor flat would have their direct access to their bin store/amenity area removed. The retained yard area would have very little quality with regard to residential amenity given its limited width and being so enclosed. The Planning Inspectorate reviewed a similar arrangement at the site on a previous appeal reference APP/T4210/W/3338058 and reviewed the reduction in quality of space, and the location of the site within the proximity of a park. It was concluded that whilst not unacceptably harmful to the living conditions of the residents of the first floor flat, this arrangement weighs against the proposal with regard to amenity. This same weighting applies to this proposal.

The property, which is an end terraced property, has already been subdivided into two uses with the rear yard also subdivided to provide amenity and bin storage for these existing uses. The introduction of a third unit at the site would further intensify the site leading to a poor layout in terms of existing and proposed uses. The overdevelopment of the property, resulting in the unsatisfactory rear yard arrangements in particular, would therefore result in conflict with the Development Plan design and amenity policies and as such can not be supported.

Amenity

The impact on amenity, in terms of the proposed layout of the rear yard has been addressed above.

As set out above, Use Class E c) (iii) relates to any other services which it is appropriate to provide in a commercial, business or service locality, the site however is not located within a commercial, business or service locality as defined in the UDP. It is acknowledged that the proposed ground floor unit would be bound by an attached post office and cafe, however all other uses that bound the site are residential, including the existing first floor. The locality is therefore considered to be residential.

UDP Policy H3 - Incompatible Uses in Residential Areas seeks to restrict the development of incompatible uses in areas which are primarily residential in nature and where possible will seek to resolve existing conflicts. This is further supported by Policies H3/1 - Assessing Non-Conforming Uses and H3/2 - Existing Incompatible Uses that consider factors such as noise, vibration, smell, fumes, smoke, soot, ash, grit, dust, visual intrusion, traffic generation and parking arrangements, and hours of operation, and seeks to implement measures to control these where possible to minimise areas of conflict and potential nuisance.

Policy JP-P1 further reinforces this by stating that developments should offer comfortable and inviting indoor and outdoor environments. UDP Policy EN7/2 - Noise Pollution does not permit development which would lead to an unacceptable noise and environmental nuisance to nearby occupiers and/or amenity users.

No noise assessment has been submitted with the application. It is therefore considered that the applicant has failed to demonstrate that the proposed commercial use would not have a detrimental impact on the first floor flat by reason of noise. In addition to this no proposed opening hours have been provided on the application form however the planning statement states that the unit would operate between 8 am and 6pm, and any visitors would be appointment only. Whilst the hours of use could be reasonably conditioned given that the proposed end user is not known, it is considered that a condition to restrict the use to appointment only would not pass the 6 condition tests.

No layout of the first floor flat has been provided with the application and therefore it is assumed the layout submitted for the previous application (70259) still applies. Bedroom windows within this flat are currently located on the gable, with the living room window located at the front. A bathroom window would therefore be the only window located on the rear elevation and this is currently located above the bin storage for the existing cafe. Given the use of this room it is considered that the location of the access, and parking is unlikely to have a detrimental impact on the occupants of this unit through noise and air pollution.

The residential amenity space however, would be impacted by this relationship. As discussed above the retained yard area would have very little quality with regard to residential amenity given its limited width and being so enclosed, however the proposal would also introduce a car parking space and customer entrance directly adjacent to an area that is supposed to be utilised as external private amenity space. Again, no assessment has been provided with the application with regards to this relationship.

Given the above it is considered that the applicant has failed to demonstrate that the proposed use, and associated parking and access areas would not have a detrimental impact on the residential amenity of the neighbouring properties through noise and air pollution contrary to the Policies set out above.

Highways

Policy EN1/2 requires the consideration of the design and appearance of access, parking and service provision. PfE Policies JP-C5 and JP-C6 require streets to be well designed

and managed to make a significant positive contribution to the quality of place and support high levels of walking, cycling and public transport.

The proposal would introduce a parking space, and associated access to the rear of the site where previously there was none. No information has been submitted in relation to tracking, visibility splays etc to ensure that this space and access can be utilised without causing a hazard to highway safety. The proposed parking space is bound by walls restricting visibility and Back Bell Lane is a narrow access bound by fencing and walls. The application form states that there is an existing dropped kerb to the rear of the site that can be utilised, as other do within the row. This is inaccurate the kerb does indeed appear to be lower than standard kerb edgings however this does not necessarily mean that it is capable of, or designed for vehicles to cross.

The existing and proposed plans and elevations also appear to suggest that there is an existing garage door to the side of the cafe. Whilst this may have been a former access, this is currently a window, with a stone plinth along the bottom and would not be acceptable as an access due to the close proximity of the site to the junction with the B6222.

It is therefore considered that the proposal would result in the creation of a sub-standard access onto, and parking arrangements adjacent to, the adopted highway in a hazardous position on the highway network close in proximity to the junction with B6222 Bell Lane and onto the adjacent back street, which is likely to lead to the creation of vehicular and pedestrian conflicts on the adopted highway, to the detriment of the free flow of traffic and highway safety.

In terms of parking standards UDP Policy HT2/4 requires all applications for development to make adequate provision for their car parking and servicing requirements . Supplementary Planning Document 11 provides parking standards for developments.

SPD 11 has not been updated to reflect the newer Class E uses, it is considered to be appropriate therefore to either use the standard for non-food retail (formerly other A1 uses) or financial and professional services (formerly A2 uses). This would require either 1 space per 30sqm or 1 space per 35sqm. SPD 11 also acknowledges that smaller developments, particularly those within local and neighbourhood shopping centres , that are assumed to be more local in nature that are accessible by other modes could have reduced levels of parking requirements (each proposal will be considered on its own merits).

1no. space would therefore comply with SPD 11 standards however as set out above it is unclear if the proposed parking is for customers, or for the staff at the proposed unit. The availability of parking for the proposed use in the locality also needs to be fully reviewed.

Parking along the front of the site (B6222) is restricted by double yellow lines. Parking is therefore provided for the existing uses on the side, and rear streets. The objection received raises concerns in relation to the parking issues caused by the existing uses, and the creation of an additional unit at this site has potential to increase this nuisance. Site visits to the site confirmed that parking on street adjacent to the site is very limited, indeed this can also be see on the latest Google Street view with cars parked along Higher Road, and Back Bell Lane utilising the pavements to ensure that cars can still pass and re-pass on the highway. In addition to this, no information has been provided in relation to servicing, or deliveries that may be associated with the proposed use.

It is therefore considered that the proposal would result in the creation of a commercial use at a site with inadequate parking and servicing facilities and is likely to lead to the creation of vehicular and pedestrian conflicts in a hazardous position on the highway network, to the detriment of the free flow of traffic and highway safety.

Bin stores are shown on the proposed ground floor plans. No assessment has been provided within the application in relation to the application and submitted plans to suggest

that these storage areas would adequately meet the needs of the future use for the storage of, and collection of refuse, including recycling facilities. The proposed bin store is also located to the side of the proposed gates which open inwards into the site and there does not appear to be space to move the bins if these gates are opened and a car is parked in the yard. It is likely that the bins for the residential use can be stored within the subdivided yard however depending on the amount of bins required this may also impact on the amount of amenity space available for future occupiers. It is therefore considered that the application and supporting documents contains insufficient information to enable the adequate, accessible bin storage facilities for both uses to be properly assessed.

Biodiversity Net Gain

Every grant of planning permission in England is deemed to have been granted subject to the biodiversity gain condition. Commencement and transitional arrangements, as well as exemptions, mean that certain permissions are not subject to biodiversity net gain.

The proposal relates to the change of use of an existing building, and a yard that is currently unsealed hardstanding. There is limited growth of any habitat between the existing slabs that make up the rear yard. The development would therefore be subject to the de minimis exemption.

Carbon and Energy

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

There would be no material changes to the existing building and as such the proposal would not be subject part L of the building regulations.

The applicant has suggested that conditions to require future doors and windows to be subject to building control approval, however this would not be an appropriate condition as it would involve regulations outside of the LPAs control. Similarly the condition to retain the new unit under a single ownership would not be appropriate.

It is however acknowledged that minimal interventions would be required internally to facilitate the change of use, and the proposal requires no external alterations to the building. It is considered that the introduction of additional steps to make this particular unit meet the considerations of Policy JP-S2 would be disproportionate to the scale of the development proposed.

Digital Connectivity

JP-C2 - Digital Connectivity - this policy requires development to have full fibre to premises connections unless infeasible or unviable, with multiple-ducting. The policy supports the provision of free, secure, high-speed public wi-fi connections, particularly in the most frequented areas.

Full fibre is available to the site. The proposal would therefore comply with the above policy consideration.

Response to objections

It is considered the material planning consideration raised by objectors have been assessed 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 submission is not supported by a sequential test or statement, which is a requirement given that the site does not fall within a defined town centre. Therefore, the application contains insufficient information to demonstrate that the proposed development would comply with the locational requirements of the NPPF paragraph 91 and UDP Policy S2/1.
- 2 The introduction of a third unit within the existing building would further intensify the site leading to a poor quality layout and access provisions for the existing and proposed uses. The overdevelopment of the property, resulting in the unsatisfactory rear yard and access arrangements in particular, would conflict with Development Plan Policies EN1/2 - Townscape and Built Design, JP-C5 - Streets for All, JP-C6 - Walking and Cycling, JP-C8 - Transport Requirements of New Developments and JP-P1 - Sustainable Places.
- 3 The applicant has failed to demonstrate that the proposed use, associated parking and access would not have a detrimental impact on the residential amenity of the neighbouring properties by reason of the noise, disturbance, air pollution and general activity associated with the proposed use. The proposed development therefore conflicts with Development Plan Policies H3 - Incompatible Uses in Residential Areas, H3/1 - Assessing Non-Conforming Uses, JP-P1 - Sustainable Places and EN7/2 - Noise Pollution.
- 4 The proposal would result in the creation of a sub-standard accesses onto, and parking arrangements adjacent to, the adopted highway in a hazardous position on the highway network close in proximity to the junction with B6222 Bell Lane and onto the adjacent back street, which is likely to lead to the creation of vehicular and pedestrian conflicts on the adopted highway, to the detriment of the free flow of traffic and highway safety. The proposed development therefore conflicts with Development Plan Policies EN1/2 - Townscape and Built Design, JP-C5 - Streets for All, JP-C6 - Walking and Cycling, JP-C8 - Transport Requirements of New Developments and JP-P1 - Sustainable Places.
- 5 The proposal would result in the creation of a commercial use at a site with inadequate parking and servicing facilities and is likely to lead to the creation of vehicular and pedestrian conflicts in a hazardous position on the highway network, to the detriment of the free flow of traffic and highway safety. The proposed development therefore conflicts with Development Plan Policies EN1/2 - Townscape and Built Design, JP-C5 - Streets for All, JP-C6 - Walking and Cycling, JP-C8 - Transport Requirements of New Developments. HT2/4 - Car Parking and New Development, JP-P1 - Sustainable Places and Supplementary Planning Document 11 - Parking Standards in Bury.
- 6 The application and submitted plans contain insufficient information to enable the adequate, accessible bin storage facilities for both uses to be properly assessed. The proposed development therefore conflicts with Development Plan Policies EN1/2 - Townscape and Built Design, JP-C5 - Streets for All, JP-C6 - Walking and Cycling and JP-P1 - Sustainable Places.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HP	21/02/2025	DM -	21/02/2025