

Application Number:	2022/0231	Application Type:	Variation of a Condition
Proposal:	Variation of condition 2 of planning permission no. 2018/0177 (opening hours of outdoor eating area) to allow opening between 09:00 and 19:00 hours (Monday to Wednesday), 09:00 to 22:00 hours (Thursday to Saturday), and 09:00 to 20:00 hours on Sundays (Re-submission of application number 2021/0388)	Location:	Land adjoining 38-42 Market Street, Edenfield. Bury. Lancashire. BL0 0JN.
Report of:	Head of Planning and Building Control	Status:	For Publication
Report to:	Development Control Committee	Date:	6 September 2022
Applicant:	Mr Colin Davies	Determination Expiry Date:	29 July 2022
Agent:	Mr Steven Hartley		

Contact Officer:	Ian Lunn	Telephone:	01706 238641
Email:	planning@rossendalebc.gov.uk		

REASON FOR REPORTING	
Outside Officer Scheme of Delegation	No
Member Call-In Name of Member: Reason for Call-In:	Councillor Janice Johnson has asked that this application be reported to the Planning Committee for consideration. Her reason for so doing is that she wishes to 'support a local business to provide jobs and service to my ward'
3 or more objections received	Yes
Other (please state):	No

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 planning permission be refused.

APPLICATION DETAILS

2. SITE

The premises, the subject of this application, are housed within the rear portion of an end-terraced two storey natural stone/natural blue slate building known as 38 to 42 Market Street. These are located approximately 25 metres south east of the junction of Market Street and Heycrofts View within a predominantly residential area that lies within the identified Urban Boundary. The premises are currently used as a café (The Drop-Off Cafe) with the benefit of planning permission (see 'Relevant Planning History' section below).

The portion of the site that is specifically the subject of this application lies to the immediate north west of the building. This is currently located in the open and is used as an associated outdoor eating area.

3. RELEVANT PLANNING HISTORY

2015/0107 - Change of use to cafe (Use Class A3) – Approved 29/06/15. This approval permitted the ground floor area to the rear of 38-42 Market Street to be used as a cafe. Condition 3 limited the opening hours to between 09.00 and 19.00 hours Mondays to Fridays, 09.00 and 17.00 hours on Saturdays and 10.00 and 16.00 hours on Sundays and Bank Holidays.

2017/0141 – Variation of Condition 3 (Opening Hours) pursuant to Planning Approval 2015/0107 – Approved 26/06/17. This approval allowed the premises to open between the hours of 09.00 to 23.00 hours Monday to Saturday, and 10.00 to 22.30 hours on Sundays for a temporary period of 12 months to enable the impact of opening these hours upon local residents to be assessed. Thereafter it required the opening hours to revert to those approved under planning permission number 2015/0107 namely between 09.00 and 19.00 hours Monday to Friday, 09.00 and 17.00 hours on Saturdays and 10.00 and 16.00 hours on Sundays and Bank Holidays.

2017/0353 - Change of use of land to form outdoor eating area in association with the adjoining cafe (part retrospective) – Approved 30/08/17. This approval allowed the outdoor seating area to be used between 09.00 and 19.00 hours 7 days a week until 26th June 2018. Thereafter it required it to be used solely between 09.00 and 19.00 hours Monday to Friday, 09.00 and 17.00 hours on Saturdays and 10.00 and 16.00 hours on Sundays and Bank Holidays

2018/0177 – Change of use of land to form outdoor eating area in association with the adjoining cafe. – Approved 25/07/18. This approval allowed the outdoor seating area to be used permanently between the hours of 09.00 and 19.00 hours 7 days a week.

2018/0178 - Variation of Condition 3 (opening hours) of Planning Permission 2015/0107 – Approved 25/07/18. This approval extended the opening hours of the café to 09.00 to 23.00 hours Monday to Saturday and 10.00 to 22.30 hours on Sundays.

2018/0409 - Construction of mezzanine floor (53sqm) to provide bunk house accommodation for 4 people – Approved 23/11/18

2019/0406 - Use of first floor for function room and external staircase (part retrospective) – Approved 26/02/20. This approval permitted the first floor to be used as a function room with opening hours limited to between 09.00 and 23.00 hours Monday to Saturday and 10.00 and 22.30 hours on Sundays.

2021/0388 - Variation of condition 2 (opening hours of outdoor eating area) permitted by Planning Permission 2018/0177 to 09:00 - 19:00 (Monday - Wednesday), 09:00 - 22:00 (Thursday - Saturday), and 09:00 - 20:00 (Sunday) – Refused 14/10/21. Proposal would lead to unacceptable disturbance of nearby residents by reason of noise.

4. PROPOSAL

Planning permission is sought to vary condition 2 of planning permission number 2018/0177 to allow the outdoor seating area to be used by customers between 09.00 and 19.00 hours Monday to Wednesday, 09.00 and 22.00 hours Thursday to Saturday and 09.00 and 20.00 hours on Sundays. This is instead of 09.00-19.00 hours 7 days a week as previously approved.

5. POLICY CONTEXT

National Planning Policy Framework (2021)

Section 15 Conserving and Enhancing the Natural Environment

Development Plan

Rossendale Local Plan 2019 to 2036

Policy ENV1 High Quality Development in the Borough
Policy ENV6 Environmental Protection

Other material considerations

National Planning Practice Guidance

6. CONSULTATION RESPONSES

RBC Environmental Health:- Object to 10pm closure on the grounds that this is likely to cause undue disturbance to surrounding local residents. They would not object if the hours were limited to 9pm Thursday to Saturday subject to no outdoor live, amplified or recorded music being permitted, and external signs being installed to advise customers to keep the noise down.

LCC Highways:- No objections

7. REPRESENTATIONS

To accord with the General Development Procedure Order neighbour letters were sent out to surrounding properties on 25th June 2022 and a site notice was posted next to the site on

13th June 2022. Seven letters of objection have subsequently been received. Whilst many of the objectors are supportive of the premises being used as a café their objections are:-

- a) that extending the hours as proposed would lead to unacceptable noise. There have been allegations that the use already generates unacceptable noise.
- b) that the premises lack adequate parking and there is insufficient space for vehicles to satisfactorily park nearby. This has led to congestion on the adjoining highways with parked vehicles also blocking neighbouring driveways.
- c) that seeking to limit customers using the outdoor area to a maximum of 30 people, and putting up signs to advise against rowdy behaviour, would not be enforceable,
- d) that allowing the proposed hours of opening would lead to the premises becoming a bar rather than a café. There is currently no proven need for such a facility within the village.
- e) that the details submitted with the application are not wholly accurate,
- f) that tables and chairs are currently encroaching onto the adjoining pavement blocking access for pedestrians,
- g) that there have already been a number of breaches of the terms of the existing planning permissions relating to this property.

One of the objectors has suggested that if the application is approved conditions should be imposed requiring that the outdoor area can only be used when the café is open and can only be used for drinking when food is being served.

The agent has submitted a Planning Statement in support of their application in which they state:-

- a) that the proposal would help to meet the need for more outdoor dining/socialising space which has arisen as a result of changes brought about by Covid,
- b) that the application is now supported by a Noise Report. This concludes that noise generated by users of the outdoor seated area will not significantly disturb surrounding residents provided that customer numbers are limited to no more than 30 people at any one time between 21.00 and 22.00 hours.
- c) that moveable structures such as marquees can now be erected outside as 'permitted development' under the terms of Class G of the current GPDO.
- d) that they would be prepared to accept conditions limiting customer numbers to a maximum of 30 and preventing the use of external sound amplification unless, in the latter case, this had first been agreed to by the Local Planning Authority.

8. ASSESSMENT

The main issues for consideration in this instance are:-

- a) Neighbour Amenity
- b) Other Issues

Neighbour Amenity

Policy ENV1 of the Local Plan requires new development to take account of the character and appearance of the area, and be sympathetic to surrounding land uses and occupiers, by avoiding demonstrable harm to neighbour amenity.

Policy ENV6 requires developments to be designed sensitively to reduce exposure to noise and noise generation, having regard to the location of the proposed development and the hours of operation.

Planning permission was granted on 25th July 2018 under planning approval number 2018/0177 allowing the existing outdoor seated area to be used in conjunction with the cafe between the hours of 09.00 and 19.00 seven days a week. A further application (2021/0388) seeking approval to vary these hours to between 09:00 and 19:00 Monday to Wednesday, 09:00 and 22:00 Thursday to Saturday, and 09:00 and 20:00 on Sundays was refused on 14th October 2021 because of concerns that this would lead to unacceptable disturbance of nearby residents by reason of noise. The application now under consideration seeks exactly the same variation of the opening hours but differs from the previous submission in that a Noise Assessment has now been submitted. This concludes:-

- a) that ambient noise generated by customers using the outdoor seated area between 19.00 and 21.00 hours is unlikely to have a significant effect on nearby residential properties, and
- b) that between 21.00 and 22.00 hours the effect is likely to be 'slight/moderate'.

With this in mind the report recommends that in order to ensure that there is no unacceptable impact on neighbouring properties from noise arising from the extended opening times, the number of customers using the outdoor seated area at any one time should be limited (by planning condition) to a maximum of 30 between 21.00 and 22.00 hours.

The Council's Environmental Health Service does not fully accept the conclusions of the noise assessment as they consider that opening until 10pm on Thursdays, Fridays and Saturdays could cause undue noise disturbance to adjoining local residents. However, they would have no objection to a 9pm closure on those days subject to conditions:-

- a) preventing any live, amplified or recorded music from being performed or played in the outdoor seating area. and
- b) requiring that signs are displayed on the premises asking patrons to keep the noise down and be considerate of neighbours, and advising them that rowdy behaviour will be challenged.

The agent is agreeable to conditions being imposed in respect of (a) and (b) and is also agreeable to a condition limiting the occupancy of the outdoor seating area to a maximum of 30 people at any one time. However, he is unwilling to agree to the 9pm limitation on opening on Thursdays to Saturdays. He maintains that the hours as proposed would not give rise to undue disturbance of local residents if no more than 30 people were to occupy the outdoor seating area at any one time. In support of this he makes reference to what he

considers to be a similar situation at the Village Stores in Helmshore. These premises are connected to residential properties, are also used as a café/restaurant with planning permission granted on appeal, include an outside seating area at the front, and have approval to open until 10pm on Sundays to Thursdays and 11pm on Fridays and Saturdays.

This has been put to Environmental Health but they maintain their view suggesting that the case now under consideration is more akin to a proposal at The Riverside Inn, Bury Road, Rawtenstall (2021/0409). This allowed the outdoor seating area at the premises to be extended but subject to a condition preventing it from being used after 9pm in the interests of safeguarding the amenities of local residents. Environmental Health contend that the outdoor seating area at the Village Stores is smaller than at the 'Drop-Off' Café with less customer capacity so feel that comparing the two is unreasonable. Furthermore, the complaints they have received about the Village Stores have related to noise generated from inside the premises rather than from outside.

Taking the above factors into consideration it is considered that allowing Thursday, Friday and Saturday night opening until 10pm would likely cause undue harm to the amenities of surrounding local residents by reason of noise in the evening. In coming to this view consideration has been given to imposing a condition limiting the occupancy of the outdoor seating area to a maximum of 30 people at any one time as proposed by the applicant's noise consultant. However, it is considered that such a condition would not fully meet the conditions tests as set out in the current planning legislation namely that they should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all respects. In particular it is considered that it would not reasonably be enforceable as the Local Planning Authority would never know, with any degree of certainty, how many people were actually occupying the area between 9pm and 10pm at any one time. It would also be difficult to 'police' from the applicant's point of view as numbers are likely to fluctuate given the tendency for people to move around (going to the bar, toilet etc) and with customers coming and going.

Given the above it is recommended that the application is refused on neighbour amenity grounds due to the conflict with Policy ENV1 and ENV6 of the Local Plan.

Other Issues

The concerns raised by objectors to the development, as outlined in the 'Representations' section above, have been considered. However, with the exception of those concerning noise, they are not accepted for the reasons given below:-

- a) given the existing opening hours of the café, and bearing in mind that the amount of physical space currently available for it to use will not change as a result of this proposal, it is not envisaged that the scheme will exacerbate any existing highway safety concerns that may or may not currently be occurring to the extent that a further reason for refusal could reasonably be justified on such grounds. County Highways have been consulted for their views on the scheme but have not raised any objections.
- b) if the premises were subsequently used primarily as a pub or drinking establishment, rather than just a café where both food and drink were served, a further application for planning permission would be required.
- c) should a planning application subsequently be received seeking approval to use the premises as a pub or drinking establishment, the applicant(s) would not need to demonstrate a need for such a facility to obtain such approval in this instance.

- d) the details submitted with this application are considered to be sufficiently accurate to enable the implications of the proposal to be properly judged.
- e) a planning application cannot legitimately be refused purely because breaches of the planning legislation have allegedly taken, or are allegedly taking, place at a property.

Conclusion

It is considered that using the outdoor seating area between the hours currently proposed, would lead to the undue disturbance of the surrounding local residents by reason of noise especially in the evening. The specific concern is the proposal to open until 10pm on Thursdays, Fridays and Saturdays. In coming to this view consideration has been given to the recommendations from the Council's Environmental Health Service. The proposal conflicts with Policies ENV1 and ENV6 in this regard.

The Local Planning Authority has sought to work with the agent in order to overcome this concern in particular by requesting that the closing times on Thursdays, Fridays and Saturdays are reduced to 9pm. However, it has not proved possible to secure an agreement with them to do this in this instance. Accordingly refusal of this application is recommended.

9. RECOMMENDATION

That planning permission be refused for the following reason:-

1. Using the outdoor seating area in connection with the cafe between the hours proposed would lead to the undue disturbance of surrounding local residents by reason of noise in the evening. The proposal is therefore considered to be contrary to the provisions of Policies ENV1 and ENV6 of the Council's adopted Rossendale Local Plan 2019 to 2036 and Section 15 of the National Planning Policy Framework.

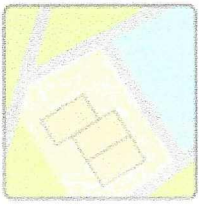
10. INFORMATIVE

The Local Planning Authority has sought to work pro-actively with the agent to secure a satisfactory solution to this issue. However it has not proved possible to do so in this instance.

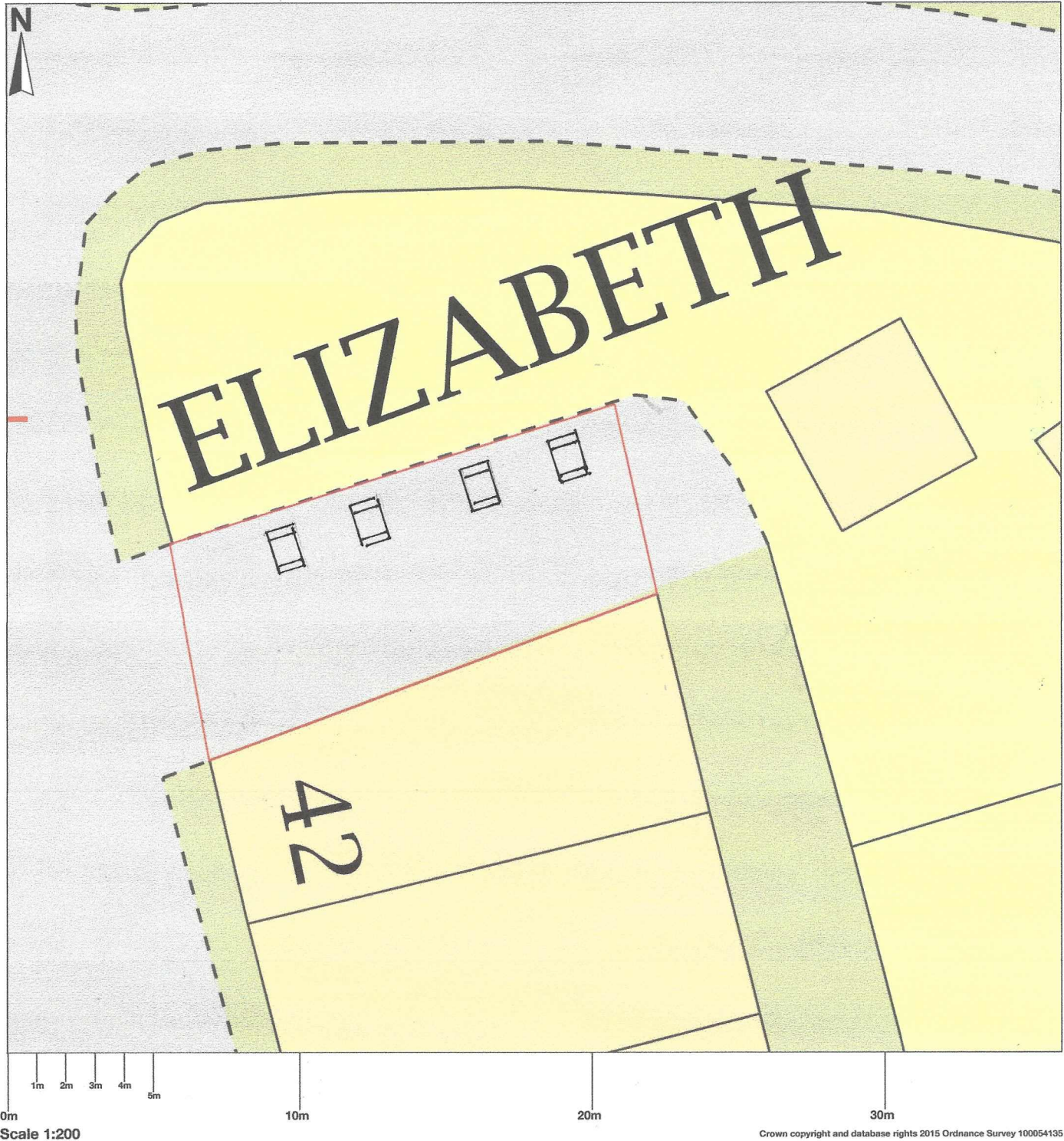


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LOCATION PLAN @ A4
1:1250



38 Market Street, Ramsbottom, Bury, BL0 0JN



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SITE PLAN 1:200