

Application No: 2009/0239

Application Type: Full

Proposal: Variation of condition 6 of planning permission 2005/617

Location: Heritage Arcade, Bacup Road, DSS Club, Bury Road and Land at New Hall Hey, Rawtenstall

Report of: Planning Unit Manager

Status: For Publication

Report to: Development Control Committee

Date: 3 August 2009

Applicant: Hurstwood Developments (in Administration)

Determination Expiry Date: 28 August 2009

Agent: ID Planning

REASON FOR REPORTING

Tick Box

Outside Officer Scheme of Delegation

X

Member Call-In

✓

Name of Member:

Reason for Call-In:

More than 3 objections received

X

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.

APPLICATION DETAILS

1. The Site

This application relates to part of the New Hall Hey site in Rawtenstall, the Heritage Arcade in Bacup Road and the Ex Soldiers and Sailors Club, 12 Queens Square.

New Hall Hey is located to the south of the A682 Rawtenstall Bypass. It is an irregular shape and occupies a prominent position on the approach into Rawtenstall. The part of the New Hall Hey site, to which this proposal relates, is adjacent to the newly constructed roundabout on the A682. Previous planning permissions have granted consent for Homebase, Pets at Home and Argos.

The Heritage Arcade comprises of a two-storey building constructed in the 1930's as a cinema, and is adjacent to Rawtenstall Bus Station. This building is to be converted into a restaurant/pub.

The Ex Soldiers and Sailor Club, 12 Queens Square, is a three-storey building, located in a conservation area. This building, as part of the original permission, has planning permission to be converted to a health care facility.

2. Relevant Planning History

There is a detailed planning history, which relates to this site. Of particular relevance to this proposal is application no. 2005/617, which was approved in May 2007 and relates to:

Erection of 1 Non Food Retail, 8 no. B1 & B8 Businesses, 4 no. B1 Offices, 3 no. Leisure & 5 no. A3 units at New Hall Hey. Conversion of Heritage Arcade from Retail Market to A3/A4 Restaurant/Pub. Conversion of DDSS Club from Private Club to Health Care Use.

The application was subject to extensive negotiations and prior to the determination of this application, a further application was submitted in 2007, relating to a small section of the site under application ref. 2007/030 for:-

Erection of 3 retail units measuring 3356 sq m, 1412 sq m and 1412 sqm'

The 2007 application also included a new access and entrance into the site from the A682. Both applications were approved on 9 May 2007, with the 2007 application seeking consent for minor amendments to Unit A1, which was proposed at the time to be occupied by Homebase and to allow non food retail uses within Units A2 and A3, which were originally proposed for leisure use, with the proposed occupiers to be Pets at Home and Argos.

3. The Proposal

Permission is now sought to vary condition 6 of planning permission 2005/617

Condition 6 of Planning Approval 2005/617 states:

“Within 18 months of Unit A1 (as shown on approved plan 00 (0-)A100 Ref F) being brought into use not less than 1,685 square metres of B1 floorspace shall be constructed and made available for occupation.”

The applicant is seeking to vary the condition to the following:

“Prior to the first occupation of A1, marketing of that part of the site with planning permission for offices (as shown on approved plan reference 9600/00(0-)A100) for the erection of 1,651 sqm of B1 office space shall be commenced in accordance with a marketing strategy and timescales to be submitted to and agreed in writing by the Local Planning Authority. If a prospective purchaser or tenant is identified for the 1,651 sqm of B1 office on commercially viable terms, upon the tenant or purchaser entering into a contract for the sale or lease of the offices, the 1,651 sqm of B1 office buildings shall be constructed and made available for purchase/occupation within 18 months from the date of signing the contract.”

The process to vary a condition is by Section 73 of the Town and Country Planning Act. The granting of a S73 application would in effect grant a new planning permission. Whilst granting a new permission only issues relating to the condition to which the S73 application relates can be considered. The appraisal below considers the issues relevant to condition 6.

Should planning permission be granted it would in effect grant a new permission similar to that approved by application 2005/617. Therefore, it is a major application and one which would normally be considered by the Development Control Committee.

It should be noted that there is a separate application (application number 2009/0240), which is also subject to the variation of condition 21 of planning permission 2007/030, which has the same wording, as this application, but only refers to the Land at New Hall Hey. This application is also on this agenda for consideration.

4. Policy Context

Since members considered the scheme, the only changes that have taken place, in relation to the planning policy context, is that the Regional Spatial Strategy was adopted in September 2008. It is therefore not considered that the policy context, in relation to this application, has materially changed since members approved applications 2005/617 and 2007/030.

5. Consultation Responses

Internal Consultations

None conducted.

External Consultations

None conducted.

Neighbour Notification Responses

Press notices were published on 17 & 24/07/2009. Site notices were posted on 17/07/2009 and neighbours were notified by letter on 15/07/2009 to accord with the General Development Procedure Order. The closing date for responses to be received being 07/08/2009.

No responses received to date.

6. REPORT

Given the nature of the proposal it is considered that the main planning issues relate to the timing of the construction of the B1 office space and assurance that the site will be developed in the future.

Background

The condition was attached to application no. 2005/617, requiring the construction of office floorspace to ensure that the significant economic and job creation benefits of the scheme were realised.

Since the original application was submitted in 2005 (application no. 2005/617), and application no. 2007/030 was determined, the developer (Hurstwood Developments) has gone into administration. Work on the three retail units as part of application no. 2007/030 has commenced but has since been stopped due to the financial circumstances of the developer. There has not been any work on the Heritage Arcade or Bury Road sites, which were included on the original permission, in 2005.

The site is now in the hands of the banks, where the banks are considering disposing of the site, leaving the site in its current state or investing further in the site to complete the three retail units.

As a consequence of the proposed financial losses, arising from the development of the office floorspace, the bank is only able to commit the funding if it can be capped and there are no further liabilities arising from completing the three retail units and their subsequent occupation.

Options for the Site

In seeking to dispose of the site, in the current economic climate, the bank consider it unlikely a suitable purchaser could be found and therefore the only realistic options for them are to leave the site in its current state with no further work being undertaken or to provide further investment to complete the three retail units and seek tenants for their further occupation.

In seeking to complete the three retail units, the bank would need to invest circa £1.2 million. On top of this there is already money owed arising from the New Hall Hey development. However, the condition attached to the planning permission (2007/030) requires that 1,651 sqm of office space is constructed 18 months after the retail units are brought into use. This requirement would increase the banks costs requiring further funding of around £1.5 million.

Current Economic Climate

Since the applications both in 2005 and 2007, were approved, there has been a change in the current economic climate. The demand for B1 office development has materially changed and there is currently no clear demand. Also the speculative development of the office space without any prospective tenants would not guarantee the bank a return on the additional investment required.

Financial Viability Appraisal

Commercial property consultants, Eddisons, have undertaken a financial viability appraisal and this has been undertaken on the basis of the following robust assumptions:-

Office Floorspace

- 17,000 sq ft net/18,700 sq ft gross

Build Cost

- £90/sq ft
- Based on a two storey building (assuming a standard fit out with no air-conditioning, good ground conditions, no contamination, and no infrastructure cost)

Rental Levels

- New build offices are expected to command a good level of rent and other offices within the area are showing rental levels from £6-£12 per sq ft. A rental level of £12 per sq ft is therefore considered to be appropriate.

Yield

- There has been a dramatic fall in investment yields over the last 12-18 months. In a secondary location such as Rawtenstall and assuming an average covenant strength, yields would be expected to approach 10%.

Empty Rates

- The changes in the empty rates in April 2008 has had a negative impact on the property industry and in particular on speculative development.
- £111,000 assuming 18 month void and 6 month rent free period.

Developer's Return

- 15%

Demand

- The office demand has been affected by the current recession more so than any other part of the property sector and as a result demand is down substantially and we consider a period of 2 years void/rent free would be required.

The conclusion to this was that if the condition was not amended, then the requirement to develop the B1 office floorspace is not financially viable.

Suggested Way Forward

It has already been stated, by the developer, that the condition is seen as onerous on the bank, and if the condition remains as it is then the banks are not likely to put any further investment

into this site. It is a gateway site and if remains undeveloped then it presents a poor image into the town.

The developer acknowledges that there are economic and job creation benefits that would accrue from the development of the office floorspace. They also acknowledge the importance of the site and its location for the Council in terms of employment land provision and therefore the developer is not seeking to remove the condition altogether.

The developer is seeking to amend the existing condition to require the marketing of the site to find a prelet before construction, this will avoid the additional financial liability to the bank whilst seeking to actively ensure the office floorspace can be constructed in the future, provided an occupier is secured beforehand. This approach therefore limits the liability of the bank but ensures the retail units can be completed and the development of the floorspace is actively pursued.

In connection with the retail units tenants have been sought for the site and there is currently interest from Argos, Pets at Home and Next.

Amendment to Condition

The existing condition is worded as follows:

“Within 18 months of Unit A1 (as shown on approved plan 00 (0-) a100 Ref F) being brought into use not less than 1,685 square metres of B1 floorspace shall be constructed and made available for occupation.”

The applicant therefore proposes to seek a pre-let through an agreed marketing strategy, and on the basis that commercially viable terms can be agreed, and a contract can be entered into, the floorspace will be constructed. It is therefore proposed, by the developer, that the wording be amended to the following:

“Prior to the first occupation of A1, marketing of that part of the site with planning permission for offices (as shown on approved plan reference 9600/00(0-)A100) for the erection of 1,651 sqm of B1 office space shall be commenced in accordance with a marketing strategy and timescales to be submitted to and agreed in writing by the Local Planning Authority. If a prospective purchaser or tenant is identified for the 1,651 sqm of B1 office on commercially viable terms, upon the tenant or purchaser entering into a contract for the sale or lease of the offices, the 1,651 sqm of B1 office buildings shall be constructed and made available for purchase/occupation within 18 months from the date of signing the contract.”

A plan has been provided, as part of this application, which shows the extent of the site that will be marketed for office use (drawing no. 7035 L08 RevAA).

Shopping Directive

Members will recall that the earlier scheme (2007/030) was referred to the Secretary of State in accordance with the Town and Country Planning (Shopping Development)(England and Wales)(No 2) Direction 1993.

The issue of whether an application should be referred to the SOS, under the terms of the various Directions, is one for the LPA to decide. However, this was discussed with officers at GONW, in connection with a previous application to vary a condition in connection with public art. Notwithstanding, whether or not the LPA decide to refer the item, informally, officers at GONW were of the opinion that there was no need to be consulted on the variation of condition in connection with the public art scheme, given their past decisions have been not to intervene, and the fact that what is an issue now, is not the main retail policy question which have previously considered, but in connection with timing and implementation of the B1 office space of 1,651 sqm, which would not raise policy issues of more than local importance.

Therefore, it is not considered necessary to refer this proposal in this instance.

7. CONCLUSION

It is considered that the amended condition, as suggested by the developers, would go some way to ensure the development of B1 office space. It would at the same time enable tenants to be found for the existing retail units. However, there are a number of elements that would need to be complied with, largely out with the Council's control.

The first element suggests that a marketing strategy is agreed, including timescales. This would be something that is normally carried out by the developer anyway to attract tenants to a site. There is also the issue of a tenant still needing to be identified on 'commercially viable terms'. This would be on 'terms' with the developer and be out of the control of the Council. Once the terms are agreed then there would still be the requirement to enter into a contract, which again is out of the control of the Council. Once the terms are agreed then there would still be the requirement to enter into a contract, which again is out of the control of the Council. Once the contract is signed then the unit would be made available within 18 months of signing the contract.

This seems an onerous condition, and give that this is the normal course of action that a developer would take, and that they acknowledge the importance of the site from an economic and job creation benefit, then the suggested way forward is to simply extend the period for implementation to 5 years as opposed to the original 18 months. However, as the time period in this instance would run from the date of the original consent, namely, May 2007, the condition would read:

'Within seven years from the approval date of planning permission 2005/617 not less than 1,685 square metres of B1 floorspace, on New Hall Hey, shall be constructed and made available for occupation.'

By wording the condition, in such a way, enables the developer to continue with the marketing of the site for tenants to occupy the B1 office use, continue their discussions with the prospective tenants for the retail units and ensure that the Council maintain some control over the timescales for the implementation of the site, whilst at the same time alleviating some of the burden for the banks.

Given that it is a gateway site into Rawtenstall, it is paramount that this site is developed, and is not just left in its current state. If the application is refused, and the site is left in its current state then the Council will have to seek enforcement action to pursue its development. If the condition is amended, as suggested above, then the site can still be developed, although not as quickly as the Council hoped for. However, given that the economic climate will change for the

better and it is a gateway site then it is considered that this site will eventually be developed as the Council envisaged.

It is therefore considered that the amended condition, to extend the requirement for the B1 office floorspace, to be available in 5 years time, will ensure that the site can be developed.

All other relevant conditions which were attached to application 2005/617 have been attached again although the wording has been changed to reflect the details that have already been submitted and agreed by the earlier permission.

8. RECOMMENDATION(S)

That the scheme be approved subject to the following conditions and that:

- I. The Planning Unit Manager be authorised to complete a deed of variation in relation to the existing completed S106 agreement to correlate to this planning application reference;
- II. That the applicant be informed that the Council is minded to grant planning permission, subject to the conditions stated below, on completion of the deed of variation;
- III. The Planning Unit Manager, in consultation with the chair/vice chair be authorised to issue the decision following the expiry of the consultation period.
- IV. That authority be given for the decision notice relating to the application be issued, (subject to conditions and reasons stated below) on completion of the above variation of the legal agreement and expiry of the consultation period.

9. Conditions

1. The development hereby approved shall be constructed in accordance with the submitted detail on the elevations shown on drawing number 7035 (20) E04 Rev F and the representative samples approved by letter dated 11th December 2007 in relation to application 2007/030 unless otherwise agreed in writing by the Local Planning Authority. *Reason: In the interests of visual amenity and to accord with Policy DC1 of the adopted Rossendale District Local Plan*
2. Notwithstanding the provisions of the Town & Country Planning (Use Classes) Order 1987, or an other amending or revoking and re-enacting that order Units 1A and 2A as shown on drawing no. 7035 L03 Rev L shall be used for the sale of home improvement and garden related products, furniture, floor coverings, soft furnishings, electrical products, household goods, pets, pet food and pet supplies and other goods ancillary to or directly associated with these goods, and for no other purpose unless otherwise agreed in writing by the Local Planning Authority. *Reason: To ensure compliance with the applicant's retail impact assessment against which the application was assessed and to safeguard the viability and vitality of Rawtenstall Town Centre and neighbouring districts in accordance with PPS6, Policy 16 of the adopted Joint Lancashire Structure Plan and Regional Spatial Strategy.*
3. Notwithstanding the provisions of the Town & Country Planning (Use Classes) Order 1987, or an other amending or revoking and re-enacting that order, unit 3A as shown on drawing no. 7035 L03 Rev L hereby approved shall not be used for the sale of clothing (other than items normally associated with DIY tasks or if sold by a catalogue retailer) or

for the sale of food or drink for human consumption (other than for the consumption on the premises as an ancillary use) unless otherwise agreed in writing by the Local Planning Authority. *Reason: To ensure compliance with the applicant's retail impact assessment against which the application was assessed and to safeguard the viability and vitality of Rawtenstall Town Centre and neighbouring districts in accordance with PPS6, Policy 16 of the adopted Joint Lancashire Structure Plan and Regional Spatial Strategy.*

4. The maximum gross floor areas within the development, including any internal alterations, shall not exceed: 7214 sq m non food retail (comprising of Units A1, A2 and A3 and including 1230 sq m garden centre) as shown on the approved plan no. 7035 L03 Rev L, and 4446 sq m of leisure comprising of units B1, B2, B3, B4, C1 & C2, as shown on plan MR 9600 00 (0-) A100. *Reason: To safeguard the viability and vitality of Rawtenstall Town Centre and neighbouring districts in accordance with PPS6, Policy RDF2 of the Regional Spatial Strategy.*
5. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, there shall be no changes from the permitted restaurant uses without the prior grant of planning permission by the Local Planning Authority. *Reason: To ensure compliance with the applicant's retail impact assessment and to restrict further Class A1 uses without express consent and to safeguard the viability and vitality of Rawtenstall Town Centre and neighbouring districts in accordance with PPS6, and Policy RDF2 of the Regional Spatial Strategy.*
6. 'Within seven years from the approval date of planning permission 2005/617 not less than 1,685 square metres of B1 floorspace, on New Hall Hey, shall be constructed and made available for occupation.' *Reason: To ensure the significant economic and job creation benefits of the scheme are realised.*
7. No part of this development shall be occupied unless and until its associated car parking/servicing provision has been completed and available for use. The car parking provision shall be retained and kept available for use as such. *Reason: To ensure the provision of adequate off street parking/servicing in accordance with PPS6, PPG13, Policy 1 of the adopted Joint Lancashire Structure Plan and Policies DC1, T4 and T7 of the Rossendale District Local Plan.*
8. Within 6 months of the commencement of each element of the development (New Hall Hey, Heritage Arcade or Former Soldier and Sailors Club) a scheme detailing any external lighting shall be submitted to and agreed in writing by the Local Planning Authority. Such scheme as is approved shall be implemented in full prior to first use of the development. *Reason: To safeguard the amenity of the area and Conservation Area in accordance with policies HP.1 and DC1 of the Rossendale Local Plan.*
9. The development hereby approved shall be carried out in accordance with the submitted landscaping details shown on the following drawings:
 - Dwg Number 278.02 Rev D - Landscaping layout Phase 1 (Units A1-A3)
 - Dwg Number 278.03 Rev C - Landscaping sections/elevations (Units A1-A3)
 - Dwg Number 278.04 Rev A - Typical tree pit details within car park (Units A1-A3/Phase 2)

- Dwg Number 278.05 Rev C - Landscaping layout Phase 2
- Dwg Number 278.06 - Landscaping elevations Phase 2
- Dwg Number 278.07 - Typical tree pit details car park boundary (Units A1-A3/Phase 2)
- Planting schedules for Phase 1 and 2
- Maintenance plan

9. All planting, seeding and turfing proposed in the approved details of landscaping shall be carried out in the first planting and seeding seasons following substantial completion of the building to which it (most closely) relates, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. *Reason: In the interests of visual amenity and to accord with Policy DC1 of the adopted Rossendale District Local Plan*
10. Prior to first occupation of any unit hereby approved a scheme detailing security measures shall be submitted to and approved in writing by the Local Planning Authority. The details submitted shall include illumination of car parking areas, enclosure of service yards and the installation of a system of CCTV. The development shall be undertaken in accordance with the approved scheme. *Reason: In the interests of designing out crime in accordance with policy DC1 of the Rossendale District Local Plan*
11. Prior to the commencement of any works at the Heritage Arcade a scheme shall be submitted for the written approval of the Local Planning Authority which details the programme of the building recording and analysis to be undertaken in respect of it. Upon completion of the programme of recording and analysis for each building it shall be submitted to the Local Planning Authority. *Reason: To ensure and safeguard the recording and inspection of matters of archaeological/historic importance associated with the Building, in accordance with the advice of Lancashire County Council (Archaeology) and RSS Policy EM1.*
12. Prior to the conversion of the Heritage Arcade samples of the facing materials to be used for the roof lights, replacement window/door, glazed screen, kalwall cladding, brickwork, and service ramp shall be submitted to and approved in writing by the Local Planning Authority. The sample of the materials should be accompanied with a method statement which details how the external elevations will be cleaned/repared. The development shall be undertaken using the approved materials and method statement. *Reason: To safeguard the amenity of the Conservation Area in accordance with Policy HP1 of the adopted Rossendale District Local Plan.*
13. Fumes, vapours and odours shall be extracted and ducted from the Heritage Arcade in such a manner as to prevent nuisance to the occupiers of neighbouring properties and to minimise the visual impact and noise of the structure, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority before the commencement of any works. The approved scheme shall be implemented prior to first use of the building as hereby permitted and kept in proper working order thereafter. *Reason: To prevent smell and fume nuisance to nearby neighbours and to ensure the visual appearance of the fume extraction system is acceptable, in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.*

14. The development hereby approved shall be carried out in accordance with the requirements of the following documentation unless otherwise agreed in writing by the Local Planning Authority with regard to the provision of surface water drainage and culverted water course(s):

6234 D01 C6 Drainage A0 (1).pdf
25m cellular store.pdf
35m cellular store.pdf
100 year New Hall Hey Service Yard.pdf
100 year New Hall Hey storm.pdf
200m cellular store.pdf
450m cellular store.pdf

Reason: To prevent pollution of the water environment, in accordance with policy DC1 of the Rossendale Local Plan.

15. The development hereby approved shall be carried out in accordance with the requirements of the following documentation unless otherwise agreed in writing by the Local Planning Authority:

- Geo environmental Appraisal of Land at New Hall Hey Road, Rawtenstall. Ref: 7134/1, Encia Consulting, dated November 2006.
- Outline Remedial Strategy for Land at New Hey Hall Road, Rawtenstall. Ref: 7134/2, Encia Consulting, dated March 2007.

A completion Report shall be submitted to the Local Planning Authority detailing the conclusions and actions taken at each stage of the works (to include validation works).

Reason: To ensure the site is properly remediated and any risk to human health and controlled waters is minimised in accordance with Policy DC1 of the Rossendale District Local Plan.

16. Throughout the construction period, facilities shall be provided / retained within the New Hall Hey site by which means the wheels of vehicles may be cleaned before leaving the site, in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: To avoid the deposit of mud and / or loose materials on the public highway, in the interests of highway safety in accordance with DC1 of the Rossendale District Local Plan.

17. The development shall be carried out in accordance with the following plans unless otherwise agreed in writing by the Local Planning Authority:

7035 L03 Rev L
7035 05 Rev B
7035 14
7035 P10 Rev A
7035 P9 Rev A
7035 L01 Rev A

7035 (20) E04 Rev F Materials details
Dwg Number 278.02 Rev D - Landscaping layout Phase 1 (Units A1-A3)
Dwg Number 278.03 Rev C - Landscaping sections/elevations (Units A1-A3)
Dwg Number 278.04 Rev A - Typical tree pit details within car park
(Units A1-A3/Phase 2)
Dwg Number 278.05 Rev C - Landscaping layout Phase 2
Dwg Number 278.06 - Landscaping elevations Phase 2
Dwg Number 278.07 - Typical tree pit details car park boundary (Units
A1-A3/Phase 2)
Planting schedules for Phase 1 and 2
Maintenance plan

Reason: For the avoidance of doubt

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