

Application Number:	2012/0488	Application Type:	Full
Proposal:	Variation of Condition 5 of Planning Permission 2009/0546 to extend opening hours	Location:	8 Bury Road, Rawtenstall BB4 6AA
Report of:	Planning Unit Manager	Status:	For Publication
Report to:	Development Control Committee	Date:	15 January 2013
Applicant:	Mr H Malik	Determination Expiry Date:	14 January 2013
Agent:	Compass Architectural & Consultants		

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REASON FOR REPORTING	Tick Box
Outside Officer Scheme of Delegation	<input type="checkbox"/>
Member Call-In Name of Member: Reason for Call-In:	<input type="checkbox"/>
3 or more objections received	<input checked="" type="checkbox"/>
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 Permission be granted as set out in Section 10.

2. SITE

The application relates to 'Freddy's,' a hot food takeaway which sells pizza and chicken from a mid-terraced property fronting the Queens Square gyratory.

The property comprises a building with a three-storey frontage situated inside Rawtenstall Town Centre, identified as being a Secondary Shopping Frontage, and is in its Conservation Area. The Conservation Area Character Appraisal says this property forms part of a 'positive unlisted

buildings of high quality'. The nearest listed building is The Queen's Arms Hotel to the North East, others nearby include Rawtenstall Library to the North West and St Mary's Church to the North.

The attached property, 6 Bury Road, is presently vacant but was last used as a jewellers, No.10 Bury Road is occupied by Worldchoice Travel. There is a terraced row of residential properties to the rear on Queen Street.

3. RELEVANT PLANNING HISTORY

2008/0341 Change of use from Phone Shop Class (A1) with living accommodation over, to Takeaway Class (A5) with Class (A3) Restaurant inc ancillary storage, with living accommodation over
Allowed on Appeal

2009/546 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. (Retrospective)
Approved

Condition 5 reads:

"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."

2012/0176 Erection of illuminated fascia sign (retrospective)
Refused: By virtue of its siting/size/design/materials/illumination, the sign for which retrospective consent is sought unduly detracts from the amenity of the building and street-scene of Bury Road/Queens Square, a prominent location within Rawtenstall Town Centre and its Conservation Area

2012/279 Installation of External Link-Type Shutters and Extension of Opening Hours
Refused for the following reason:

- 1) The roller-shutters for which permission is sought would by reason of their size, height, prominence and design detract to an unacceptable and unnecessary extent from the character and appearance of the property, the street-scene and Rawtenstall Town Centre Conservation Area, contrary to the National Planning Policy Framework, Government publication 'Safer Places - The Planning System & Crime Prevention' (2004), Policies DP1-9 and EM1 of the Regional Spatial Strategy, Policies 1, 16, 23, 24 of the Council's Core Strategy DPD and the Council's Shop Front Design Guide (May 2012).

Enforcement Position

Enforcement action is continuing with regards to unauthorised shutters and illuminated signage on the property.

4. **PROPOSAL**

Permission is sought to vary Condition 5 of Planning Permission 2009/546 to extend the opening hours of the hot food takeaway from 11:00 to 22:30 Sunday to Thursday; 11:00 to 23:00 Saturdays; and 12:00 to 22:00 Sundays and Bank Holidays.

The variation sought would enable the premises to open to the public between 11:00 and 00:00 Sunday to Thursday and 11:00 on Fridays and Saturdays to 01:00 the following day.

5. **POLICY CONTEXT**

National

National Planning Policy Framework (2012)

Section 7 Requiring Good Design

Section 12 Conserving and Enhancing the Historic Environment

Development Plan Policies

Regional Spatial Strategy for the NW of England (2008)

Policy DP1-9 Spatial Principles

Policy RDF 1 Spatial Priorities

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

Rossendale Core Strategy DPD (2011)

AVP 4 Strategy for Rawtenstall, Crawshawbooth, Goodshaw and Loveclough

Policy 1 General Development Locations & Principles

Policy 16 Preserving and Enhancing Rossendale's Built Environment

Policy 23 Promoting High Quality Design and Spaces

Policy 24 Planning Application Requirements

Other Material Planning Considerations

RBC Rawtenstall Town Centre Conservation Area Character Appraisal (2011)

RBC Interim Hot Food Takeaway Policy (2011)

6. **CONSULTATION RESPONSES**

LCC (Highways)

No objection

RBC (Environmental Health)

Since the previous application was submitted in 2009 the Council has now adopted the Hot Food Takeaway Policy in 2011 which recommends 'the hours of opening of a hot food takeaway within 30 metres of a residential property will normally be restricted to the hours of 08.00-22.00 Monday to Saturday with one hour at the start of the day to prepare food and one hour at the end of the day to pack up and tidy away. Opening on Sundays and Bank Holidays will not normally be permitted.'

The planning approval 2009/0546 means the takeaway can already operate outside those hours taking into account the existence of an established late night economy in the area etc, the current hours are 11.30am to 10.30pm (11pm on Saturdays and 10pm on Sundays and Bank Holidays). I feel these current hours are reasonable and acceptable.

However I object to the extension of these hours as I feel that it would have a detrimental effect on the occupiers of neighbouring residential property due to patron noise mainly caused by pedestrian traffic which can be very difficult to control.

7. **NOTIFICATION RESPONSES**

To accord with the General Development Procedure Order site notices was posted on 29/11/12 and 4 neighbours notified by letter on 21/11/12.

Five neighbour objections have been received raising the following concerns:

- There are enough fast food takeaways available until the early morning and fast food is not healthy
- Smell and noise nuisance intensified
- Litter in the street and lack of bins in the area. It is requested a condition be attached to ensure areas are kept tidy.
- Insufficient parking
- Would deter residents from occupying residential flats above the neighbouring property at No.4 Bury Road
- It would detract from the Conservation Area, existing uses and future investment in the area

8. **ASSESSMENT**

The main considerations of the application are:

1) Principle; 2) Visual Amenity/Heritage Impact; 4) Neighbour Amenity & 5) Highway Safety

Principle

The application relates to an existing use in a building within the Urban Boundary. Therefore the proposal is considered acceptable in principle.

Visual Amenity/Heritage Impact

The proposed change in opening hours would not unduly impact on the character and appearance of the area and is therefore considered acceptable.

Neighbour Amenity

Policy HFTA 7 of the Council's Interim Housing Hot Food Takeaway Policy (2011) states:

"The hours of opening of a hot food takeaway within 30 metres of a residential property will normally be restricted to the hours of 08:00 – 22:00 Monday to Saturday with one hour at the start of the day to prepare food and one hour at the end of the day to pack up and tidy away. Opening on Sundays and Bank Holidays will not normally be permitted."

When alternative hours of opening are sought, or where the hot food takeaway would not be situated within 30m of a residential property, regard will be had to the following when considering what hours of opening are appropriate:

- *The existence of an established late night economy in the area;*
- *The character and function of the immediate area; and*
- *The potential benefits of the proposal for the wider community.*
- *Residential amenity of occupiers of adjoining property"*

I am satisfied that there is a late night economy in the area, the site being within the Town Centre and within walking distance of a number of clubs/pubs/bars and takeaways that are open until later than the hours now sought and that the area has a mix of uses. Whilst the potential benefits for the wider community would not be tangible, given the location and the existing late night economy (including that of the property itself) I do not consider that the opening hours proposed would cause undue noise and disturbance to occupiers of nearby residential properties.

Highway Safety

There has been no objection from the Highway Authority and I am satisfied that the works or the amended opening hours would be acceptable in highway safety terms.

9. SUMMARY REASON FOR APPROVAL

The proposed extension of opening hours will not detract to an unacceptable extent from neighbour amenity having regard to the nearby takeaways and restaurants and their hours of operation. The scheme is therefore considered to accord with Policies 1 and 24 of the Council's adopted Core Strategy DPD (2011).

10. RECOMMENDATION

Approve the variation of Condition 5 to read as follows :

The takeaway shall not be open to visiting members of the public outside of the hours of 11:00 and 00:00 Sunday to Thursday and 11:00 Fridays and Saturdays to 01:00 the following morning, with one hour at the start of the day for staff to prepare food and one hour at the end of the day to pack up and tidy away.

Reason: In the interests of neighbour amenity, in accordance with the Application Form and Policy 24 of the Council's adopted Core Strategy DPD (2011).