

REPORT FOR NOTING

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| DECISION OF: | PLANNING CONTROL COMMITTEE |
| DATE: | 23 March 2021 |
| SUBJECT: | PLANNING APPEALS |
| REPORT FROM: | HEAD OF DEVELOPMENT MANAGEMENT |
| CONTACT OFFICER: | DAVID MARNO |
| TYPE OF DECISION: | COUNCIL |
| FREEDOM OF INFORMATION/STATUS: | This paper is within the public domain |
| SUMMARY: | <p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined |
| OPTIONS & RECOMMENDED OPTION | The Committee is recommended to the note the report and appendices |
| IMPLICATIONS: | |
| Corporate Aims/Policy Framework: | Do the proposals accord with the Policy Framework? Yes |
| Statement by the S151 Officer: Financial Implications and Risk Considerations: | Executive Director of Resources to advise regarding risk management |
| Statement by Executive Director of Resources: | N/A |
| Equality/Diversity implications: | No |
| Considered by Monitoring Officer: | N/A |

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| Wards Affected: | All listed |
| Scrutiny Interest: | N/A |

TRACKING/PROCESS

DIRECTOR:

| Chief Executive/ Strategic Leadership Team | Executive Member/Chair | Ward Members | Partners |
|--------------------------------------------------|---------------------------|--------------|----------|
| | | | |
| Scrutiny Committee | Committee | Council | |
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1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

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Appeal Decision

Site visit made on 19 January 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2021

Appeal Ref: APP/T4210/W/20/3261134

Euro House, 30-32 Walmersley Road, Bury BL9 6DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by PREL Ltd against the decision of Bury Metropolitan Borough Council.
 - The application Ref: 65225, dated 14 February 2020, was refused by notice dated 14 April 2020.
 - The development proposed is the change of use from shop (Class A1) to hot food takeaway (Class A5) with flue and 4 no. air conditioning units at rear; new shop front.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a shop (Class A1) to a hot food takeaway (Class A5) with a flue and 4 no. air conditioning units at the rear; and a new shop front at Euro House, 30-32 Walmersley Road, Bury BL9 6DP in accordance with the terms of the application, Ref: 65225, dated 14 February 2020, subject to the conditions in the attached schedule.

Procedural Matter

2. The description of development set out in the banner heading above is taken from the Council's decision notice, in the absence of a description on the planning application form. It refers to the Use Class of the shop and the proposed hot food takeaway as it was prior to changes that took place on 1 September 2020¹. Under the Regulations, an application that was made prior to this date is also to be determined with reference to the uses or use classes that were in place prior to that date. Accordingly, I have considered the appeal on this basis and this is reflected in my decision paragraph.

Main Issue

3. The main issue is the effect of the proposal on highway safety and the free flow of traffic, in particular the car parking and the servicing arrangements.

Reasons

4. The appeal property comprises a mid-terrace retail unit, with a small rear service area. It is located on the A56 Walmersley Road, which is a busy thoroughfare. Close to the site lies an area of hardstanding where the

¹ Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

appellant has gained planning permission² for a public pay and display car park.

5. Double yellow line parking restrictions are found along this part of Walmersley Road and the associated footway is largely separated from the road by a safety barrier. A signalised junction with Moorgate, Derby Way and Peel Way lies a short distance from the site, beyond which is Bury town centre.
6. The appellant proposes that the customers of the hot food takeaway that are relying on the use of a car as their mode of transport would utilise the spaces in the approved car park. After their arrival at the car park, customers would use a new pedestrian access onto Walmersley Road that would allow ready access to the proposal. This would involve the removal of a fence that lies across part of where the proposed car park would be located.
7. On this basis, and having regard to the parking restrictions that are in place along Walmersley Road, it would be unlikely that customers would park along this stretch of this road or towards the nearby signalised junction. Access to the approved car park would be taken from Peter Street, a minor road that runs parallel to Walmersley Road and can be easily accessed from Moorgate. As a result, it would be unlikely that customers would carry out associated manoeuvres that would endanger highway safety for parking reasons or otherwise. Moreover, the use of the double yellow lined area for parking would be a matter for traffic enforcement.
8. Based on the site layout plan for the approved car park and the number of vehicle parking spaces indicated on the planning application form, sufficient parking provision would be made with regard to the Council's Development Control Policy Guidance Note 11 Parking Standards in Bury (2007) (SPD). The SPD also states that car parking for takeaways will be assessed on an individual basis, recognising that they rely on short stay parking in close proximity. The proposed use of the spaces in the approved car park would be consistent with this consideration.
9. The appellant has stated that the construction of the approved car park will be underway shortly. There is clearly some likelihood of the approved car park being available for usage within a timescale that would be consistent with the proposal. This would be required because the approved car park would be necessary for the appeal to succeed. In addition, the implementation of an agreed parking management plan would be required so that customers are aware of the car park and not inhibited in their use of it. These are matters which can be addressed through the imposition of planning conditions.
10. The proposal also includes an off-road servicing area that would be contained within the car park and close to the rear of the appeal property. This would also be accessed from Peter Street. Hence, it would not result in manoeuvres that would impede highway safety with its location on the car park.
11. With regard to the planning permission³ on the appeal site for a restaurant, this has a limited bearing on my decision because I have considered the highway safety aspects that arise from the proposed takeaway use that is the subject of my decision.

² Council ref: 64112

³ Council ref: 64707

12. I conclude that the proposal would not have an unacceptable effect on highway safety and the free flow of traffic, in particular the car parking and the servicing arrangements. As such, it would comply with Saved Policies EC4/1, HT2/4, HT6/2 and S2/6 of the Council's Bury Unitary Development Plan (1997) where they are concerned with, amongst other considerations, proposals for small businesses that are environmentally compatible with the surrounding area; provision for car parking and servicing requirements in accordance with the Council's car parking standards; reducing pedestrian/vehicular conflict; and, parking and servicing provision associated with the proposed food and drink development and its effects in terms of road safety, traffic generation and movement.
13. The proposal would also comply with the SPD as the level of car parking associated with a development proposal or particular use is appropriate. It would also accord with the National Planning Policy Framework on highway safety grounds, in particular where it states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Conditions

14. In addition to the timescale for implementation, I have imposed a condition concerning the approved plans for the purposes of certainty. I have also imposed a condition concerning refuse management in the interests of protecting the living conditions of the nearest residents and public health. Conditions are also imposed concerning the opening hours and the implementation of the submitted odour management measures, also in the interests of protecting the living conditions of the nearest residents.
15. Conditions are imposed which ensure the provision of the approved car park prior to the use of the proposal, together with a related parking management plan. These conditions are imposed in the interests of highway safety and the free flow of traffic.
16. Where I have altered the wording of the remainder of the conditions put forward by the Council, I have done so in the interests of precision and without changing their overall meaning. I have also avoided a pre-commencement condition because such details can be submitted to and agreed prior to the development being carried out and in accordance with those details.

Conclusion

17. For the reasons set out above and having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

Darren Hendley

INSPECTOR

Schedule Of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P213-100/A, 19-116 Rev C.
- 3) The development hereby permitted shall be carried out in accordance with a refuse management plan that shall have been previously submitted to and agreed in writing by the Local Planning Authority. The refuse management plan shall include details of the refuse storage and collection arrangements. The approved details shall thereafter be maintained.
- 4) The development hereby permitted shall not be open to customers outside of the following times: 0800hrs to 2300hrs Mondays to Sundays.
- 5) The development hereby permitted shall not be brought into use until the scheme for treating fumes and odours has been implemented in accordance with the approved measures shown in the Risk Assessment for Odour document (site reference: SAM Express Ltd 30-32 Walmersley Road Bury BL9 5AG). The approved measures shall thereafter be maintained.
- 6) The development hereby permitted shall not be brought into use until the car park as approved by the Council under application no: 64112 has been completed in accordance with the details shown on Dwg No. P213-005.
- 7) The development hereby permitted shall be carried out in accordance with a car parking management plan that shall have been previously submitted to and agreed in writing by the Local Planning Authority. The car parking management plan shall include details of:
 - i) the measures that are to be in place to ensure the car park as approved by the Council under application no: 64112 is available for use by the customers of the development hereby permitted and remains so; and
 - ii) how customers are to be made aware that the car park is available for their usage.

The approved details shall thereafter be maintained.



Appeal Decision

Site visit made on 19 January 2021

by Helen B Hockenhull BA (Hons) B. PI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 February 2021

Appeal Ref: APP/T4210/Y/20/3257076

35 Mount Pleasant, Nangreaves, Bury BL9 6SR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Brenda Howcroft against the decision of Bury Metropolitan Borough Council.
 - The application Ref 65474, dated 4 May 2020, was refused by notice dated 9 July 2020.
 - The works proposed are 5 no. replacement timber window frames.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the proposal concerns a listed building located within a conservation area and in the setting of another listed building, I have had special regard to sections 16(2), 66(1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Act.
3. The description of development included on the original planning application form did not form a clear succinct description of the proposed works, which at that time involved the replacement of 7 windows in the appeal property. The scheme was amended during its consideration by the Council to the replacement of 5 windows. The description I have used above is taken from the Council's decision notice.

Main Issues

4. The main issues are the effect of the proposed works on the special architectural and historic interest of a Grade II listed building, 35-40 Mount Pleasant (Ref: 1356809) and any of the features of special architectural or historic interest that it possesses, the effect on the setting of the nearby Grade II listed terrace, Nos 41-50 Mount Pleasant (Ref: 1067245) and whether the works would preserve or enhance the character or appearance of the Nangreaves Conservation Area (CA).

Reasons

5. Mount Pleasant forms an isolated hillside village designated as a conservation area in 1974. It is a rare example of a purpose-built factory village. It includes several blocks of terraced mill workers properties dating from the early to late nineteenth century. The upper part of the village is focussed around a central

village green. The original mill has been demolished and the site redeveloped with complementary designed terraced properties and apartments.

6. Although the village was built in phases, properties were constructed following a standard pattern. The buildings have regular shapes, groupings and proportions and are constructed in local stone and slate. The building groups are set at different levels with an open and visible layout which assists to create views throughout the village and beyond to the surrounding countryside. The flagstone sett roadway running to and throughout the village adds to its character and distinctiveness. Given the above, I find the significance of the CA, as far as it relates to this appeal, primarily concerns its industrial origins, its historic form and layout together with its uniformity in terms of design and materials.
7. No. 35 Mount Pleasant forms part of a listed terrace comprising a row of five 2 storey former mill workers cottages. The building most likely dates from the latter part of the nineteenth century and is constructed in local millstone grit and sandstone with a natural slate roof. It is simple and functional in form and detail with regularity in terms of the proportions of window and door openings. Given the above, I find the special interest of the listed building, insofar as it relates to this appeal, to be primarily related to its simplicity and historic fabric and form.
8. The listed terraced row comprising Nos 41-50 Mount Pleasant, located to the west of the appeal property, steps down following the topography of the area. It is similarly constructed in local stone and slate with a simple functional appearance and regular proportions. It has an open aspect, framed by landscaped front garden areas with grassed open space beyond. Its setting insofar as it relates to this appeal is defined by its relationship to the appeal building and the rest of the village, which contributes to its understanding and significance.
9. The existing windows in the property comprise timber stained double glazed units with a top hung opening light. There is no dispute that their replacement with windows of similar materials, would cause no harm to the special interest of the listed building or the significance of the CA. I concur with this view. The area of contention relates to the design of the windows.
10. It is proposed to install mock vertical sliding sash windows with central vertical glazing bars, fixed lower sash and a top hung mock sash upper window with horn detailing. The existing set back in the reveal would be maintained and the window would have standard vertical sliding sash dimensions and proportions. When closed it would give the appearance of a vertical sliding sash window, typical of that which would historically have been installed, though it would have no sliding element. When open, the mock horns would form a prominent incongruous and inauthentic feature, at odds with the simple form and uniformity of the listed terrace. This style of window would also be out of keeping with the homogeneity of built form in the village, a feature which contributes to the character and appearance of the CA.
11. The Mount Pleasant Conservation Area Character Appraisal and Management Plan (CACAMP) gives advice on the type of windows that would be acceptable in the CA. The guidance recommends full vertical double sliding sash frames

- either weighted or spring loaded with or without glazing bars or dummy/mock vertical sliding sash frames with the option of fixed upper or lower sashes. It goes on to state that to give some variety within this range, a sole option for each design will not be enforced.
12. The appellant has argued that the scope for different designs set out in the guidance would lend support to the appeal scheme. However, such an interpretation cannot be made in this case, as it is clear that vertical sliding sash is being recommended, not a top hung opening window as proposed in this appeal.
 13. My attention is drawn to a photograph in the CACAMP of Nos 13-28 Mount Pleasant taken in 1912. This illustrates typical windows of that time and shows vertical sliding sash windows at first floor with glazing bars but windows of a different type at ground floor. They have no glazing bars and whilst it is difficult to assess due to the angle of the photograph, appear to have a much lighter frame. Whilst this demonstrates a variety of fenestration, it does little to support the design of windows being proposed in this appeal.
 14. I note the appellant's survey itemising the type of windows installed in other properties in the village, a significant number of which were found not to be vertical sliding sash windows. I recognise that there are other window designs in the CA, including casement windows and mock sliding sash that I observed on my site visit.
 15. The appellant has also brought my attention to a range of window designs that have been approved following listed building consent applications in the village. I am advised by the Council that the approval of uPVC windows in No. 30 Mount Pleasant took place in 1988 before the CACAMP was adopted. In the case of No. 50 Mount Pleasant, top hung opening lights were approved in a rear extension as it would not be visually prominent or installed in part of the original fabric of the building. Whilst I acknowledge that other window designs can be found in the CA and in other listed buildings, I must consider the appeal on its individual merits based on the evidence before me.
 16. Turning to the effect on the setting of the nearby listed terrace Nos 41-50 Mount Pleasant, the consistent and uniform fenestration of Nos 35-40, contributes to the way that this building is experienced. I have already found that the appeal scheme undermines this uniformity. The proposal would therefore impact negatively on the setting of the nearby listed terrace and cause harm to its significance.
 17. In summary, I conclude that given the above, the proposed works would fail to preserve the listed building, would be detrimental to the setting of the nearby listed terrace and fail to preserve or enhance the character and appearance of the CA. I give these harms considerable importance and weight.
 18. Paragraph 193 of the National Planning Policy Framework (the Framework) advises that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to their conservation. Having regard to the nature of the works and the impact on the CA as a whole, I find the harm to be less than substantial. Accordingly, in line

with paragraph 196 of the Framework, the harm should be weighed against the public benefits of the proposal, which include securing the optimal viable use.

19. The appellant has not outlined in any detail what the public benefits in this case may be. I accept that replacing windows in poor condition would have some public benefit in maintaining and conserving a listed building for the future.
20. The appellant argues that mock vertical sash windows would be more sustainable to maintain. With an appropriate maintenance regime in place, there is no reason why timber sliding sash windows should have a shorter lifespan. In any event, ease of maintenance constitutes a private benefit to the houseowner and not a benefit to the wider public.
21. I conclude that the minimal public benefits outlined above would not outweigh the harm I have found. The works proposed would fail to preserve the special architectural and historic interest of the Grade II listed building, cause harm to the setting of the nearby Grade II listed terrace and fail to preserve or enhance the character or appearance of the Mount Pleasant Conservation area. The works would therefore fail to satisfy the requirements of the Act, paragraph 192 of the Framework and conflict with Saved Policies EN2/1, EN2/2 and EN2/3 of the Bury Unitary Development Plan 1997 which seek to conserve and enhance the heritage significance and setting of an asset.

Overall Balance

22. I have had due regard to the Public Sector Equality Duty (PSED) contained in s149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Based on the evidence before me, it is unclear whether the appellant is a person of advanced years and /or has a physical disability. In any event I shall proceed on the basis that this person shares a protected characteristic for the purposes of the PSED.
23. The appellant highlights the fact that she struggles to open vertical sliding sash windows and that top hung windows are easier to open for an aging population or those with a physical impairment. Bearing in mind the lack of objection to the proposal and the other consents for non-sliding sash windows in the village, she maintains that she has felt discriminated against by the Council. However, if I were to dismiss this appeal, any adverse impact would be limited because properly weighted and maintained vertical sash windows require little physical effort to open and close. Moreover, a poorly maintained top hung casement can be as difficult to operate as a poorly constructed and maintained sash window.
24. Given the above, it would be open to the appellant to submit an application to replace the existing windows with ones of sufficient quality that are more in keeping with this historically important building. I have no evidence before me to suggest a specific physical impairment that would prohibit the operation of properly balanced sash windows in favour of a top hung casements nor any indication of why any adaptation that may be necessary for the operation of a sash window would not be appropriate. Consequently, the harm that would be

caused by the proposal would not be outweighed by any significant, adverse impacts on the protected characteristic of the appellant.

Conclusion

25. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Helen Hockenhull

INSPECTOR