

DELEGATED REPORT

Report by Helen Pressley	Date of report: 04/08/2023	Ref: 69674/FUL
Registration: 03/07/2023	LDfC: 25/07/2023	Expiry Date: 28/08/2023
Site Visit: 12/07/2023	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 former shop/ living accommodation (Use Class E) to 2 no. flats including building up of shop front and formation of new window openings.

Location: 29 Bolton Road, Bury, BL8 2AB

Description

The application relates to a two storey terraced commercial property, currently vacant, in the middle of a terraced row within a Local Shopping Centre. The property has a retail space on the ground floor with a residential unit at the first floor that is currently accessed via rear yard and through the kitchen area of the ground floor retail unit.

The attached property (No.27) to the west is a takeaway whilst to the east (No.31) is a shop. To the rear there are older commercial premises.

The proposal involves changing the use of the premises into two flats, one on the ground floor and another at first floor. The first floor flat would retain access from the rear, but this would now be a private access. Access to the ground floor flat is proposed from the front of the site. The existing shop front would be replaced with a new smaller window to match the window at first floor with infill to match the existing elevation.

Relevant Planning History

60688 - Change of use from A1 (retail) to A5 (hot food takeaway) with addition of flue to rear elevation - Approve with Conditions 25/01/2023

Publicity

Neighbour letters sent 03/07/2023 and 04/07/2023. No representations received.

Statutory/Non-Statutory Consultations

Traffic Section - conditions requested in relation to outward opening windows, foundation details and bin storage.

Environmental Health - Pollution Control - conditions requested in relation to soundproofing and insulation

Planning Policy Manager - no response

Waste Management - no response

Environmental Health - Contaminated Land - assessed the application and has no comments to make regarding contaminated land or air quality.

Pre-start Conditions - Agreed by applicant

Unitary Development Plan and Policies

S1/4	Local Shopping Centres
H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
H1/2	Further Housing Development
H2/4	Conversions
HT2/4	Car Parking and New Development
HT6/2	Pedestrian/Vehicular Conflict
EN1/2	Townscape and Built Design
EN5/1	New Development and Flood Risk
EN7/2	Noise Pollution
EN7/3	Water Pollution
EN7/5	Waste Water Management
SPD6	Supplementary Planning Document 6: Alterations & Extensions
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) 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 dwelling, 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 urban boundary and there are residential properties *at first floor within the row. 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. Therefore, the proposed development would be acceptable in principle and would be in accordance with Policy H1/2 of the Bury Unitary Development Plan.

Principle (Change of Use)

National Planning Policy states that there is a need for a variety of tenures within the

housing sector a indicates that small and medium sized sites can make an important contribution to meeting the housing requirement of an area.

Unitary Development Plan Policy H2/4 - Conversions. Applications for the conversion of buildings into two or more self contained units, or the conversion of a building into a house of multiple occupation, will be considered with regard to the following factors:

- a) the effect on the amenity of neighbouring property through noise, visual intrusion, the position of entrances, impact of parking areas, extensions and fire escapes;
- b) the general character of the area and the existing concentration of flats;
- c) the amenity of occupants;
- d) the effect on the street scene of any changes to the external appearance of the building;
- e) car parking and servicing requirements.

UDP Policy S1/4 Local Shopping Centres. 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.

Whilst Policy S1/4 emphasises the maintenance of the local shops within the centre, given that the premises was previously a bookmakers and has been vacant for well over a year, the concern about losing an A1 shop use is mitigated. It is important to note that the Local Centre, like many throughout the country, has suffered from the structural changes taking place in the retail sector, with a significant proportion of units not in retail use.

In this instance, it is considered that the fall back position of what could be built under permitted development rights is also a material planning consideration. Change of use of any building within Class E into residential use is permissible under Class MA - Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

- a) transport impacts of the development, particularly to ensure safe site access;
- (b) contamination risks in relation to the building;
- (c) flooding risks in relation to the building;
- (d) impacts of noise from commercial premises on the intended occupiers of the development;
- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;
- (h) where the development involves the loss of services provided by—
 - (i) a registered nursery, or
 - (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006,the impact on the local provision of the type of services lost.
- (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

Given the nature and scale of the development, and the permitted development fall back, it is considered that the change of use to residential would not have a significant impact on the viability and vitality of the shopping centre and would not be contrary to the NPPF or UDP Policy S1/4 Local Shopping Centres.

Layout and Design

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.

The replacement of the existing shopfront and doorway with a single doorway, single window and brick infill would simplify the frontage. The site does not currently have high amenity value and given that the premises has been vacant for over a year, the proposal to bring the premises back into use would not have a detrimental impact on the appearance of the shopping centre. It is considered reasonable to attach a condition requiring the ground floor materials to match the existing front elevation. With conditions, the proposal is acceptable and complies with UDP Policy EN1/2 Townscape and Built Design.

Residential amenity

In addition to UDP Policy H2/4 set out above 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. UDP Policy H2/1 also requires the consideration 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.

The first floor would retain the existing use, with internal re-arrangements however the habitable room windows would retain habitable room uses. The proposed bedroom would be above the proposed bedroom of the ground floor flat, with the proposed living/kitchen area being above the proposed kitchen area of the ground floor flat limiting disturbance to the ground floor unit.

The proposed front ground floor windows would be separated from the directly facing property by a main road and as such no overlooking is foreseen. The proposed rear ground floor window, and proposed rear side window would relate to non-habitable rooms (shower and kitchen) and as such aspect standards have not been applied.

The internal area of the ground floor flat would be 48 square metres. The internal area of the first floor flat would be approximately 52 square metres complying with national space standards for 1 bedroom 1 person dwellings (39 square metres).

EN7/2 - Noise Pollution does not permit development which could lead to an unacceptable noise nuisance to nearby occupiers and/or amenity users. Due to the site's close proximity to a takeaway, and main road environmental health have been consulted and requested additional conditions in relation to soundproofing to ensure the amenity of future occupiers is maintained.

Giving consideration to the above, and the proposed conditions it is considered that the proposal is acceptable and complies with UDP Policies H2/4, H2/1, EN7/2 and SPD 6 with respect to amenity.

Parking and Bin Storage

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. 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 proposal does not include any off-street parking however in this relatively sustainable

location, close to the town centre, none is required. Given the nature of the proposal, it is not likely that there would be any more traffic generated than the existing commercial use, with existing residential above. The proposal is acceptable in terms of traffic and parking and complies with UDP Policy H2/4 Conversions.

Bin storage is at the rear and collection would be through the rear gate onto Albion Court as existing and this is considered to be acceptable.

Highways have asked for conditions to ensure that any required foundations do not encroach under the footway, and that the ground floor window would not open out into the adjacent footway below a height of 2.4 metres. These would be provisions under the Highways Act 1980 and as such informative's have been added.

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

The proposal complies with the development plan and would improve the economic, social and environmental conditions of the area. It therefore comprises sustainable development and the Local Planning Authority worked proactively and positively to issue the decision without delay. 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 the drawings location plan received 23rd May 2023, Proposed site and ground floor plan received 14th June 2023 , Existing and proposed floor plans and elevations received 3rd July 2023 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 external finishing materials for the proposal hereby approved shall match those of the existing building.
Reason. In the interests of visual amenity and to ensure a satisfactory development pursuant to Policy EN1/2 - Townscape and Built Design of Bury Unitary Development Plan.
- 4 No development shall take place unless and until a scheme to soundproof the windows against traffic noise has been submitted to and approved in writing by the Local Planning Authority so as to achieve an internal level of L10 40dBA (18 hour)* and such works that form the approved scheme shall be completed before the relevant flats are brought into use.
Reason. To protect the amenity of the occupants of the premises once the development hereby approved is occupied pursuant to Bury Unitary Development Plan Policies EN7/2 - Noise Pollution and Policy H2/4 - Conversions.

* The Noise Insulation Regulations 1975 as amended by the 1988 Regulations

- 5 No development shall take place unless and until a scheme to soundproof the rooms

between the party walls of the takeaway business at 27 Bolton Road has been submitted to and approved by the Local Planning Authority. The levels of acoustic insulation to be provided shall be, as a minimum, those deemed to be acceptable and specified as standards of construction in current Building Regulations. Such works that form the approved scheme shall be completed before the development is brought into use.

Reason. To protect the amenity of the occupants of the premises once the development hereby approved is occupied pursuant to Bury Unitary Development Plan Policies EN7/2 - Noise Pollution and Policy H2/4 - Conversions.

- 6 The bin storage facilities indicated on the approved plans shall be implemented 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 Policy Policy H2/4 - Conversions.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HP 04/08/2023			