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# Appeal Decision

Site visit made on 6 August 2024

**by J Symmons BSc (Hons) CEng MICE**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 September 2024**

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**Appeal Ref: APP/T4210/W/24/3341939**

**Performance House, Heywood Street, Bury BL9 7DZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr H Khan against the decision of Bury Metropolitan Borough Council.
  - The application Ref is 70461.
  - The development proposed is change of use of part of a car showroom to general retailing plus an independent office (including an extension to the existing building).
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## Decision

1. The appeal is allowed and planning permission is granted for the change of use of part of a car showroom to general retailing plus an independent office (including an extension to the existing building) at Performance House, Heywood Street, Bury BL9 7DZ in accordance with the terms of the application Ref: 70461 and subject to the conditions in the attached schedule.

## Preliminary Matters

2. As there is no indication that changes to the development description provided on the application form have been agreed between the main parties, I have used the application form details in this decision.
3. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and issued a written ministerial statement titled 'Building the homes we need'. Given that those parts of the draft Framework most relevant to this decision are not proposed to be amended I consider there is no requirement to seek further submissions on these. I am satisfied that no party's interests would be prejudiced by my taking this approach.
4. Reference is made to a car wash facility on the appeal site which consists of a number of hand car wash bays covered by a canopy structure. The Council refer to the car wash facility including the canopy structure as unauthorised and the appellant provides no evidence to dispute this. For clarity and for the avoidance of doubt, any reference to the car wash facility in this decision includes the canopy structure. During my visit there were vehicles obscuring the hand wash bays of the car wash facility, but I did observe the canopy structure.

## Main Issues

5. The main issues in the determination of the appeal are:

- highway safety, particularly with regard to car parking and servicing;
- whether the proposed development would meet the development plan's carbon emissions standard; and
- whether the proposed development would meet the development plan's high-quality digital infrastructure standard.

## **Reasons**

### *Highway safety*

6. The appeal site is a commercial building most recently used for car sales with a yard area. The Council noted that the yard area was partly used as a car wash facility.
7. The proposal would convert and extend part of the commercial building to form two retail units and one office unit. In support of this, twelve car parking spaces would be provided in the yard area.
8. Through consultation with the Highway Authority, the Council raised concerns that the existing car wash facility would result in standing and queuing vehicles which would adversely affect the use of the proposed development's access, parking spaces and servicing requirement. It was considered that this would cause potential overspill parking and delivery activities that would adversely affect the nearby signalised junction on Heywood Street and the adjacent side streets.
9. However, the appellant and the Council agree that the car wash facility is unauthorised. While the Council indicates that it requested a planning application for the car wash facility to be submitted, the main parties confirm that this was not completed. The appellant has confirmed that the facility is no longer operating and has advised that, even if it was, the Council could take enforcement action to stop its use. The appellant has further confirmed that the proposed development does not include the car wash facility and it was only shown on the proposed plans at the request of the Council.
10. The Council provides little evidence to dispute the appellant's confirmation that the car wash facility is no longer operational or, if it was operational, that enforcement action could not be taken. On the above basis, I consider it reasonable and appropriate for the car wash facility not to be considered in assessing the proposal.
11. The Council confirms that the proposal would provide sufficient car parking spaces and no evidence to the contrary is before me. Without the car wash facility, the concerns raised by the Council regarding it causing standing and queuing vehicles are no longer applicable. Furthermore, there is little evidence to dispute the appellant's indication that, without the car wash facility, there would be no difficulty in accessing the refuse bins. As the area for vehicles to manoeuvre would be significantly larger without the car wash facility, I see little reason to question the adequacy of on-site servicing of the development.
12. Overall, the proposal would not affect highway safety with particular regard to car parking and servicing. The proposal would comply with Policies EN1/2, HT2/4, HT6/1 and HT6/2 of the Bury Unitary Development Plan Adopted Plan 1997 and the guidance set out in the Development Control Policy Guidance

Note 11 – Parking Standards in Bury for adoption 2007. These policies and guidance seek new development, amongst other matters, does not have an unacceptable adverse effect on the character and townscape, provide adequate parking and service provision and prevent conflict between pedestrians, cyclists and vehicles.

### *Carbon Emissions*

13. Policy JP-S2 of the Places for Everyone Joint Development Plan 2022 to 2039 (2024) (PfE) is aimed at delivering a carbon neutral Greater Manchester no later than 2038. The expectation from the adoption of the PfE is that net zero carbon should be achieved for regulated carbon emissions; from 2028 for all emissions in construction; and from 2025, development should also calculate and minimise carbon emissions from unregulated emissions. The policy indicates that an energy statement should set out how this would be achieved, in accordance with an energy hierarchy. It also sets out, amongst other matters, that electrical vehicle charging should be provided and at least BREEAM excellent standard (or equivalent) for the 'Ene 01 – reduction of energy use and carbon emissions' category should be achieved.
14. There is no energy statement before me, nor any substantive evidence to detail how the proposal would comply with the policy. The appellant indicates that a condition could secure this matter. As the policy allows an exception if it can be demonstrated that net zero carbon is not practicable or financially viable, I see no reason why this matter could not be controlled by a condition were the appeal to be allowed.
15. I therefore conclude that with a suitably worded condition imposed, the proposed development would not conflict with Policy JP-S2 of the PfE.

### *Digital Connectivity*

16. Policy JP-C2 of the PfE seeks to ensure that new development is equipped with electronic communication services and requires all new development to have full fibre connections to premises. There is no substantive evidence before me to demonstrate compliance with this policy.
17. The appellant indicates that this matter could be secured through a condition. As the policy allows an exception if it can be demonstrated that such connectivity is not practicable or financially viable, I see no reason why this matter could not be controlled by a condition were the appeal to be allowed.
18. Accordingly, I conclude that with a suitably worded condition imposed the proposed development would not conflict with Policy JP-C2 of the PfE.

### **Conditions**

19. The Council has suggested several conditions which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of these for consistency and clarity. I have also added a number of conditions which I consider necessary. Both the appellant and the Council were consulted on the proposed conditions and other than acknowledgement of them no comments were provided.
20. For the avoidance of doubt and in the interests of certainty, I have included the standard time limit condition. For the same purpose, a condition is imposed

requiring the development to be carried out in accordance with the approved plans. However, with respect to drawing titled 'Proposed Floor Plan & Elevations' dated 08/11/2023, I have excluded the car wash facility as this does not form part of the development for which permission is hereby granted.

21. To ensure the development maintains the character of the existing building and the surrounding area I have imposed a condition for the external materials to be submitted and approved by the Council. Furthermore, in order to provide certainty a condition is imposed to secure the delivery of the proposed parking spaces and their retention.
22. Conditions to ensure the development meets Policies JP-S2 and JP-C2 of the PFE with respect to carbon emission reduction and digital connectivity have also been included.
23. I have included conditions for unforeseen contamination and electric vehicle charging points as recommended by the Council's Environmental Protection Team to protect human health, controlled waters and the wider environment and encourage the uptake of ultra-low emission vehicles.

### **Conclusion**

24. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*J Symmons*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings:  
'Location Plan' dated 26/10/2023; and  
'Proposed Floor Plan and Elevations' dated 08/11/2023 but excluding the car wash facility shown which does not form part of the development approved by this permission.
- 3) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 4) Prior to the commencement of the development hereby permitted, details shall be submitted to and approved in writing by the local planning authority to demonstrate that full fibre connections to the premises will be provided,

unless it is substantiated that this would not be technically feasible and/or viable. The details must also include future-proofing of the premises for full fibre gigabit-capable network connections. The development shall be carried out in accordance with the approved details and maintained thereafter.

- 5) Prior to commencement of the development hereby permitted, an energy statement shall be submitted to and approved in writing by the local planning authority. That statement shall provide details of a scheme to ensure that regulated operational carbon emissions from the development will, unless the energy statement substantiates that it would not be practicable or financially viable, be net zero. Where net zero would not be practicable or financially viable, the statement shall provide details of a scheme to ensure that carbon emissions are reduced to the maximum possible extent. The energy statement shall be in accordance with the energy hierarchy which in order of importance shall seek to i) minimise energy demand, ii) maximise energy efficiency, iii) use renewable energy, iv) use low carbon energy and v) utilise other energy sources.

The development shall be carried out in accordance with the details set out in the approved energy statement and all measures identified within the approved scheme shall be implemented prior to the first occupation of the development and maintained thereafter.

- 6) Unless substantiation is submitted to and approved in writing by the local planning authority that it would not be practicable or financially viable, the development shall achieve at least BREEAM Level excellent (or equivalent) for the 'Ene 01 – reduction of energy use and carbon emissions' category in accordance with the requirements of the relevant BREEAM scheme. No building shall be occupied until a Final BREEAM Certificate for this category has been issued and provided to the local planning authority.
- 7) No development above ground level shall take place until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details / samples.
- 8) Electric vehicle (EV) charging points for 20% of the proposed parking spaces shall be provided prior to occupation of the development hereby permitted, unless substantiation is submitted to and approved in writing by the local planning authority that it would not be practicable or financially viable. The charge points shall be 7kW (32A) single phase as a minimum. Prior to commencement of the development hereby permitted, the proposed location of the charge points shall be submitted to and approved in writing by the local planning authority. The charging points shall be maintained thereafter.
- 9) The development hereby permitted shall not be occupied until the vehicle parking spaces have been provided in accordance with drawing titled 'Proposed Floor Plan and Elevations' dated 08/11/2023. Thereafter those spaces shall be retained for the parking of vehicles only.