

Application Number:	2022/0226	Application Type:	Full
Proposal:	Change of use of the back garden of No. 23 to allow customers from the shop at 21 Market Street to use the area to consume food/drinks which they have purchased from the shop.	Location:	21-23 Market Street Whitworth Rossebdale OL12 8RW
Report of:	Planning Manager	Status:	For Publication
Report to:	Development Control Committee	Date:	June 2022
Applicant:	Mr Andrew Simpson	Determination Expiry Date:	12 th July 2022
Agent:			

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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	Yes
Other (please state):	

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

That the planning application be refused for the reasons set out in the report.

APPLICATION DETAILS

2. SITE AND SURROUNDING AREA

The application site is located to the south of a row of residential properties on the west side of Market Street. No 23 is a 3 storey property (2 storey from the front eastern elevation) end terrace house with a retail unit attached to the south. The retail unit is currently vacant and undergoing refurbishment. The site is on the corner of Dell Road and Market Street.

3. RELEVANT PLANNING HISTORY

2021/0058 - Installation of bi-fold doors at 1st floor to rear, with covered balcony. Approved 15.09.21.

4. PROPOSAL

The proposal is to change the use of the back garden at No. 23, a residential property to allow customers from the shop at 21 Market Street to consume food and drinks in the garden. Access to the garden would be from the lane to the rear of the property.

5. POLICY CONTEXT

National

National Planning Policy Framework (2021)

Section 2 Achieving Sustainable Development
Section 6 Building a Strong, Competitive Economy
Section 11 Making Effective Use of Land
Section 15 Conserving and enhancing the natural environment

Local

Local Plan 2019-2036

SS Spatial Strategy
SD2 Urban Boundary and Green Belt
ENV1 High quality Development in the Borough
R4 Existing Local Shops
HS8 Private Outdoor Amenity Space

Other Material Considerations

National Planning Practice Guidance

6. REPRESENTATIONS

To accord with the General Development Procedure Order, letters were sent to neighbours on 19/05/22 and a site notice was erected on the 25/05/22.

Eight responses have been received objecting to the application and raising the following issues:

- Likely increased pedestrian and vehicular use at a busy road junction and featuring a blind corner and constricted entrance to Healey Dell.
- There is no visitor parking on Market Street outside nos. 21-23. The only nearby parking is on Shawclough Road and that is often at full capacity.

- Customers of the proposed delicatessen will inevitably park on the nearby overtaking bay on Dell Road.
- Residents of the terrace access to the back of their properties down this very narrow road and will have to drive past anyone using the garden space.
- Impact on the peace and tranquillity of the neighbourhood. Noise pollution to neighbours.
- One of the benefits of a nature reserve is the tranquillity. This could be threatened by what would amount to a drinking establishment
- The proposal will in effect convert the shop into a restaurant with an alcohol licence for lengthy periods of the day.
- The licensing application is for alcohol to be consumed off the property in open recyclable container causing noise and littering.
- Litter along Shawclough Road and in the nature reserve is already a considerable problem.
- The Healey corner is a point of entry to a beautiful nature reserve and this will become an area of peril unwelcoming for families from the drunk disorderly crowds wandering in the road.
- It is understood that the owner has taken over management of the public toilets and the corner plot of land. Three conifer trees have been planted on the triangular piece of ground between the top of Dell Road and Shawclough Road. Trees planted on this will hamper sightlines for traffic. The use of the toilets for their customers will be a conflict of interest.
- No toilets for use by customers except public toilets
- Harmful to the local environment and wildlife.

Eight responses have been received in support of the application for the following reasons:

- The building has been out of use for a long time and a food shop would be great for the local area and attract more people.
- Whitworth needs more local businesses.
- There are no other shops in the area between Tesco in Whitworth and Tesco in Rochdale.
- Will provide a good service for young children after visiting the Dell and other people
- The new owners have made the building and the adjoining house look good.
- Fears of drunken revellers and piles of litter are a fantasy. It's not a nightclub.
- The alcohol sales won't replace a full time pub and are only minimal sales. The focus will be around deli items.
- Owners of the property have been clearing the area of rubbish that has been dumped. Lovely to see they care for the area.
- Responsible people will use the bins provided.
- The toilets are put in the area for the amount of walkers that visit the dell every week. The dell is always busy with people, especially at weekends and there are no problems parking currently.
- Unlikely to be additional traffic. People are unlikely to travel to the area with the sole purpose of visiting in order to have a snack/meal.
- Having the road shut off from the Rochdale side is what has caused trouble with traffic on the back road

7. CONSULTATION RESPONSES

LCC Highways:- No objections

Environmental Health:- Recommends an hours condition limiting the use of the garden to 7pm daily to protect the amenity of occupiers of adjoining property.

ASSESSMENT

The key material considerations within the application be assessed are:

- 1) Use
- 2) Visual Amenity
- 3) Residential Amenity
- 4) Access/Parking

Use

It is noted that an objection has been received to the proposed use as a delicatessen/retail. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 Class E, Commercial, Business and Service covers uses that were formerly designated Class A1, (Shop) Class A2 (Financial and Professional Services) and Class A3 (Café or Restaurant). The Business Rates record shows that No 21 has been rated as a ground floor shop and basement storage since 2010. There is no reason to doubt that the lawful use of the property falls within Class E and that on this basis the proposed use as a delicatessen shop with the provision of outside seating would fall under Class E. Planning permission would not be required for the use of No. 21 Market Street.

Planning permission would however be required to change the use of the garden of No. 23 from residential to Class E in connection with the shop/café use.

Representations have raised concerns about the possible use of a triangular piece of land in the vicinity of the site in conjunction with the use of No. 21. This is not covered by this application and should such a use occur it can be investigated by the Council's Enforcement Officer. A 5 year lease licence for the land will shortly be granted to Mr and Mrs Simpson to maintain and upkeep the land. The licence does not grant them exclusive possession and the land is still accessible and available for anyone to use. Mr & Mrs Simpson are fully aware of their rights and responsibilities regarding this land and their intention is to keep the area tidy for the benefit of the local community and not to use this as an extension of their own property or business.

Visual Amenity

The proposal for the use of the garden for seating will not have an undue impact on the visual amenity of the area. The table and chairs will reflect what is found in a normal residential garden and the size of the garden will limit the number that can be provided. The proposed seating will be visible only from the lane at the rear of the property and Dell Road.

Residential amenity

Both national and local policies aim to protect the amenity of all existing and future occupants of land and buildings. A core planning principle of the Framework is to "*Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.*" Policy ENV1 of the Local Plan requires that development is sympathetic to surrounding land uses and occupiers and avoids demonstrable harm to the amenities of the local area.

The use of the garden of No. 23 will result in the introduction of a business use into this terrace of residential properties. The noise from customers in the garden is likely to exceed that which would normally be expected in a residential garden. No 23 is separated from the rear garden of No. 25 by a wall with a fence above and a brick built store. Due to the proximity of the two properties it is

considered that the proposal will result in undue noise and disturbance to neighbouring residential properties and would not be in accordance with the NPPF or Policy ENV1 of the Local Plan.

Policy HS8 of the Local Plan requires that all new residential development should provide adequate private outdoor amenity space. Amenity space for individual dwellings should be useable and have an adequate level of privacy. Although there is a balcony at first floor level serving No. 23 the proposal will result in the loss of the garden for the residential property. It is considered that would be contrary to Policy HS8.

Highways

LCC Highways have advised that the proposals should have negligible impact on highway safety and capacity within the immediate vicinity of the site. The proposal is therefore considered acceptable on Highways grounds.

8. CONCLUSION

The proposal will be detrimental to the residential amenity of neighbouring properties and will result in an inadequate level of private amenity space for the occupiers of No. 23 Market Street. It will therefore be contrary to the NPPF and Policies ENV1 and HS8 of the Rossendale Local Plan 2019-2036.

10. RECOMMENDATION

That planning permission be refused for the following reason:

1. The proposal will be detrimental to the residential amenities of neighbouring residents by way of increased noise and disturbance. It will also result in an inadequate level of private amenity space for the occupiers of No. 23 Market Street. It will therefore be contrary to the NPPF and Policies ENV1 and HS8 of the Rossendale Local Plan 2019-2036.

12. INFORMATIVES

1. The proposal would not comply with the development plan and would not improve the economic, social and environmental conditions of the area. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.