
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.