

DELEGATED REPORT

Report by Helen Pressley	Date of report: 12/12/2023	Ref: 70191/FUL
Registration: 23/10/2023	LDfC: 23/11/2023	Expiry Date: 18/12/2023
Site Visit: 07/12/2023	Site Notice: N/A	Press Date: N/A
Objections: 0	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 ground floor from taxi booking office to hot food takeaway (Sui Generis) with installation of extraction flue and external staircase at rear.

Location: 42 Walmersley Road, Bury, BL9 6DP

Description

The application relates to a taxi booking office located within a row of commercial premises within a Local Shopping Centre that runs between 26 and 64 at the southern end of Walmersley Road.

There are parking restrictions in the form of double yellow lines along Walmersley Road and there have been railings erected along the edge of the footway in an effort to deter crossing and illegal parking. Badger Street, to the north, has restrictions at its western/Walmersley Road end but is not restricted at its eastern end where there is a row of terraced houses. Peter Street, running from Badger Street to the rear of the site has unrestricted parking. Redevelopment has been approved on land to the south of the site, on the corner of Moorgate and Walmersley Road (ref: 65524) for a new public car park, however this has not been implemented and the site appears to now be used for car sales.

Proposal is for a change of use of the ground floor of the premises to a hot food takeaway. The proposed opening hours are not indicated on the application form. The proposal also includes external alterations including the provision of a new shop front with aluminium glazed windows, and relocation of the entrance door. To the rear it is proposed to install an external extraction flue.

The application is a resubmission of application 69786. The re-submitted application is accompanied by a plan of the allocated shopping centre, planning design and access statement and a red edge plan that shows access from Badger Street.

Relevant Planning History

48641 - Change of use from hot food takeaway to private hire booking office - Refused 07/11/2007

49354 - Change of use of ground floor from takeaway (A5) to office (A2) and taxi booking office (Sui Generis) - Approve with Conditions 12/02/2008

53472 - Externally illuminated fascia sign (retrospective) - Refused 03/03/2011

66359 - Change of use of vacant ground floor (43m2) from taxi booking office to hot food takeaway - Refused 17/03/2021

69786 - Change of use of ground floor from taxi booking office to hot food takeaway (Sui Generis) with installation of extraction flue and external staircase at rear - Refused 18/09/2023

Publicity

Neighbour letters sent 1/11/2023. No representations received.

Statutory/Non-Statutory Consultations

Traffic Section - Recommends refusal on grounds that there is inadequate parking and servicing arrangements. Confirmed extensive illegal fly parking to the front of the site.

Environmental Health - Pollution Control - no response. Previously recommended conditions in relation to submission of a scheme for treating fumes and odours (application 69786)

Planning Policy Manager - no comments

Waste Management - no response

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

S1	Existing Shopping Centres
S1/4	Local Shopping Centres
S2/6	Food and Drink
EN1/2	Townscape and Built Design
EN1/7	Throughroutes and Gateways
EN1/8	Shop Fronts
EN7/2	Noise Pollution
HT6/2	Pedestrian/Vehicular Conflict
HT2/4	Car Parking and New Development
EC4/1	Small Businesses
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) and the adopted Bury Unitary Development Plan (UDP) together with other relevant material planning considerations, including relevant policies in the emerging Places for Everyone Joint Development Plan.

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.

Policies and Guidance

The National Planning Policy Framework indicates that significant weight be placed on the need to support economic growth and maintain the shopping hierarchy.

Unitary Development Plan Policy S1 - Existing shopping centres states the Council will seek to protect, maintain and enhance the role and function of the existing hierarchy of shopping centres within the Borough.

The proposed change of use involves an existing unit fronting Walmersley Road, which forms part of the Walmersley Road/Moorgate Local Centre as identified under Policy S1/4- - Local Shopping Centres of the adopted Bury Unitary Development Plan (UDP). Under this Policy, the Council will seek to maintain and enhance local shopping centres and will encourage the provision of a range of shopping facilities required to serve purely local needs.

Given the proposed use of the premises as a hot food takeaway, the proposal should also be considered against UDP Policy S2/6 - Food and Drink which states that, in considering all proposals which involve restaurants, hot food takeaways, cafes, snack bars, wine bars and public houses, the Council will have regard to the following factors:

- a) the amenity of nearby residents by reason of noise, smell, litter and opening hours;
- b) whether or not the proposal would result in an over concentration of Class A3 to A5 uses, which could adversely change the nature or character of a centre as a whole;
- c) parking and servicing provision associated with the proposed development and its effects in terms of road safety, traffic generation and movement;
- d) provision for the storage and disposal of refuse and customer litter;
- e) the environmental impact of any ventilation flues and/or ducting

Paragraph 92(c) of the National Planning Policy Framework states that planning policies and decisions should aim to achieve healthy, inclusive and safe places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs - for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts

that encourage walking and cycling.

In 2008, planning permission was granted to change the use of these premises from a from a takeaway to an office and taxi booking office. It was considered at this time that the change of use would not have a significant effect on the appearance of the street scene given that the existing hot food take-away was closed for much of the day. The loss of a hot food take-away and its replacement with an office and private hire booking office was also considered to improve the range of facilities within the existing centre. In addition to this since the previous change of use was granted, national planning policy has changed to highlight the need for planning to support healthy lifestyles, especially where this would address identified local health and wellbeing needs, including through improving access to healthier foods.

The current application is to change the use of the premises from a taxi booking office to a hot food takeaway. Taxi booking offices tend not to have callers or cabs. It is noted, that as with previous submissions for the same change of use the premises is vacant. No update has been given by the applicant to suggest the site has been marketed for its current use and no alternative applications have been submitted for any use other than a takeaway use. It is noted that other units within the local shopping centre are also vacant, However the statement within the Planning, Design and Access statement indicates a low level of demand by potential occupiers, is an assumption with no evidence presented in relation to the marketing of these premises to support that assertion.

The principle of this change of use still needs to be considered against UDP Policies S1/4 and S2/6 within the context of the premises having now been established within its current use and also against the change in emphasis of national planning policy. NPPF paragraph 2 confirms that planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. It is acknowledged that the applicant considers within their Planning, Design and Access Statement that they doubt the LPA would designate the area as a Local Shopping Centre in 2023. However, the policies referenced are saved policies and have been assessed to be compliant with the NPPF. These policies are therefore relevant, material planning considerations that need to be given appropriate weight.

With this in mind the fundamental aim of UDP Policy S1/4 is to maintain and enhance the Borough's local shopping centres, principally through the encouragement of a range of shopping facilities to support their vitality and viability. It is considered the proposal would lead to a further depletion of retail uses and diversity within the centre and would involve a new use that is unlikely to generate significant footfall, particularly during the day. It is acknowledged that there is a vacant unit but as set out above no attempt has been made to find an alternative use for the unit that would diversify the designated shopping centre. Both factors would be to the detriment of maintaining and enhancing its role as a Local Shopping centre, contrary to the aim of UDP Policy S1/4.

The majority of the criteria set out under UDP policy S2/6 are matters of detail but, in terms of principle, criterion (b) considers whether the proposal would result in an over-concentration of food and drink uses, which could adversely change the nature or character of a centre as a whole. It is considered that the approval of the proposal would lead to an unacceptable skew of the shopping centre in that food and drink uses would be the predominant use within the centre occupying more units than retail. Furthermore, the particular frontage that the application premises sits within (i.e. 28-46 Walmersley Road) already includes 4 of the 9 units occupied by food and drink uses some of which are double fronted units and are therefore sizeable. As such the approval of proposal would mean that approximately 56% of this frontage would be occupied by food and drink uses. When looking at the wider Local Shopping Centre, as set out within the applicant's submitted Local Shopping Centre drawing, a further 3 food and drink units can be identified. The harm that this causes to the Local Shopping Centre through lack of diversity, lack of local shops within walking distance of adjacent residential properties and lack of day time footfall

would inherently alter the character of this row beyond what is considered to be acceptable.

The concentration of hot food takeaways in the Local Shopping Centre is exacerbated when looking at this row and on balance, it is considered that the application would lead to an over-concentration of food and drink uses and reduction of potential retail uses to the detriment of the function and character of the Walmersley Road/Moorgate Local Centre contrary to UDP Policies S1/4 and S2/6.

A further point to consider is the 'healthy lifestyle' issues raised in the National Planning Policy Framework. Whilst this could potentially be a reason to refuse a hot food takeaway the current UDP has no policy to support this refusal and if a change of use to a takeaway were granted, the type of food to be served could not be reasonably conditioned. Therefore, it is considered that refusing the proposal on the basis of 'unhealthy food' is not sustainable in this case.

It is noted that the applicant has highlighted that planning permissions for food and drink uses have been granted within the Local Shopping Centre over the years and that they contend that refusal for over concentration of use has only now been introduced. The applicant refers directly most recent application, 65225 at No. 30 - 32 that was allowed on appeal following refusal on highways grounds. The history of this site however needs to be understood.

An application for the change of use to a hot food takeaway at this site was refused under reference 64266 was for three reasons:

1. the over concentration of food and drink uses.
2. inadequate car parking and servicing arrangements.
3. lack of information with regard to refuse collection.

As such, the reason for refusal for over concentration of use has *not* only now been introduced.

Under reference 64707, a restaurant use was approved at No. 30 - 32 as it was considered that customers for a restaurant use would sit in and eat, and would be less likely to park illegally on Walmersley Road. It was considered that a restaurant use (which is different in terms of passing footfall and opening hours when compared to a takeaway) within this Local Shopping Centre would have a positive impact and bring a vacant property back into commercial use. Following this the change of use to a takeaway was therefore granted as the loss of the retail use had already been accepted with the introduction of a restaurant use.

Notwithstanding the above, each case is assessed on it's own merits and whilst other takeaway uses have been accepted within the Local Shopping Centre, an assessment has been made in relation to this site that the introduction of a further takeaway unit would have a detrimental impact on the character of the locality contrary to policy. As such the proposal can not be supported.

Visual Amenity

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. This is further reinforced by UDP Policy EN1/7 - Throughroutes and Gateways that is concerned with improving the quality of development along throughroutes and at gateways, requiring a high standard of design and landscaping. Policy EN1/8 further seeks to ensure that proposes for new and altered shop front properly respect the architectural elements of the building and the character of the surrounding street scene.

The proposed flue would project beyond the rear wall of the property, sited above the existing single storey rear extension, but would be largely screened from public view points due to the existing commercial paraphernalia to the rear of the row. It is considered that the

views of the proposed flue would be limited and as such would not detrimentally impact on the character of the street scene.

Whilst the new shopfront would not be out of keeping with the other properties within the centre, the use of the premises as a hot food takeaway, as opposed to a retail shop, would have a cumulative and detrimental impact on the character of the shopping centre in the sense of generating footfall. The proposal would therefore be contrary to UDP Policies EN1/2 and EN1/7.

Residential Amenity

The nearest residential properties appear to be a flat above 40 Walmersley Road (adjacent) and the flat above No. 37 Walmersley Road (opposite), with the nearest houses on Badger Street, to the north.

In this location it is considered that there is already background activity in and around the area. There are other uses in the locality which are open late in the evening and as such the addition of one other premises with evening opening hours is considered not to have a significant impact on amenity in the area. The application is therefore considered to comply with Policy S2/6 - Food and Drink in this respect.

Traffic, Parking and Servicing

The Traffic Team have serious concerns about the proposal in relation to car parking, fly parking and servicing arrangements for the premises. Given the nature of this part of Walmersley Road, with parking restrictions and railings together with the lack of dedicated parking to the front of the unit, there is a distinct possibility that customers would park and carry out manoeuvres on, or in close proximity to the A56 Walmersley Road and the nearby signalised junction (Moorgate/Walmersley Road) to the detriment of the free flow of traffic and road safety. Indeed, this frequently occurs now in relation to the existing units within the row as confirmed by the Local Highways Authority.

It is noted that an appeal at the nearby 30 - 32 Walmersley Road was allowed (APP/T4210/W/20/3261134) as the appellant had recently gained planning permission for a public pay and display car park and proposed that users of the take away would utilise this space rather than illegally parking on Walmersley Road. It should however be noted that this planning permission for a public pay and display car park (65524) has now lapsed and has not been implemented. The landowner now appears to be utilising this area for car sales, without approval, which has been reported to planning enforcement. The Appeal Inspector concluded that due to existing parking restrictions in place along Walmersley Road, "it would be unlikely that customers would park along this stretch of road or towards the nearby signalised junction." It is clear from consultation with the Local Highways Authority, who confirmed they have received a number of complaints relating to this stretch of highway, that contrary to the Appeal Inspectors assertions observations and complaints are such that this is not the case and that this is an issue that is of concern.

The existing gaps in the railings should only be utilised for limited periods for servicing of the properties along Walmersley Road. Whilst users of the takeaway may use home delivery services, the complaints and observations by the Local Highway Authority suggest that the delivery drivers do not park on Badger Street, as the applicant suggests, or utilise the local car parks on Fox Street and off Back Moorgate West. Instead the Local Highways Authority continue to receive enforcement requests for this location in relation to the existing units. The addition of a further hot foot takeaway use would therefore only compound the existing fly parking problem.

It is noted that the Planning, Design and Access Statement contends that any use of the property is likely to attract visitors arriving by car. The fundamental point of UDP Policy S1/4 however is consolidation and enhancement of existing retail provision, primarily to serve the day to day needs of *local* residents who live nearby, and therefore would walk to the site not attend by car. The existing car parks identified above are sufficient to meet the

limited needs of anyone who does need to utilise a car to visit the allocated Local Shopping Centre.

Contrary to the Planning, Design and Access Statement the previous use was office, and *taxi booking office* and therefore the drivers of taxis/private hire vehicles would *not* have visited regularly to pick up fares, drop off money, take breaks and use the toilet etc. Conditions on the original consent (49354) limited the use of the front ground floor room to A2 and the decision notice summarised the assessment of this use by stating "The booking office is small in scale and would not involve visiting members of the public or the parking/waiting of private hire vehicles in the immediate vicinity of the site. The A2 office in place of the hot food take-away would not have an adverse impact on the viability of the local shopping centre."

Additional information has been submitted in relation to bin storage and access to the rear of the site from Badger Street. The applicant proposed to utilise a brick built store in the rear yard for bin storage, and details have been given in relation to how waste would be stored. Access can be gained to the rear of the site via an alley from Badger Street that appears to be utilised by other units. Whilst the Traffic Section maintain their recommendation for refusal in relation to insufficient information to ensure that adequate accessible refuse collection facilities within the curtilage of the site it is considered that a more detailed bin storage plan could be conditioned to address this concern, if the proposal were acceptable in principle. Issues remain around servicing but this is always going to be an issue.

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, if approved, would lead to an over-concentration of food and drink uses and reduction in retail and other alternative uses to the detriment of the function and character of the Walmersley Road/Moorgate Local Centre contrary to UDP Policies S2/6 Food and Drink, S1/4 - Local Shopping Centres, EN1/2 Townscape and Built Design and EN1/7 Throughroutes and Gateways.
- 2 The proposed car parking and servicing arrangements for the premises are inadequate and would lead to customer vehicles parking and carrying out manoeuvres on the adjacent classified road (A56 Walmersley Road), to the detriment of the free flow of traffic and road safety. The proposal is therefore unacceptable and contrary to the NPPF and UDP Policies S2/6 Food and Drink, HT2/4 Car Parking and New Development and HT6/2 Vehicular/Pedestrian Conflict.

<u>Case Officer</u> HP 12/12/2023	<u>Date</u>	<u>Sign off Officer</u> DM 12/12/23	<u>Date</u>
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