

Application Number:	2021/0388	Application Type:	Section 73 (Variation of Condition)
Proposal:	Variation of condition 2 (opening hours of outdoor eating area) permitted by Planning Permission 2018/0178 to 09:00 - 19:00 (Monday - Wednesday), 09:00 - 22:00 (Thursday - Saturday), and 09:00 - 20:00 (Sunday)	Location:	Ground And First Floor Rear Off 38 - 42 Market Street Edenfield Bury Lancashire BL0 0JN
Report of:	Planning Manager	Status:	For publication
Report to:	Development Control Committee	Date:	12/10/2021
Applicant:	Colin Davies	Determination Expiry Date:	19/10/2021
Agent:	N/A		

Contact Officer:	Storm Grimshaw	Telephone:	01706 252411
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REASON FOR REPORTING	
Outside Officer Scheme of Delegation	
Member Call-In Name of Member: Reason for Call-In:	
3 or more objections received	
Other (please state):	Due to public interest

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

1. RECOMMENDATION

Refusal.

2. **SITE**

The application relates to land at Elizabeth Street. It is located perpendicular to Market Street, and immediately in front of the entrance to the Drop off Café, which occupies the ground floor and first floor of 42 Market Street. The building is the end building of a row of terraced properties which includes both commercial and residential properties. Whilst there are several commercial properties in the local area, the predominant land use in the surrounding area is residential.

Elizabeth Street is a short un-adopted street which gives access to the communal passageway running to the rear of the Drop off Café itself and to the rear of the terraced dwellings from 26 to 36 Market Street (evens).

The site is bounded by a grassed area to the north, the rear garden of 2 Heycrofts View to the east, and the building containing the café itself to the south. The site is accessed via Market Street which is located immediately to the west.

The site is within the urban boundary.

3. **PLANNING HISTORY**

The planning history below relates to either the site itself or 42 Market Street from which 'The Drop Off Café' operates.

2018/0409 – Construction of mezzanine floor (53sqm) to provide bunk house accommodation for 4 people (Approved with conditions)

2018/0178 – Variation of Condition 3 (opening hours) of Planning Permission 2015/0107 (Approved with conditions)

2018/0177 – Change of use of land to form outdoor eating area in association with the adjoining café (Approved with conditions)

2017/0353 – Change of use of land to form outdoor eating area in association with the adjoining cafe (part retrospective). (Approved with conditions).

2017/0141 – Variation of Condition 3 (Opening Hours) pursuant to Planning Approval 2015/0107 (Approved with conditions)

Approved with conditions by Planning Committee contrary to the Officer's recommendation. Decision dated 26 June 2017.

2016/0575 – Variation of Condition 3 (to extend the Opening Hours) pursuant to Planning Approval 2015/0107.

Refused by Planning Committee. Decision dated 1 March 2017.

2015/0107 – Change of use to cafe (Use Class A3) (Approved with conditions)

4. **PROPOSAL**

The applicant seeks to vary condition 2 of planning approval ref. 2018/0177, to extend the opening hours of the outside seating area which is the subject of this application.

The existing opening hours of the outside seating area are 09:00 – 19:00 (Monday to Sunday including Bank Holidays). The applicant seeks to extend the opening hours of the outside seating area to the following:

- 09:00 – 22:00 (Thursday – Saturday)
- 09:00 – 20:00 (Sunday)

The opening hours of the outdoor seating area from Monday to Wednesday would continue to be 09:00 – 19:00.

This application is the result of an open planning enforcement investigation following complaints that the outdoor seating area was being used outside of the hours permitted by planning approval ref. 2018/0177.

The Council's Planning Enforcement Team have advised that there were repeat offences of breaching condition 2 (opening hours) of planning approval ref. 2018/0177 from dates in April, May, June and July, and as a result the Enforcement Team served the applicant with a breach of condition notice on 21st July 2021. Since then there has been one occasion where the applicant has used the outdoor seating area beyond the permitted hours.

5. **POLICY CONTEXT**

National

National Planning Policy Framework (2021)

Section 2	Achieving sustainable development
Section 4	Decision-making
Section 6	Building a strong, competitive economy
Section 7	Ensuring the vitality of town centres
Section 8	Promoting healthy and safe communities
Section 9	Promoting sustainable transport
Section 12	Achieving well designed places

Development Plan Policies

Rossendale Core Strategy DPD (2011)

AVP 5	South West
Policy 1	General Development Locations and Principles
Policy 7	Social Infrastructure
Policy 8	Transport
Policy 9	Accessibility
Policy 11	Retail and Other Town Centre Uses
Policy 13	Protecting Key Local Retail and other Services
Policy 14	Tourism
Policy 23	Promoting High Quality Design & Spaces
Policy 24	Planning Application Requirements

6. CONSULTATION RESPONSES

Consultee	Summary of Comments received
RBC Environmental Health	Objection
LCC Highways	No objection

7. NOTIFICATION RESPONSES

To accord with the General Development Procedure Order 21 neighbouring properties were notified on 23.06.2021 and a site notice was posted on 13.07.2021.

Six representations received from neighbouring properties objected to the planning application, raising the following concerns:

- Noise nuisance / disturbance
- Inadequate parking provision, parking congestion associated with the café and loss of parking resulting from users of the premises
- Increase in traffic
- Impact on residential amenity and the cumulative impact of the commercial premises on residential amenity which has increased in size since 2015

The following comments raised are non-material to the determination of this application:

- Some supporters of the application are not local to the area
- Non-compliance with existing planning conditions and the subsequent impact on residential amenity

62 representations supporting the application have also been received, commenting inter alia that the premises are an important asset to the village.

8. ASSESSMENT

The main considerations of the application are:

1. Residential Amenity
2. Access, Parking and Highway Safety

Residential Amenity

The site was granted planning permission to change the use of the land to form an outdoor seating area in association with the adjoining café in 2017, but this was on a temporary basis until 26th June 2018 in order to identify the level of harm the proposed use would have on the amenity of neighbouring properties in the area.

After the temporary trial period planning permission was granted for the continued use of the site as an outdoor seating area in association with the café, but a condition restricting hours was considered necessary in the interests of neighbour amenity due to the proximity of the site to residential properties.

As was the case for the previous planning applications for this site, the main consideration in the determination of this application to extend the opening hours of the outside space is the impact the proposal would have on the amenity of neighbouring properties in the surrounding area.

The building is in close proximity to residential properties located on Market Street and Heycrofts View, and 2 Heycrofts View is located immediately adjacent to the application site with the property's rear garden adjoining the outdoor seating area.

The Council's Environmental Health department have been consulted on the application and have advised the following:

“Environmental Health object to the proposed extended hours for the outdoor area due to the close proximity to residential property and the detrimental impact the people noise will have in the area for longer periods.”

No noise impact assessment has been submitted in support of the application and, as such, there is no evidence from the applicant to disprove the concerns raised by the Council's Environmental Health department.

It should be noted that concerns have been raised from several neighbouring properties over the impact the proposed opening hours would have on residential amenity, including an objection from 2 Heycrofts View.

Due to the proximity of the site to neighbouring properties, particularly 2 Heycrofts View, it is considered that the use of the outdoor seating area at the proposed hours would give rise to noise disturbance at unsociable hours. As such, the proposed opening hours would have a significant adverse impact on the residential amenity of neighbouring properties and would fail to protect the amenity nearby residents.

In cases where the local planning authority considers development to be unacceptable, it is required to consider whether it would be possible to make the development acceptable through the use of planning conditions. However, in this case, the Council does not consider it possible to overcome the significant harm which would result from noise disturbance at the proposed hours by way of condition, and, as such, the proposed scheme is considered to be unacceptable.

Officers note that a significant number of representations have been submitted in support of the application, however, this does not overcome the level of harm the proposed opening hours would have on nearby residents.

Having regard to the above, the proposed scheme is considered to be unacceptable in terms of residential amenity, and contrary to Policies 23 and 24 of the Core Strategy DPD and Section 12 of the Framework.

Access, Parking and Highway Safety

The Local Highway Authority have raised no objection to the proposed extended opening hours, but did advise the following:

“It was however noted that the area that is deemed to be a footway access to the rear of the properties is currently obstructed by a number large barrels and other similar items. These items should be removed from the strip that is shown on the plans submitted with application number D14/2018/0177.”

The comment from LCC Highways has been forwarded to the applicant and they are aware of the request that the items obstructing the footway to the rear of the properties on Market Street should be removed.

The proposal is considered to be acceptable in terms of access, parking and highway safety.

9. REASON FOR REFUSAL

1. The proposed increase to the opening hours of the outdoor seating area would result in unacceptable noise disturbance to nearby residents, failing to protect neighbour amenity. As such, the scheme conflicts with the National Planning Policy Framework and Policy 24 of the Core Strategy DPD.

10. INFORMATIVES

1. Standard refusal informative.