

TITLE: 2004/882 CHANGE OF USE FROM PRIVATE RESIDENTIAL DWELLING TO HOT FOOD OUTLET AT 545 MARKET STREET, WHITWORTH

TO/ON: DEVELOPMENT CONTROL COMMITTEE 17th MARCH 2005

BY: TEAM MANAGER DEVELOPMENT CONTROL

APPLICANT: MISS C J MCGREGOR

DETERMINATION EXPIRY DATE: 9TH FEBRUARY 2005

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.

Site and Proposal

The applicant seeks permission for the change of use from a residential dwelling to a hot food outlet, at the above address. The property is located within the urban boundary.

Relevant Planning History

2001/118 – Change of use to hot food takeaway at 533 Market Street, Whitworth - APPROVED

2002/265 – Change of use of retail shop to takeaway at 595 Market Street, Whitworth – REFUSED

Notification Responses

Site notices were posted and the following summarised comments have been received:

- Competition
- Traffic and highway safety
- Anti-social behaviour
- Litter
- Property values
- Parking provision
- Smell and fumes from the hot food outlet.

Consultation Responses

County Highways

No objections to the proposal on highway grounds.

RBC Highways

No objections to this proposal.

RBC Environmental Health Officer

Recommendation that conditions be attached to the planning permission if granted.

Whitworth Town Council

Applications for Hot Food Outlets are subject to Policy S4 of the Rossendale District Local Plan. In particular, such applications should be judged in terms of their acceptability by reference to existing provision, environmental impact and neighbourliness. The Town Council believes that in this area of Whitworth, there is already sufficient existing provision in terms of hot food outlets. A recent planning application for change of use of shop premises to a hot food outlet was refused by this Council for precisely this reason and the Town Council now looks for some consistency in decision making. Whitworth Town Council believes that the proposed development would have a detrimental effect on the local environment and would harm the interests of occupiers of neighbouring houses. Further, and in the absence of car parking facilities, the proposed development would have a harmful effect upon highway safety.

Development Plan Policies

Policy DS1 (Urban Boundary) states *“the Council will seek to locate most new development within a defined boundary – the urban boundary – and will resist development beyond it unless it complies with Policies DS3 and DS5.”*

Policy DC1 (Development Criteria) of the Rossendale District Local Plan
The policy states that all applications for planning permission will be considered on the basis of a) location and nature of proposed development, b) size and intensity of proposed development; c) relationship to existing services and community facilities, d) relationship to road and public transport network, e) likely scale and type of traffic generation, f) pollution, g) impact upon trees and other natural features, h) arrangements for servicing and access, i) car parking provision j) sun lighting, and day lighting and privacy provided k) density layout and relationship between buildings and l) visual appearance and relation to surroundings ,m) landscaping and

open space provision, n) watercourses and o) impact upon man-made or other features of local importance.

Policy T4 (Car Parking) of the Rossendale District Local Plan states that *development proposals will be required to provide, normally within the curtilage of the development, sufficient space to meet operational and non-operational requirements.*

Policy S4 (Hot Food Outlets) of the Rossendale District Local Plan states that: *Applications for hot food outlets will be judged in terms of their acceptability by reference to existing provision, environmental impact and neighbourliness, and having regard to the following criteria:*

- a) that the proposed use or development should not be situated within an area, terrace or frontage of shop properties which are presently predominantly within the A1 shop classification of the schedule to the Town and Country Planning (Use Classes) Order 1987;*
- b) that the proposed use or development would not have any material or significantly detrimental effect upon the environment of the locality;*
- c) that the proposed use or development would not cause demonstrable harm to other interests of acknowledged importance, including the amenities of occupiers of dwelling houses or flats in the town centre, shopping or residential locality, and highway safety.*

Other Material Planning Considerations

PPG 6 (Town Centres and Retail Development)

The diversity of uses in town centres, and their accessibility to people living and working in the area, make an important contribution to their vitality and viability.

Changes of use, whether in town, district or local centres, can however sometimes create new concentrations of single uses, such as restaurants and take-away food outlets, where the cumulative effects can cause local problems. Such proposals should be assessed not only on their positive contribution to diversification, but also on the cumulative effects on such matters as loss of retail outlets, traffic, parking and local residential amenity. These issues should be resolved when making planning decisions, rather than permissions being unimplementable when licences are refused.

Appeal Decision

A recent appeal was upheld regarding a change of use from a shop (Class A1) to a hot food takeaway (Class A3). The inspector stated that the hot food takeaway would provide a service to shoppers and workers during the daytime and would provide welcome diversity into the town centre whilst maintaining the predominance of retail uses in the frontage, as well over half of the retail units would remain in A1 use. Therefore, the inspector concluded that the hot food takeaway would not cause demonstrable harm to the vitality and viability of the town centre and doesn't conflict with the objectives of S4 and the advice contained within PPG6.

Planning Issues

The location for the proposed development is within the urban boundary and therefore the proposal complies with Policy DS1 of the Rossendale District Local Plan.

There are currently four hot food outlets in Whitworth and two are in the vicinity of the location for the proposed development. Therefore, it could be said that there are enough hot food outlets within Whitworth and therefore the proposed development is contrary to Policy S4 of the Rossendale District Local Plan.

Seven of the ten properties in the three blocks of terraced properties are in A1 use, according to the Town and Country Planning (Use Classes) Order 1987. Therefore the proposed development would be contrary to Policy S4 of the Rossendale District Local Plan as hot food outlets should not be situated within a terrace of shop properties which are predominantly of A1 classification. However, the recent appeal decision has shown that there is scope for hot food outlets within A1 frontages in certain circumstances and the proposed hot food outlet could provide a welcome service to shoppers and workers alike in Whitworth during daytime, unlike the other hot food outlets in the vicinity which mainly open in the evenings. Therefore the proposal would not cause demonstrable harm to the vitality and viability of the town centre, therefore the proposed development complies with Policy S4 of the Rossendale District Local Plan and PPG6.

The issue of parking is one that has been raised by local residents in association with this application. The number of cars estimated to be visiting the site on a daily basis is 20. It has been stated that there is parking available in the parking bay at the front of the property and parking at the rear, including Shed Street. Parking is available on a car park which is accessed from North Street. It is possible to accommodate the estimated number of cars within the parking provision put forward by the applicant during the course of the day, therefore the proposal accords with Policy T4 and S4 of the Rossendale District Local Plan.

It should be noted that both Highways authorities have no objection to the proposal on highway grounds.

Concerns regarding the potential for fumes from the proposed development have been raised. After consultation with Environmental Health, it is felt that these issues can be dealt by conditional control and will not significantly affect the amenity of the residents of the surrounding properties, therefore complying with Policy DC1 of the Rossendale District Local Plan.

The proposed development will not adversely affect the amenity of the neighbouring properties or the surrounding environment and therefore complies with Policies S4, T4 and DC1 of the Rossendale District Local Plan.

Recommendation

That planning permission is granted subject to the following conditions:

Conditions

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

Reason: The condition is required by virtue of Section 91 of the Town and Country Planning Act 1990.

2. Fumes, vapours and odours shall be extracted and discharged from the premises in accordance with a scheme (which shall incorporate grease and carbon filters and discharge at roof level with an internal stack) to be submitted to and approved in writing by the local planning authority before the use is commenced. The approved scheme shall be fully implemented before the permitted use is first commenced and maintained in perfect working order thereafter.

Reason: To prevent smell and fume nuisance to nearby neighbours and to ensure the visual appearance of the fume extraction is acceptable.

3. A scheme for the sound insulation of any ventilation equipment referred to in the condition set out above shall be submitted to the Local Planning Authority and no development shall commence until all sound insulation works have been carried out to the satisfaction of the Local Planning Authority. The sound insulation works shall be maintained thereafter to the satisfaction of the Local Planning Authority.

Reason: To safeguard the amenities of the occupiers of nearby residential properties.

Local Plan Policies

DS1

DC1

T4

S4