



**REPORT FROM: PLANNING, ECONOMIC DEVELOPMENT AND
REGULATORY SERVICES MANAGER**

TO: POLICY AND RESOURCES COMMITTEE

DATE: 18th MARCH, 2021

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PLANNING APPLICATIONS

PURPOSE OF REPORT

To determine the attached planning application.

REPORT TO POLICY AND RESOURCES COMMITTEE 18TH MARCH 2021

Application Ref: 20/0641/FUL

Proposal: Full: Major: Retain gym to ground floor and change of use of first and second floor to 10 apartments.

At: Powerhouse Gymnasium, Burnley Road, Brierfield.

On behalf of: Mr Ahmed

Date Registered: 05.11.2020

Expiry Date: 23.03.2021

Case Officer: Charlotte Pinch

This report has been referred from Brierfield and Reedley Committee as members were minded to refuse the application, on the grounds of inadequate parking provision, against officer's recommendation. The parking provision has been adequately addressed in the report and the building could be used currently for commercial use on all three levels, substantially increasing parking demand. No objections have been raised on this point from LCC Highways in order to substantiate a reason for refusal.

In the absence of supporting evidence, if refused on the grounds of inadequate parking provision, there would be a significant risk of an adverse costs award against the Council from any subsequent appeal.

Site Description and Proposal

The application site is an existing gym (Use Class E). It is a detached three storey building, within the town centre of Brierfield.

The application is for retention of the gym at ground floor level (Use Class E) and conversion of the first and second floor to 10no. self-contained apartments (Use Class C3). The proposal includes the insertion of roof lights in the north and south side roof slopes, two new windows on the south side elevation and re-instate two windows on the rear elevation. Externally, the lower ground floor and ground floor would accommodate 8 allocated parking spaces, 1 allocated gym parking space, bin storage and 10no. bicycle lockers.

The proposal was reduced during the course of the application from 14no. apartments to 10no. apartments.

Relevant Planning History

None relevant.

Consultee Response

LCC Highways

Having reviewed the revised Proposed Site Layout Plan (Drawing No 02 Rev C), together with information in the agent's e-mail dated 31 January 2021, I make the following comments.

The number of apartments proposed has now been reduced from 14 to 10. One secure, covered cycle storage space has been provided for each apartment. Eight off-road parking spaces have also been provided on site for the apartments, which the revised plan indicates will be on an allocated basis. In addition, gym members will be directed to use the public car park on Wood Street.

The further revisions and additional information provided have alleviated to an acceptable degree those highway safety concerns previously raised. Therefore the highway authority withdraws its previous objection to this development.

PBC Environmental Health

Concerns are raised with regard to the noise and vibration from the ground floor gym on the residential occupants at first and second floor level. Conditions are therefore recommended to agree and install suitable noise protection measures for the dwellings.

Lancashire Constabulary

No objections.

Lancashire Fire and Rescue

No objections.

NHS East Lancashire Hospitals Trust

Planning application 20/0641/FUL, Powerhouse Gymnasium, Burnley Road, Brierfield, Nelson, Lancashire, BB9 5HX is seeking to secure permission for the construction of 14 flats. These dwellings will support a population increase of 14 new residents (assuming an average of 1.0 people per dwelling⁵) all of whom will need to access health services.

It follows that without the provision of additional facilities and services it will not be possible to accommodate the health impact of the development within the existing provision which is available.

Whilst the Trust will, in due course, be able to obtain funding to meet the needs of the population which arises from the development, this funding will not be in place for approximately three years. Once in place, the funding will not be provided retrospectively, and as such the impact on the Trust for the initial period will not be met from any alternative source of funding⁶.

We therefore request a contribution for this development in the sum of £10,387.00

Public Response

Four letters of objection were received from neighbouring occupiers, their comments are summarised as follows:

- Additional accommodation in this area would exacerbate existing parking problems.
- Existing on street parking is limited.
- The erection of flats on top of the gym building will block views for existing residents.
- Apartments would cause a public disturbance and may not be used solely for residential purposes.

Officer Comments

Policy

Pendle Local Plan Part 1: Core Strategy

ENV1 (Protecting and Enhancing Our Natural and Historic Environments) requires development to make a positive contribution to the protection, enhancement, conservation and interpretation of our natural and historic environments.

ENV2 (Achieving Quality in Design and Conservation) states that all new development should seek to deliver the highest possible standards of design, in form and sustainability, and be designed to meet future demands whilst enhancing and conserving heritage assets. The proposals compliance with this policy is addressed in the design and amenity sections.

LIV1 (Housing Provision and Delivery) sets out the housing requirement for Pendle, on allocated sites within settlements.

LIV4 (Affordable Housing) sets out the targets and thresholds required to contribute towards the provision of affordable housing.

LIV5 (Designing Better Places to Live) requires that layout and types of development reflect the site and the surroundings, to meet borough-wide requirements for housing stock.

SDP2 (Spatial Development Principles) states that new development within settlement boundaries unless it is an exception outlined in the Framework or elsewhere in the LPP1.

WRK4 (Retailing and Town Centres) states the development and uses which are acceptable in a town centre location, for suitable and available sites.

Replacement Pendle Local Plan

Saved Policy 31 of the Replacement Pendle Local Plan sets out the maximum parking standards for development.

National Planning Policy Framework

The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. It states that there are three dimensions to sustainable development: economic, social and environmental. The policies in the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.

Principle of Development

The application site is an existing gym at ground and first floor level, located within the town centre of Brierfield.

Policy WRK4 deals with retailing and town centres. It states that;

“All development within a Town Centre or Local Shopping Centre should seek to make a positive contribution to:

- Safeguarding the retail function of the centre.
- Improving the vitality and viability of the centre.
- Improving the overall mix of retail and other land uses.
- Supporting the creation of a comfortable, safe, attractive and accessible shopping environment.
- Enhancing access to the centre by sustainable modes of transport, and encouraging multi-purpose trips.

The re-occupation of vacant floorspace, or the re-development of existing sites, within a Town Centre or Local Shopping Centre will be prioritised for all forms of retail development. The Council will also promote uses which help to create active street frontages and a vibrant public realm, such as shops, cafés, restaurants, cultural and leisure uses.”

As such, the proposed ground floor use as a gym falls within the definition of a main town centre use, within the NPPF, and the council seeks to promote leisure uses within the town centre. Therefore, the proposed ground floor gym use is acceptable in principle.

With regards to the residential use at first and second floor level, Policy WRK4 further states that ‘Mixed-use schemes that include a proportion of housing may also be appropriate provided that it does not undermine the economic role of the centre.’

As such, the proposed first and second floor dwellings would not detrimentally impact the use of the gym at ground floor level, which is an acceptable town centre use. As such, it would not harm the economic role of the centre, if anything it would have a positive impact by bringing residents into the town centre.

Moreover, the site is located within the settlement boundary of Brierfield, as such this is a sustainable location for residential development and is therefore acceptable in principle.

Design

Policy ENV2 seeks to deliver the highest possible standards of design, meet future demands, whilst enhancing and conserving our heritage assets. It advises that developments should be practical and legible, make a positive contribution to the historic environment, local identity and character and should be safe and secure.

Only minor alterations are proposed to the external appearance of the building, with efforts being made to retain the key features of the building.

A total of ten new roof lights are proposed in the north and south side roof slopes at second floor level. These would be sited in line with the existing windows and given the large scale of the buildings roof would not appear dominant.

In addition, two new windows are proposed on the south side elevation and the re-instatement of two windows on the rear elevation, which would be acceptable.

Therefore, although the building is undergoing a number of sympathetic external alterations, providing an additional use will secure the future upkeep and use of the building.

Impact on Residential Amenity

Paragraph 127 of the NPPF states that planning policies and decision should ensure that developments are safe and accessible, with a high standard of amenity for existing and future users.

The site is located within a mixed residential and commercial area, within Brierfield Town Centre. It is adjacent to a builders merchants to the north, mosque to the west and commercial retail premises to the south. It is sited directly on Burnley Road, A682.

The proposed development would comprise of 10 apartments, all with one bedroom. This would not result in an over intensification of use of the building, which would not be out of keeping in the area, nor would it result in significant detrimental disturbance to existing neighbouring occupiers.

The proposed conversion includes minimal external alterations, utilising the majority of the existing window openings. The two new windows on the south side elevation and rear elevation would look onto the car park and the mosque to the rear. Moreover, there are existing windows in a similar position on each of the elevations, therefore not resulting in any greater overlooking impacts than the existing situation.

Some concerns have been raised regarding the noise impact of the gym on the ground floor on the new residents in the apartments at first and second floor level. With the gym remaining at ground floor level and the apartments above, it is considered that the impact would be lessened. Moreover, a condition will be applied to this permission for details of suitable noise insulation measures to be approved and implemented prior to residential occupation.

Furthermore, the existing opening times of the gym of 9am to 9pm each day will be restricted and secured by condition, to avoid the potential for any early morning or late evening disturbance.

Therefore, the proposed development is acceptable in terms of residential amenity in accordance with Policy ENV2.

Highways

The scheme was amended during the application process reducing the number of apartments from 14 to 10. As such, eight on plot parking spaces are to be provided for the apartments, which are to be allocated, with one gym staff parking space. Gym users will be directed to use the public car park on Wood Street. The proposal also includes 10 covered and secure cycle parking spaces for the apartments.

The site is located within Brierfield Town Centre and is surrounded by on street parking and a free public car park. Although only eight parking spaces are provided on plot for ten apartments, the location of the property close to amenities and public transport links would not create a heavy reliance on personal vehicles for future occupants.

It is also important to note that the current building could be used for commercial purposes on all three levels, without the need for a planning application. This would result in a greater number of visits and significant demand for parking over and above the proposed residential units. Therefore, no objections are raised in this regard.

NHS Contribution Request

Planning legislation allows for conditions to be placed on developments to make them acceptable. It also provides for the possibility of payments being made through section 106 agreements for infrastructure affected by a development. The law surrounding this is as follows:

Section 106 of the 1990 Act provides as follows:

(1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106C as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—

- (a) restricting the development or use of the land in any specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the authority (or, in a case where section 2E applies, to the Greater London Authority) on a specified date or dates or periodically.

(2) A planning obligation may—

- (a) be unconditional or subject to conditions;
- (b) impose any restriction or requirement mentioned in subsection (1) (a) to (c) either indefinitely or for such period or periods as may be specified; and
- (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period....”

The relevant parts of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (“the CIL Regulations”) are as follows:

(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

Section 216(1) of the Planning Act 2008 together with Regulation 59 of the CIL Regulations requires charging authorities to apply CIL payments to “supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure”.

Section 216(2) defines “infrastructure” as follows:

“infrastructure” includes—

- (a) roads and other transport facilities,
- (b) flood defences,
- (c) schools and other educational facilities,
- (d) medical facilities,
- (e) sporting and recreational facilities, and
- (f) open spaces”

The request for contributions for health care services does in my view overall fit into a category of infrastructure that could, if necessary to make the development acceptable, fall within a category of infrastructure that can be funded through a section 106 agreement. However that does not mean to say that the contribution being requested meets the tests set out in the CIL Regulations detailed above.

Case law is clear that planning permissions cannot be bought or sold hence any sum to be paid to a planning authority must be for a planning purpose which should in some way be connected with the land in which the developer is interested.

The issue for Committee is whether the funding has a direct connection to the development and whether this would be fairly and reasonably related in scale and kind to the development. Robust evidence is required to support a request for a contribution. In London for example a model has been produced which attempts to provide robust and up to date evidence on the need for a contribution. The model is referred to as the HUDU model. This looks at the specific circumstances of each development in its own location reflecting the population characteristics of the area. The evidence supplied with this request does not in my view go far enough to support the view that the impacts of the individual development is directly related to healthcare deficiencies. A flat rate is applied to all developments which will inevitably result in some developers over providing and some underproviding. The model does not factor in demographic modelling of the area and does not for example look at any percentage of the population that may move into the developments and that they are already resident in the area thus not increasing the demand on services. Whilst more accurate evidence could be provided were the model to be finessed as it stands it is not sufficiently robust to prove the level of contribution fairly reflects the impact the development would have on acute services.

This is an important issue that will arise in other developments in the Borough. In order to get an independent view on this we have obtained Counsel’s opinion on this. That advice is legally privileged but supports the view that the evidence is not sufficiently robust to be able to support a requirement for the contribution requested. That is also supported by advice from Counsel that other Councils have had.

Committee are therefore recommended not to require a contribution as the evidence is not robust enough to confirm that the funding is directly enough related to the development and is fairly and reasonably related in scale and kind to the development.

Affordable Housing

Policy LIV4 sets out the targets and thresholds required to contribute towards the provision of affordable housing. The application site is located within the settlement boundary of Brierfield.

As a result, the development would be associated with Brierfield, as within the M65 corridor, therefore as only 10 dwellings have been proposed on the site, a 0% affordable housing contribution would be required, in accordance with Policy LIV4.

Reason for Decision

Section 38 of the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development is acceptable and compliant with the Local Plan Part 1. There is a positive presumption in favour of approving the development and there are no material reasons to object to the application.

RECOMMENDATION: Approve

Subject to the following conditions:

1. The proposed development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: 01 RevA, 02 RevC and Location Plan 1:1250.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. Prior to the commencement of development samples of the materials and details of the design and colour to be used in the replacement windows and rooflights shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure materials are appropriate to the locality and in order to allow the Local Planning Authority to control the external appearance of the development.

4. Prior to first occupation of any residential units the parking areas shown on the approved plans Drawing No. 02 RevC shall be marked out and clearly signed for allocation to the residential dwellings. The parking areas shall thereafter always remain available for the parking of domestic vehicles associated with the residential dwellings.

Reason: In order to ensure satisfactory levels of off-street parking are achieved within the site to prevent parking on the highway to the detriment of highway safety.

5. Prior to first occupation of any residential units the cycle storage facilities shall be provided and available for use in accordance with the approved plan Drawing No. 02 RevC.

Reason: To ensure that the development provides the infrastructure for forms of sustainable transport.

6. The ground floor gym premises shall not be open for customers or any other person not employed within the business operating from the site outside the hours of 09.00 and 21:00 hours on any day.

Reason: In the interests of residential amenity.

7. A scheme for the noise insulation of the premises shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved scheme shall be completed prior to first occupation of any residential units and shall thereafter be retained in accordance with the approved details.

Reason: In order to minimise the disturbance by noise from the gym to the proposed residential Units.

Application Ref: 20/0641/FUL

Proposal: Full: Major: Retain gym to ground floor and change of use of first and second floor to 10 apartments.

At: Powerhouse Gymnasium, Burnley Road, Brierfield.

On behalf of: Mr Ahmed