

REPORT FOR DECISION

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	2nd June 2015
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"> - None to report
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

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	

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:- Copy Appeal Decisions attached

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**Planning Appeals Lodged
between 13/04/2015 and 21/05/2015**



Application No.: 58340/FUL

Appeal lodged: 20/04/2015

Decision level: DEL

Appeal Type: Written Representations

Recommended Decision: Refuse

Applicant: Mr Iain Smith

Location 4 Brookhouse Close, Tottington, Bury, BL8 4QN

Proposal Single storey extension with balcony above at the front

Total Number of Appeals Lodged: 1

**Planning Appeals Decided
between 13/04/2015 and 21/05/2015**



Application No.: 58142/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mr David Shafai

Location: Fountain Street North, Bury, BL9 7AN

Proposal: Change of use from industrial building (Class B1) to children's daytime play centre (Class D1) (resubmission)

Appeal Decision: Allowed

Date: 28/04/2015

Appeal type: Written Representations



Appeal Decision

Site visit made on 1 April 2015

by **P Eggleton BSc(Hons) MRTPI**

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

Decision date: **28/04/2015**

Appeal Ref: APP/T4210/W/14/3001833 Fountain Street North, Bury BL9 7AN

- 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 Mr D Shafai against the decision of Bury Metropolitan Borough Council.
 - The application Ref 58142 was refused by notice dated 15 December 2014.
 - The development proposed is the change of use from industrial (Class B1) to children's daytime play centre (Class D1).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from industrial (Class B1) to children's daytime play centre (Class D1) at Fountain Street North, Bury in accordance with the terms of the application, Ref 58142, dated 5 November 2014, subject to the following condition:
 - 1) The development hereby permitted relates to the approved plans: MS4-00 and MS4-02.

Main Issues

2. The main issues are the effect on the supply of employment premises; and the effect on highway safety with regard to parking and pedestrian access.

Reasons

3. The proposal is for the change of use of this modern commercial (Class B1) building to a children's daytime play centre. The use has already commenced.

Loss of employment land and premises

4. Policy EC2/2 of the Bury Unitary Development Plan 1977 (UDP) seeks to retain existing employment premises except where it can be clearly demonstrated that it is no longer suited to employment use. The aim of the policy is to retain isolated pockets of industry as they provide employment opportunities, particularly in the more deprived areas of the borough. The policy is supported by the Council's Supplementary Planning Document 14: Employment Land and Premises (SPD14) which was updated in 2011.
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5. The *National Planning Policy Framework* advises that planning policies should avoid the long-term protection of sites allocated for employment use where there is no reasonable prospect of them being used for that purpose. Although not part of an industrial allocation, the Council's policies generally accord with the *Framework* and I therefore afford them substantial weight.
6. The Chartered Surveyor, Ian S Parr describes the area as having become extremely depressed with numerous vacant properties and quite a large number of older properties falling into disrepair. He has advised that given the high vacancy and depressed feeling of the immediate area, there would not be a demand for alternative users. I found this description to reflect the situation on the ground. The immediate area is run down; large sites have been cleared; many buildings are in a poor condition and appear to be empty or underused; and there is a significant fly tipping problem. However, the area is also busy with numerous on-going commercial uses.
7. The details submitted with regard to the marketing, particularly in relation to the rent level, do not suggest that the unit has been comprehensively marketed at a price that accords with other commercial properties in the area. This building is a modern purpose built unit and given its location, central to the town, I am not persuaded that, if marketed at a suitable price, it would not attract some interest. Although I note the reservations of the appellant's expert, I am not satisfied that it has been demonstrated that the premises are no longer suited to continued employment use. I therefore find conflict with Policy EC2/2 and SPD14.

Highway safety

8. Works have been undertaken to the frontage of this property. Although generally required by the original permission for the Class B1 building, the entrance is clearly set out; the forecourt is surfaced, marked and enclosed; and the footpath has been improved. The route to the remote parking area is along a short stretch of public footpath. I also found on street parking to be available. I understand that the use of the remote parking area is the subject of a legal agreement that is already in place. I walked through that area to the appeal site and generally found the arrangement to be satisfactory. The proposal also includes two on-site spaces and a disabled space.
9. The Council's Development Control Policy Guidance Note 11: Parking Standards in Bury 2007 (PGN11) provides a variety of standards for differing uses within Class D1. These do not refer directly to a use such as this. The nearest equivalent appears to be 'Crèche, day nursery or day centre'. It requires a parking space per member of staff which is achieved by the current arrangements. The Council refer to a requirement for 1 space per 25 square metres of floor space but this appears to relate to Class D2 uses.
10. I anticipate that visitors would seek to park as close to the entrance as possible. PGN11 also requires drop off facilities to be considered. I note the concerns of the Council in this regard and the sketch plan provided which the engineer considers would overcome their concerns. I am not persuaded that the revised layout suggested would offer significant benefits as it would result in the need for vehicles to reverse across the pavement.

11. The continued use is likely to result in some congestion in the vicinity of the property. The drop-off provision is limited. It requires the use of the adjacent pavements and the uncontrolled on-street parking areas. This is a shortcoming of the development. However, given the nature of these streets and the parking provision available, I am not persuaded that the development results in significant concerns with regard to highway safety or the free flow of traffic. I am also not satisfied that it would conflict with the objectives of PGN11 or UDP Policy HT2/4 which requires that developments make adequate parking provision.

Other matters

12. The use has resulted in a number of jobs and the provision of a well-used service. Although the industrial and relatively run down character of this area would not appear to be ideally suited to a play centre, it is actually centrally located and in close proximity to a number of residential streets. I am also mindful that the *Framework* indicates that alternative uses of buildings should be treated on their merits, having regard to market signals and the relative need for different land uses to support sustainable local communities.
13. Although of a slightly different character, UDP Policy CF5 advises that the Council will look favourably on proposals for childcare facilities, such as nurseries and playgroups. The *Framework* requires that Council's plan positively for the provision of community facilities and local services to enhance the sustainability of communities and residential environments. I also find support from UDP Policy EC4/1 which relates to small businesses. There is similar support within the *Framework* for economic activity.
14. Reference has been made to UDP Area Policy BY10 which relates to the wider area of Rochdale Road, Lord Street and York Street. It encourages and promotes proposals for Class B1, B2 and B8 uses and also retail development in the secondary shopping area fronting Rochdale Road. The justification for the policy is to instil new life into the area and promote and encourage physical and environmental improvements, whilst retaining the primarily industrial/business nature of the area.
15. The Council suggest that the use would be inconsistent with the aims of Policy BY10 but it actually only specifically suggests that residential development will be discouraged. The works and the new use have already gone some way to improve this area and bring new life into it. Although predominantly industrial, the wider area is very mixed. I do not consider that a use of this limited scale, which represents new investment; provides a local service; and has improved the appearance of the area, undermines the objectives of the policy. I consider that it may help to support renewal objectives.

Conclusions

16. The use clearly fails to satisfy the requirements of Policy EC2/2 and the SPD as the marketing of the premises has been inadequate but it would retain employment which is at the heart of the policy justification.
17. I find support from within the development plan from Policy EC4/1 with regard to small business uses. The provision of local services and small local businesses also gains support from the *Framework*. I do not find that the use

conflicts with the objectives of UDP Area Policy BY10 and in these particular circumstances, it provides support for its overall aims.

18. I afford considerable weight to the guaranteed provision of employment opportunities (which are at the heart of Policy EC2/2); the effective and efficient use and maintenance of a building and its forecourt which lies in an area where many other buildings and their surrounds are in decay; and the provision of a community service in this central and relatively sustainable area.
19. I am required to determine the proposal in accordance with the development plan unless material considerations indicate otherwise. Overall, whilst there is conflict with the development plan, there is also some support. Although finely balanced, I am satisfied that this support, coupled with the other matters that weigh in favour of the proposal, are sufficient to outweigh the Council's concerns. These considerations indicate that a decision contrary to Policy EC2/2 should be reached.
20. I am not persuaded that such a conclusion would undermine Policy EC2/2 or its objectives in the future given the very particular and unusual circumstances of this case; the small scale of the property; and the array of buildings and sites in the vicinity that appear to be available for industrial and storage uses. I therefore allow the appeal.
21. As the use has already commenced, I have imposed a condition relating to the details of the approved plans for the avoidance of doubt and in the interests of proper planning. The only other condition requested by the Council relates to the surfacing and laying out of the parking area but as this now appears to have been completed, I do not find the condition to be necessary.

Peter Eggleton

INSPECTOR