

Application No: 2009/0546	Application Type: Full Application,
Proposal: Change of Use from Shop With Living Accommodation Above to Take Away and Restaurant with Storage and Living Accommodation over, New Shop Front and Flue to Rear.	Location: 8 Bury Road Rawtenstall BB4 8AA
Report of: Planning Unit Manager	Status: For Publication
Report to: Development Control Committee	Date: 8 th February 2010
Applicant: Mr. H Malik	Determination Expiry Date: 28 th January 2010
Agent: Mr L Vika	

REASON FOR REPORTING **Tick Box**

Outside Officer Scheme of Delegation ✓

Member Call-In ✓

Name of Member: Cllr Swain
Reason for Call-In: It is contrary to the Hot Food Takeaway SPD; Highway implications; Neighbourhood Amenity and Proliferation of Takeaways in the area.

More than 3 objections received ✓

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. SITE

- 1.1 The application site lies to the south-east of Bury Road, Rawtenstall facing on to the Queen's Square gyratory and is occupied by a 3 storey, mid-terraced building constructed in stone and slate. The ground floor of the shop is vacant but was last used as a mobile phone shop (Class A1) with ancillary accommodation on the two floors above.
- 1.2 The unit stands in a row of 5 similar properties with Class A1 shops at ground floor level, to the south-west of which stand another row of 5 units with Class A1 shops at ground floor level.
- 1.3 Planning permission has been granted by the Development Control Committee for the change of use of the ground floor of No.12 Bury Road from a D2 assembly and leisure use to a Class A3 restaurant.
- 1.4 The site lies within the Urban Boundary as designated within the Rossendale District Local Plan and also within the Rawtenstall Town Centre Conservation Area.

2. RELEVANT PLANNING HISTORY

- 2.1 2008/0341 - Change of Use from Phone Shop (Class A1) with Living Accommodation over; to Hot Food Takeaway (Class A5) with Restaurant (Class A3) including ancillary Storage with Living Accommodation over.

The application was recommended for approval by the case officer but later refused at the 1st September 2008 meeting of the Development Control Committee for the following reasons:

1. The proposed development would attract a high number of visitors arriving to the property by car as well as vehicles providing a delivery service without making adequate provision for parking, turning and servicing. As such, the proposed development would be detrimental to highway safety and thereby conflicts with saved Policy DC1 - Development Criteria of the adopted Rossendale District Local Plan.
2. The proposed development by reason of its hours of opening and nature of the use would create noise, smell, litter and attract anti-social which would be detrimental to the amenities of the occupiers of adjoining and nearby properties. The proposal is thereby by contrary to saved Policy DC1 - Development Criteria of the adopted Rossendale District Local Plan.
3. The proposed development would result in the loss of a Class A1 retail unit in a Town Centre location where retailing is sought to be maintained as the predominant use. The loss of such a retail unit in this location would be detrimental to the vitality, viability and regeneration efforts in Rawtenstall

Town Centre and as such would be contrary to saved Policy DC1 - Development Criteria of the adopted Rossendale District Local Plan and the emerging Rawtenstall Town Centre Area Action Plan Revised Preferred Options.

The concurrent applicant appealed against the Council's decision to refuse the application which was subsequently granted at appeal.

3. THE PROPOSAL

- 3.1 The applicant is seeking consent for the change of use of the building from an Class A1 shop to a mixed use of Class A3 Restaurant and a Class A5 Hot Food Takeaway. The applicant has confirmed that the use would operate on the same basis as the scheme granted on appeal.
- 3.2 The application also seeks permission for alterations to the shop front which include the installation of replacement timber windows with the creation of an additional doorway placed centrally, new stall riser and fascia board to match. The shop frontage is intended to reflect the work undertaken at Denpoint at 9-11 Bacup Road. Indicative details of the extractor ducting and sound proofing have been provided. Protective measures for the shop windows are proposed in the form of an open grille which rolls up and would be housed behind the fascia board.
- 3.3 The application also proposes an extension of the opening hours to open during the day. The proposed opening hours would be 11:30-22:30 Monday-Friday; Saturday 11:30-23:00 and 12:00-22:00 Sundays and Bank Holidays.
- 3.4 The signage would be covered by a separate application for advertisement consent.

4. POLICY CONTEXT

4.1 National Planning Guidance

PPS1 – Delivering Sustainable Development
PPS4 – Planning for Sustainable Economic Growth
PPG13 – Transport
PPG15 – Planning and the Historic Environment
PPG24 – Planning and Noise
PPS 25 – Flood Risk

4.2 Regional Spatial Strategy Policies

North-West of England Plan – Regional Spatial Strategy to 2021

Policy DP 1 Spatial Principles
Policy DP 2 Promote Sustainable Communities
Policy DP 3 Promote Sustainable Economic Development

Policy DP 4 Make the Best Use of Existing Resources and Infrastructure
Policy DP 5 Manage Travel Demand; Reduce the Need to Travel, and Increase Accessibility
Policy DP 6 Marry Opportunity and Need
Policy DP 7 Promote Environmental Quality

Policy L 1 Health, Sport, Recreation, Cultural and Education Services Provision

Policy RT 2 Managing Travel Demand
Policy RT4 Management of the Highway Network

Policy EM 1 Integrated Enhancement and Protection of the Region's Environmental Assets

4.3 Saved Policies of the Rossendale District Local Plan

DS1 – Urban Boundary
DC1 – Development Criteria
DC4 – Materials
HP1 – Conservation Areas

4.4 Other Material Planning Considerations

RBC – Interim Policy Statement: Hot Food Takeaways

5. INTERNAL CONSULTATIONS

5.1 **RBC – Environmental Health** – No objection in principle.

5.2 **RBC – Conservation Officer** – No objection but requires further details to be agreed prior to the commencement of work on site.

6. EXTERNAL CONSULTATIONS

6.1 **LCC – Highways** – No objections.

7. REPRESENTATIONS

7.1 A press notice was published on 18/12/2009. A site notice was posted on 21/12/2009 as shown on the site plan. 7 neighbours were notified by letter on 04/12/2009 to accord with the General Development Procedure Order. The site notice has been posted to go above and beyond the regulatory requirement to ensure a high level of Community engagement to accord with PPS1.

7.2 5 letters of objection received:

- Lack of parking
- Increase in litter

- Already enough restaurants and takeaways in Rawtenstall
- Would present a poor image of the town at its “Gateway”
- Impact of the use on existing shops
- Groups of people congregating
- Impact on residential amenity

8. REPORT

- 8.1 The main considerations of the application are the principle of the development, whether scheme would preserve and enhance the character and appearance the Rawtenstall Town Centre Conservation Area, and the impact of the proposal on residential amenity and highway safety.
- 8.2 The applicant has stated that there is no difference between the scheme allowed at appeal under 2008/0341 and the current proposal, although the proposed use does not match exactly the details in the supporting statement to the earlier approval. The details indicated that the proposal under 2008/0341 were sought to establish the nature of the proposed use which clearly indicated the use would operate and have the appearance of a traditional Indian-style restaurant albeit with an element of takeaway. The details which have been supplied by the applicant’s agent differ to some extent, so that the case is less certain. The case officer has highlighted to the applicant throughout the pre-application and application process that even if planning permission were approved for a mixed Class A3/A5 use, this would not grant planning permission for the building to be used wholly as a Hot Food Takeaway. Were the business to operate wholly as a Class A5 use, it would be unauthorised and the subject of potential enforcement action. This should be the subject of an informative to the applicant. However, as this is not what the applicant has stated, the use currently being applied for is primarily as a restaurant with an element of Hot Food Takeaway which reflects the use as applied for previously under 2008/0341. As such, the principle of the change of use to a mixed Class A3/A5 development has already been established by the appeal decision on application 2008/0341 allowing the scheme which renders the principle of the development acceptable.
- 8.3 The design of the proposed alterations to the shop front including the windows, additional door, stall risers and fascia would be in keeping with the architectural integrity of the larger building, although the finer details should be agreed by condition. The roller-grille is of a style encouraged by the Council’s Interim Policy Statement on Hot Food Takeaways and would be housed behind the fascia board. The extractor ducting would be sited on the rear of the building and would not be visible above the ridge line of the building or within important views within the Conservation Area. This is in the same location as the preceding appeal where the Inspector raised no objection to its siting. As such, the scheme is considered to preserve and enhance the character and appearance of the Rawtenstall Town Centre Conservation Area and would be acceptable in terms of visual amenity.
- 8.4 The proposed use already has extant planning permission by virtue of the previous appeal decision and there would be no works to extend the building

which would incur a loss of light, privacy or outlook. The extractor ducting may cause some noise and disturbance to future occupiers although a scheme of sound insulation has been proposed and should be secured by condition which would mitigate the noise effects. The only significant difference between the current application and the early approval, is that opening hours would be extended to open during the day. The proposed hours would be 11:30-22:30 Monday-Friday; Saturday 11:30-23:00 and 12:00-22:00 Sundays and Bank Holidays. As the extended opening hours would be during the day, these would not give rise to unacceptable levels of noise and disturbance at a time when residents would place a high value on low levels of background noise. As such, the scheme is considered acceptable in terms of residential amenity.

- 8.5 The proposed development was granted at appeal despite the Council's concerns over parking. In the light of the proposal being essentially the same and the Highway Authority raising no objections, the scheme is considered to be acceptable in terms of highway safety.

9. CONCLUSION

- 9.1 The scheme is acceptable in principle, it would preserve and enhance the character and appearance of the Rawtenstall Town Centre Conservation Area, it would also be acceptable in terms of visual and residential amenity and highway safety.

10. RECOMMENDATION

- 10.1 Approve

11. REASONS FOR APPROVAL

1. The scheme is acceptable in principle, it would preserve and enhance the character and appearance of the Rawtenstall Town Centre Conservation Area, it would also be acceptable in terms of visual and residential amenity and highway safety and thereby conforms to PPS1, PPS4, PPG13, PPG15 & PPS23 also the following policies of the Regional Spatial Strategy DP1-7, L1, RT2 & RT4 and policies DS1, DC1, DC4 & HP1 of the Rossendale District Local Plan.

12. CONDITIONS

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

Reason: Required by Section 51 of the Planning and Compulsory Purchase 2004 Act.

2. The development shall be carried out in accordance with drawing numbers 1 and 2 date stamped 03 Dec 2009 unless subsequently amended and approved in writing by the Local Planning Authority.

Reason: To ensure the development complies with the approved plans and for the avoidance of doubt.

3. Prior to the commencement of development on site, the applicant shall submit to the Local Planning authority for their approval in writing, a scheme detailing the proposed extractor ducting, flue, cowl, filters, anti-vibration mountings, acoustic levels. The development shall be carried out in accordance with the approved scheme and thereafter maintained for as long as the use hereby approved remains in existence.

Reason: In the interests of residential amenity pursuant to policy DC1 – Development Criteria of the Rossendale District Local Plan.

4. Any construction works associated with the development hereby approved shall not take place except between the hours of 8:00 am and 7:00 pm Monday to Friday and 8:00 am and 1:00 pm on Saturdays. No construction works shall take place on Sundays, Good Friday, Christmas Day or Bank Holidays.

Reason: To safeguard the amenities of nearby residential properties, in accordance with PPG24 – Noise and the criteria of policy DC1 of the adopted Rossendale District Local Plan.

5. Prior to the commencement of development on site, the applicant shall submit to the Local Planning Authority for their approval, details of the storage of waste and refuse for the use. The approved storage and waste details shall be provided prior to the approved use first operating and shall thereafter be maintained in perpetuity.

Reason: To prevent litter in the interest of visual amenity pursuant to Policy DC1 – Development Criteria of the Rossendale District Local Plan.

6. The premises shall not be open for trading except between the hours of 11:00 and 22:30 Sunday to Thursday; 11:00 and 23:00 Saturdays; 12:00 and 22:00 Sundays and Bank Holidays. No operations whatsoever shall take place within the premises within one hour of the closing time stated above.

Reason: To prevent noise and disturbance to nearby residential properties in the interests of residential amenity pursuant to policy DC1 - Development Criteria of the adopted Rossendale District Local Plan.

7. Prior to the commencement of development on site, there shall be submitted to the Local Planning Authority a scheme detailing the sound insulation in the premises between the ground floor also the extractor ducting and the residential accommodation. The approved sound insulation scheme shall be implemented prior to the use hereby approved commencing and shall thereafter be maintained in perpetuity.

Reason: Reason: In the interests of residential amenity pursuant to policy DC1 – Development Criteria of the Rossendale District Local Plan.

8. Prior to the commencement of development on site, there shall be submitted to the Local Planning Authority for their approval a scheme detailing the provision access to the premises by disabled people. The approved scheme shall be implemented prior to the use first operating and thereafter maintained as such in perpetuity.

Reason: To provide equal access for all in accordance with the Council's Interim Policy Statement on Hot Food Takeaways.

Contact Officer	
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