

Description

The application relates to a building which is located in the Bury Town Centre Conservation Area. The building was previously in use as a nursery but prior approval for 16no. apartments was granted in May 2023. The building is situated on Crompton Street with a row of shops opposite and pedestrian access to the Mill gate Centre. Immediately adjacent to the site is a paved area, Lion Gardens, Directly to the north is an access road which leads to a service yard area at the rear for some of the units in the Mil Gate.

The building is not listed but it is mentioned specifically in the Bury Town Centre Conservation Area Appraisal and it is also included within the draft local list of buildings of special architectural or historic interest.

The main building comprises 3 storey to the front with a 2 storey addition at the rear which extends the width of Lion Gardens. The majority of the property is brickwork, with stone sills and surrounds to the windows and doors, and horizontal stone coursework through the frontage. The gable facing Lion Gardens is rendered and painted to match the brick work and has the main entrance through a double doorway.

Planning permission is sought for a first floor rear extension to form 1 no. lower first floor flat and loft conversion/roof alterations with dormers to form 2 no. second floor flats with external alterations and associated works. 16no. flats as approved under prior approval 69480 will be retained.

The proposal would introduce flat roof dormers and extensions within the roof, and at lower ground floor area. And seeks to add windows at ground floor within the side elevation facing towards South Back Rock and windows within the elevation facing towards Lions Garden.

The red edge has been extended under this planning permission to include an area to the north of public space known locally as Lions Gardens to facilitate bin storage.

Relevant Planning History

49341 - Change of use from former post office to licensed food and drink operation (Class A4) - Approve with Conditions 20/02/2008

49406 - Change of use from former post office to licensed food and drink operation (Class A4) (Alternative scheme to ref 49341 - includes an external area - Approve with Conditions 19/03/2008

53996 - Change of Use from Sui Generis (Post Office with Sorting Office) to Shop (Class A1) and change of elevation to provide additional access and new windows - Withdrawn - Invalid 20/05/2011

54208 - Change of use from Sui Generis (post office with sorting office facilities) to mixed use comprising retail (Class A1) , financial and professional services (Class A2), restaurant and cafe (Class A3), and drinking establishment (Class A4); Alterations to side elevation to provide canopy, additional access and new windows - Approve with Conditions 02/11/2011

55352 - Change of use of building from Sui Generis to D2 (Assembly & Leisure). - Approve with Conditions 03/09/2012

58302 - Two storey extension to side elevation to form additional internal staircase - Withdrawn by Applicant 06/02/2015

58453 - Change of use from ground floor children's play centre and first/second floor offices to creche/day nursery/children's play centre (Class D1) to the ground/first/second floors;

New access to first floor flat roof area at rear and installation of 1.8 metre high railings to create outside play area - Approve with Conditions 23/04/2015

58472 - Two storey extension to side elevation to form additional internal staircase (resubmission) - Approve with Conditions 15/04/2015

59675 - Creation of car park and turning area/drop off point to serve existing nursery premises - Refused 19/04/2016

62907 - 1 No. non-illuminated fascia sign - Approve with Conditions 20/08/2018

69480 - Prior approval for proposed change of use from Class E to 16 no. apartments (Class C3) - Prior Approval Not required 17/05/2023

Publicity

Neighbour letters 29/06/2023 and 04/07/2023

Site Notice 10/7/2023

Press Notice 06/07/2023

No representations received

Statutory/Non-Statutory Consultations

Conservation Officer - The application cannot be supported in heritage term as it would not comply with or be contrary to paragraphs 199, 202 and 203 of the NPPF and adopted Bury UDP policies EN2/1 - Character of Conservation Areas and EN2/2 - Conservation Area Control.

Environmental Health - Pollution Control - No comment

Traffic Section - insufficient information to properly assess the adequacy of the proposed bin storage arrangements and prohibition of car parking on the adjacent pedestrianised area to be properly assessed

Waste Management - No response

United Utilities (Water and waste) - No response

Greater Manchester Ecology Unit - Informative requested in relation to Bats as works have already commenced on site.

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

<SQLDCPolicyComRep>

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 (Residential)

The National Planning Policy Framework (NPPF) should be treated as a material planning consideration and it emphasises the need for local planning authorities to boost the supply of housing to meet local housing targets in both the short and long term. The Framework maintains the emphasis on identifying a rolling five year supply of deliverable housing land.

Bury's Strategic Housing Land Availability Assessment sets out the latest housing supply position, which is made up of sites that have an extant planning permission and sites that have potential to obtain planning permission in the future. This shows that there are a number of sites within the Borough with the potential to deliver a significant amount of housing. However, not all of these sites will contribute to the five year supply calculations as many sites will take longer than five years to come forward and be fully developed (e.g. some large sites could take up to ten years to be completed). As such, latest monitoring indicates that the Council is unable to demonstrate a five year supply of deliverable housing land and this needs to be treated as a material factor when determining applications for residential developments.

The National Planning Policy Framework also sets out the Housing Delivery Test, which is an assessment of net additional dwellings provided over the previous three years against the homes required. Where the test indicates that the delivery of housing was substantially

below (less than 75%) of the housing requirement over the previous years, this needs to be taken into account in the decision-taking process. The latest results published by the Government show that Bury has a housing delivery test result of less than 75%, and therefore, this needs to be treated as a material factor when determining applications for residential development.

Therefore, in relation to the proposed 86 dwellings, paragraph 11d) of the National Planning Policy Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless:

- i. The application of policies in the Framework that protect areas, or assets of particular importance, provides a clear reason for refusing the development proposed; or
- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.

Therefore, in this case the 'titled balance' applies and planning permission should be granted unless the above points Para 11(d) i or ii apply.

Policy H1/2 states that the Council will have regard to various factors when assessing a proposal for residential development, including whether the proposal is within the urban area, the availability of infrastructure and the suitability of the site, with regard to amenity, the nature of the local environment and the surrounding land uses.

The site is located within the town centre. The site is considered to be within the Bury Town Centre Shopping Area and Prime Shopping Area as identified under UDP Policies S1/1 and S2/2. These policies seek to maintain and enhance the role of Bury Town Centre as a sub-regional shopping centre and to maintain retailing as the predominant land use at ground floor level. It is acknowledged however that Prior approval application 69480 established the principle of residential use at the site and a site visit confirmed that works to implement this scheme already appear to have been started.

The proposal would introduce 8 ground floor flats, with the layout previously approved under prior approval 69480. At lower ground floor an additional 2no. bedroom flat is proposed through an extension. The first floor would retain the same layout as approved under prior approval with 6 flats proposed. At second floor the layout for units 15 and 16 would be retained as approved under prior approval with 2 additional 1no. bedroom flats proposed through extension.

It is considered that the proposed development would not conflict with the surrounding land uses and would be located in a sustainable location with regard to public transport and services. Given the previous prior approval at the site the proposed development it is considered to be acceptable in principle and would be in accordance with Policy H1/2 of the Bury Unitary Development Plan.

Heritage, Design and Layout

Alterations to the building

As the site is located within Bury Town Centre Conservation Area it is necessary to consider the proposal in terms of UDP Policies EN2/1 - Character of Conservation Areas and EN2/2 - Conservation Area Control of the UDP. UDP Policy H2/1- The Form of New Residential Development requires all new residential development to make a positive contribution to the form and quality of the surrounding area. Policy H2/2 - The Layout of New Residential Development seeks to ensure that new residential development will be acceptable in terms of layout in order to provide a good quality residential environment. In addition to this, 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.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires Local Planning Authorities in the exercise of their planning functions to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

Paragraph 199 of the National Planning Policy Framework (NPPF) requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 203 of the NPPF states 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.

Paragraph 202 of the NPPF states where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

5 Crompton Street is considered to be a Non-Designated Heritage Asset (NDHA) and is sited within Bury town centre conservation area. It is included within the draft local list of buildings of special architectural or historic interest and is included within the conservation area appraisal as a significant unlisted building that makes a positive contribution to the character of the conservation area which describes the buildings as " Built probably at the end of the 19th century, but certainly between 1893 and 1910. Red brick with stone dressings, in neo-Elizabethan style with stone mullioned windows, finials, blind-arch parapets, corner turret and tower over the main entrance. The large extension to the rear is late 20th century."

It has been noted in emails with the agent acting on behalf of the applicant that they do not consider the building to be locally listed and they have requested to be directed to a document that defines the building as a NDHA. They have acknowledged that the building is mentioned in the conservation area appraisal. Appeal decision reference APP/T4210/W/17/3187674 states that even if a building is not on a local list of non-designated heritage assets, this does not mean that it has no heritage value. The fact that the building is listed as being significant within the conservation area appraisal, and is included on the draft local list however would indicate its heritage value, and that any loss of significance of this building would cause harm to the historic environment.

The submitted heritage statement does not describe any heritage values the building may possess that would comprise its heritage significance.

However it is considered that the building does possess architectural and historic value which makes it a strong contributor to the preservation of the character and appearance of Bury town centre conservation area.

The proposed dormer and first floor extensions would by virtue of their design, size and materials represent incongruous features on the building being flat roofed box dormers and an extension finished in metal cladding that would cause harm to and therefore a loss of heritage significance to an unacceptable level. The cumulative effects of the other external alterations consisting of the additional and alterations to the existing roof, window openings and doors would also cause unacceptable harm to the heritage significance of the building by causing harm to its architectural interest.

The proposed external alterations would have visibility in parts from street level and from wider areas at upper floor locations from surrounding buildings. The proposals would by virtue of their design, size and materials represent incongruous features within that part of Bury town centre conservation area and as such represent less than substantial harm to the character and appearance of the conservation area and therefore would not preserve or enhance it. The applicant has stated in their heritage statement that the proposals would represent less than substantial harm, but with the public benefit of bringing an under utilised heritage asset back into a viable use that would outweigh the less than substantial harm identified. However it should be noted that there is a recent consent under prior approval for conversion of the application site to 16 No. apartments and the applicant has stated that works to begin the conversion have already been started. As such this application is for extensions and other external alterations that are not currently required to bring building back into use and as such there is no public benefit that would outweigh the harm caused by the proposed works.

The application cannot be supported in heritage or design terms as it would not comply with or be contrary to paragraphs 199, 202 and 203 of the NPPF and adopted Bury UDP policies EN2/1, EN2/2, EN1/1 and EN1/2

External Space

TC1/1 - Open Space in Town Centres seeks to protect identified areas of open space which provide:

- an important element in civic design;
- valuable visual amenity;
- important outlets for recreation;
- valuable wildlife habitats; or
- act as buffers between incompatible uses or provide links between other open land areas.

Open spaces which are considered to fall within the scope of the above policy will generally be protected against development unless adequate compensatory provision is made or other significant benefits are derived from any specific development proposal.

OL3/1 - Protection of Urban Open Space, development will not be permitted where it would lead to the loss of urban open space which provides:

- valuable visual amenity;
- valuable wildlife habitats, corridors and links;
- important outlets for recreation; or
- a buffer between incompatible uses or a link between other open land areas.

This policy has regard to the value of open space, not only as an amenity, but also for its contribution to the conservation of the natural and built environment of the Borough. In addition to the identified areas, there are smaller incidental open spaces, which are also protected in accordance with the above policies.

The site itself is not identified on the proposals map as protected urban land, but the area immediately adjacent, which is defined by the curved paving and the raised platform, is, and as such it is considered the above policies are relevant and pertinent to the application.

The application site and adjacent land operate and function as one area of coherent open space. As Policies TC1/1 and OL3/1 state, these pockets of open space within town centres are important and provide valuable amenity areas which members of the public can use and enjoy either as part of their working day or whilst carrying out daily activities, duties or shopping within the town. These spaces often provide important respites and relief for short periods of time in people's days, and offer a physical balance to what is mainly built development in town centres.

Lions Gardens has been an open and usable space for many years, and used on occasion for providing entertainment or one-off activity areas for leisure purposes. The proposal seeks to introduce a bin store in the area immediately adjacent to the protected urban area. No elevations of the bin store have been provided, however the block plan indicates a structure with doors opening outwards and an indicative photograph has been included within the design and access statement. Neither of these is considered to be adequate to make a full assessment of the design of the bin store.

The use of this area to store bins, takes away this usable and open space. There also does not appear to be any provision to prevent this area from being used as parking or amenity space associated with the apartments. It should also be noted that the stone lion statues which provide the local name for the open space, and associated stone plaques would be directly behind the bin store and therefore screened from public views impacting on the character of the area. It is concerning when the location of the bin store was raised with the applicant in emails that they intend to remove this lions, and they have been advised not to. The applicant has also been advised that this area is outside of the approved red edge for the prior approval scheme.

For visual amenity purposes, and a feeling of maintaining some openness and space around Lions Gardens, the use of the area for bin storage is considered to be inappropriate and unacceptable, and would be contrary to the principles of OL3/1 and TC1/1.

Residential Amenity

Neighbouring Amenity

UDP Policy H1/2 states that the council will have regard to various factors when assessing a proposal for residential development, including whether the proposal is within the urban area, the availability of infrastructure and the suitability of the site, with regard to amenity, the nature of the local environment and the surrounding land uses. This is further supported by Policy H2/1 that requires an assent of the impact of developments on residential amenity and the position and proximity of neighbouring properties. There are no adopted aspect standards for new build residential properties however, Supplementary Planning Document 6 provides guidance on aspect standards between residential properties and as such, would be a reasonable guide in this case.

For clarity the following aspect standards would be applicable:

- 20 metres between directly facing habitable room windows;
- 13 metres between an existing habitable room window and a proposed two storey blank wall
- 6.5 metres between an existing habitable room window and a proposed single storey blank wall
- 7 metres between a proposed first floor habitable room window and a directly facing boundary with a neighbouring property.

The submitted proposed block plan is poor, and does not show where the proposed extensions would be located to accurately assess aspect standards, and the proposed floor plans do not show the adjacent buildings.

Notwithstanding the above it would appear that the habitable room windows for flats 18 and 19 would face towards the area of public open space to the south of the site. There are no existing windows within this elevation at this level, and whilst there would be flats and windows at lower levels on this elevation they are existing openings. The applicant would be relying on views over land outside of their control, at an elevated position with an increased number of potential occupiers. Given the height of the proposed windows SPD 6 would require a distance of 10 metres to the boundary. It appears that a distance of approximately 6.4 metres can be provided. As such there is potential for these new windows to cause undue overlooking, or to be impacted should this area of land ever come forward for

re-development.

The habitable room windows for flat 17 would appear to face towards the rear of the properties that face The Rock. There are no existing windows or accommodation at this level. As no block plan has been submitted showing this addition it is difficult to assess exactly which property would be impacted however it does appear to face towards No. 18 and 20 The Rock which do have residential properties above the ground floor. The proposed windows would be separated from the rear yards of the properties that face The Rock by a highway and these yards do not appear to be in residential use. A distance of approximately 20 metres appear to be able to be provided to the rear of No. 18 - 20 the Rock complying with the aspect standards above, although this measurement can not be considered to be fully accurate.

The proposed windows at ground floor for flats 5 and 6 would be enlarged but the internal layout would be retained as previously approved.

The existing ground floor door associated with flat 1 would be replaced with a new window. The use of the space would be retained as previously approved.

The existing ground floor door associated with flat 7 would be replaced with a new window. The use of the space would be retained as previously approved.

The existing ground floor door associated with flat 6 would be replaced with a new window. The use of the space would be retained as previously approved.

The window for the kitchen/lounge area of flat 6 would appear to directly face towards the proposed bin store. The bin store would appear to be located approximately 1m from this window. Although no elevations of the bin store have been provided it is considered that the close proximity of the bin store would be unduly overbearing in relation to the outlook of this window which is associated with a habitable space for the flat. As this is the only proposed bin store for 19 flats it also has the potential to cause nuisance in relation to noise and smells contrary to UDP Policies EN7 - Pollution Control and EN7/2 - Noise Pollution which does not permit development which could lead to an unacceptable noise and environmental nuisance to nearby occupiers and/or amenity users. Considering this appears to be the only window for this flat this is even more concerning.

Amenity for future occupiers - space standards

The 3 flats have been assessed to ensure that they would all comply with the minimum gross internal floor area requirements and associated minimum bedroom dimensions of the 'Technical housing standards – nationally described space standard' (NDSS). The 16 already approved flats have been assessed.

Flat 17 would be a 2 bedroom flat at 68m² complying with space standards for a 2 bed, 3 person unit. Bedroom 1 would have an area of 10.5m² and be 2.4m in width and bedroom 2 would have an area of 10.3m² be 2.2m in width. As this property as 2 bed spaces one should be a double. Neither room as a floor area of 11.5m² to meet space standards. In this instance however, given that Bury do not currently have a local plan policy that requires applicant's to adhere to space standards a deficit of 1 square metres for bedroom 1 is not considered to be so significant that it would warrant refusal of the scheme.

Flat 18 would be a 1 bedroom flat at 43.1m² complying with space standards for a 1 bed 1 person unit. The bedroom would have an area of 13.4m² and a width of 3m complying with space standards.

Flat 19 would be a 1 bedroom flat at 47.8m² complying with space standards for a 1 bed 1 person unit. The bedroom would have an area of approximately 18.4m² and a width of approximately 2.9m complying with space standards.

Highways and Parking

UDP Policy EN1/2 - Townscape and Built Design requires the consideration of the design and appearance of access, parking and service provision. This is further supported by UDP Policy H2/2 - The Layout of New Residential Development that requires proposals to demonstrate adequate car parking provision, access for both vehicles and pedestrians, and provision for public transport and the existence of any public rights of way, and UDP Policy HT6/2 - Pedestrian/Vehicular Conflict that requires developments to reduce pedestrian/vehicular conflict.

As set out above, no elevation drawings have been provided in relation to the bin stores and there also does not appear to be any provision to prevent the area to the south of the building from being used as parking or amenity space associated with the apartments. The block plan shows provision for 4 bins, and the design and access statement states that "bins to be provided are to be in line with the requirements of Bury Council prior to first occupation" but no evidence has been given that 4 bins would be adequate for this scale of development.

The Highways Officer has also raised concerns in relation to the bin store and also considers that insufficient information has been provided to ensure that this area is not encroached upon for parking. The proposed development is therefore considered to be contrary to UDP Policies EN1/2 - Townscape and Built Design, H2/2 The Layout of New Residential Development and HT6/2 - Pedestrian/Vehicular Conflict.

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.

The design and access statement states that the area to the south of the existing building has been previously used as parking and drop off space for the nursery use. Any use of this area for parking for any length of time would have been unlawful and planning permission was refused for this in 2016.

The design and access statement confirms that no parking is to be proposed as part of the application, as the site is highly sustainable. At the heart of the NPPF is the principle of sustainable development which encourages the use of public transport. Given the town centre location, the proximity of facilities and public transport nearby, and the existing prior approval for 16 flats the parking provision is considered to be acceptable.