

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 27/03/2023	Ref: 69293/FUL
Registration: 06/02/2023	LDFC: 10/03/2023	Expiry Date: 03/04/2023
Site Visit: 14/02/2023	Site Notice: 14/02/2023	Press Date: 16/02/2023
Objections: 0	Con Area: BURY	Adv Type: CAAF
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Change of use at first floor from cafe/restaurant (Class E) to 2 no. flats (Class C3) with new entrance

Location: 30 The Rock, Bury, BL9 0NT

Description

The application relates to a shop premises which are located in Bury Town Centre and set within the Conservation Area. The premises are located within a row of other shops and businesses and there is an access at the rear

The building has a restaurant/cafe use at both ground and first floor which is accessed via a front entrance and internal staircase.

At the rear is a yard which is used for bin storage and there is an external staircase which provides access to the 1st floor.

The application states that the premises are too large for the current owners to operate the business at both ground and first floor.

In order to make better use of the upper floors, the application seeks a change of use at first floor from cafe/restaurant to 2 no. x 1 bed flats (Class C3) with new entrance.

A new entrance would be provided to the flats within part of the existing shop display window which would require alterations to the frontage.

Flat 1 will also benefit by utilising the rear stair, which leads to a balcony. The balcony will be enclosed with timber fencing to ensure privacy and safety of the occupier. This section of the build would have its existing window positions and doorway reopened.

Relevant Planning History

52575 - New shop front - Approve with Conditions 28/06/2010

52576 - 2 No. internally illuminated fascia signs; 2 No. non-illuminated logo signs - Approve with Conditions 09/06/2010

64103 - Change of use of ground and first floors from shop (Class A1) to dessert parlour (Class A3) with refurbishment of shop front - Approve with Conditions 20/06/2019

Publicity

Letters sent to 25 properties on 8/2/23.

Press advert 16/2/23

Site notice posted 14/2/23.

No responses received as a result of the publicity.

Statutory/Non-Statutory Consultations

Traffic Section - No objection

Conservation Officer - No objection

Waste Management - No objections. The flats would get a 240l grey each which will be emptied either weekly or fortnightly due to the Town Centre location.

Pollution Control - No comments to make

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

NPPF	National Planning Policy Framework
EN1/2	Townscape and Built Design
EN1/8	Shop Fronts
EN2/1	Character of Conservation Areas
EN2/2	Conservation Area Control
H1/2	Further Housing Development
H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
S2/3	Secondary Shopping Areas and Frontages
S1/1	Shopping in Bury Town Centre
TC2/1	Upper Floors
Area	The Rock/Moorgate
BY8	
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 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.

Chapter 7 of the NPPF - Ensuring the vitality of town centres recognises town centres as the heart of communities and supports proposals to ensure their vitality and viability. It advocates a mix of uses are important to meet the needs and functions of a town centre, which includes residential uses.

Bury UDP Policies S1/1 - Shopping in Bury Town centres and S2/3 - Secondary Shopping Areas and Frontages seeks to encourage and enhance the vitality and viability of the town centre and to maintain and provide display a mix of commercial uses, and maintaining a display or open ground floor frontage.

Policy TC2/1 - Upper Floors - Proposals will be supported which bring underused and vacant space on upper floors of premises into beneficial use, and a range of uses such as offices and living accommodation will be encouraged which will contribute to the overall vitality of town centres and help to retain and improve their liveliness and attractiveness. Utilisation of this type of accommodation will also result in proper maintenance and repair of the building fabric, which is particularly important in conservation areas and for individual listed buildings.

UDP Policies H2/1 - The Form of New Residential Development and H2/2 - The Layout of New Residential Development takes into consideration factors relating to the height and roof type of adjacent buildings, the impact of developments on residential amenity, the density and character of the surrounding area and the position and proximity of neighbouring properties. Regard is also given to parking provision and access, landscaping and protection of trees/hedgerows and external areas.

Principle - The proposal to redevelop and occupy the vacant upper floors of an existing business for a residential use would support the vitality and viability of the town centre and would also ensure secure the longevity of the building within the town centre and conservation area.

The building is within a highly sustainable location, with existing infrastructure in place to support the scale of the development and would also contribute to meeting local housing needs in the Borough.

The ground floor would remain in commercial use and therefore continue to contribute to the shopping role of the town centre.

Policy TC2/1 - Upper floors supports proposals to bring underused and vacant space into a beneficial use.

As such, the principle of the change of use would be in general accordance with national and local planning policy and would be in compliance with the NPPF and Bury UDP policies.

Heritage considerations

Section 72 sets out the duties imposed upon a Local Planning Authority in respect of Conservation Areas in exercising its planning functions.

The NPPF advocates positive strategies for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other risks. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.

Paragraph 194 states that in determining applications, LPA's should require an applicant to describe the significance of any heritage assets affected, including any contribution to their setting. The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on their significance.

Paragraph 199 of the National Planning Policy Framework (NPPF) states 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.

The premises are located in Bury Town Centre Conservation Area.

The proposal to redevelop the upper floor would contribute to the longevity and maintenance of a building in the Conservation Area and therefore considered to preserve the special character of the Bury Conservation Area.

The works to the frontage to create a new entrance are considered relatively minor and would not harm the appearance of the building to a significant degree.

It is therefore considered that the proposed development would preserve the character of the Conservation area and comply with the principles of the NPPF.

Impact on surrounding area - The premises are located in a main shopping area where there are a mix of uses and it is common place to find residential units above commercial properties in town centre locations. There are other residential units which are located above commercial premises in the town centre, and this would be no different in terms of the character of the development.

The Pollution Control section have raised no objections. Similar to other development of the same character, a soundproofing condition to Building Regulation standards would be reasonable to include as part of this development.

In terms of adjacent properties, it is considered the proposed use would not cause significant noise or activity comparative to other 1st floor uses of similar premises. There would not be any issues of overlooking from habitable room windows.

As such, it is considered the proposed development would be acceptable and would comply with H2/1, H2/4 and EN1/2.

Highway issues - As a town centre location, the site is located in a highly sustainable area where dedicated parking would not be expected. There is access to local services and facilities with a good public transport network.

As such the proposed development would accord with the principles of the NPPF.

Waste management - Bins would be located in the rear yard to serve both the existing cafe use and proposed residential use. Waste management have raised no objection to the provision or collection from the property.

Statement in accordance with Article 35(2) Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2015

The Local Planning Authority worked positively and proactively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Approve with Conditions

Conditions and Reasons:

- 1 The development must be begun not later than three years beginning with the date of this permission.
Reason. Required to be imposed by Section 91 Town & Country Planning Act 1990.
- 2 This decision relates to drawings Location plan 803-00; Existing floor plans 803-01; Existing elevations 803-02; Proposed floor plans 803-04 rev b; Proposed elevations 803-05 rev a and the development shall not be carried out except in accordance with the drawings hereby approved.
Reason. For the avoidance of doubt and to ensure a satisfactory standard of design pursuant to the policies of the Bury Unitary Development Plan listed.
- 3 The bin storage facilities indicated on the approved plans, incorporating inward opening doors, shall be made available prior to the use hereby approved commencing and maintained thereafter.
Reason. To ensure adequate provision for the storage and disposal of refuse within the curtilage of the site, clear of the adopted highway pursuant to Bury Unitary Development Plan Policies EN1/2 - Townscape and Built Design and H2/2 - The Layout of New Residential Development.
- 4 Prior to first occupation of the residential units hereby approved, soundproofing of the floor/ceiling between the ground floor and the first floor flats and to all party walls of the residential flats hereby approved shall be completed in accordance with standards of construction specified in current Building Regulations.
Reason. To protect the residential amenities of the future occupiers of the flats pursuant to UDP Policy EN7/2 Noise Pollution.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT 27/3/23		DM	27/03/23