

Application Number:	2015/0007	Application Type:	Full
Proposal:	Change of use from A1 shop to A3 restaurant, & erection of flue on rear roof-plane	Location:	715-717 Market Street, Shawforth, Whitworth
Report of:	Planning Unit Manager	Status:	For publication
Report to:	Development Control Committee	Date:	24 March 2015
Applicant:	Equinox Properties Ltd	Determination Expiry Date:	27 March 2015
Agent:	Indigo Planning		

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REASON FOR REPORTING	
Outside Officer Scheme of Delegation	
Member Call-In Name of Member: Reason for Call-In:	
3 or more objections received	Yes
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 Committee grant Permission subject to the Conditions set out in Section 10.

2. SITE

The application relates to an L-shaped site to the west side of Market Street (A671) and occupied by a 2-storey end-terraced property and part 1-storey/part 2-storey flat-roofed extension projecting from the rear half of its southern gable. To the front of this extension is an external staircase rising up to a first-floor door in the 2-storey extension.

The building is understood to have been vacant for 3+years and last used as a butcher's shop, with living accommodation. The external walls of the buildings are of white coloured render, the end-terraced element possessing a shopfront.

The application site is surrounded by a mix of residential and commercial uses. The attached property to the north side is a house (No 719), which has its front door immediately adjacent to the front door to serve the proposed restaurant. The final property in the terrace (No. 721) contains a vehicle repair garage, the principal access to which is in its north-facing gable. To the opposite side of the main road is the recently-completed residential development on the site of Facit Mill. Beyond the fenced-off track/yard to the rear of the application building are 2-storey commercial premises occupied by the Fudge Factory and Berni Inn restaurant, its car park extending to the south side of the application site.

The site is located within the Urban Boundary. It is not a listed building and is not within or adjacent to a conservation area.

3. **RELEVANT PLANNING HISTORY**

2014/0315 Proposed change of use from shop (A1) to hot food take away (A5) at ground floor, with ancillary storage at first floor & flue on rear roof-plane

The application form stated that the business would employ 3 full time staff and 2 part time staff, with proposed opening hours of 1100-2300 7 days per week.

The Council's Environmental Health Officer advised as follows :
"We would object to this application citing the policy on positioning of such premises. There are two adjacent dwellings, a flat above the storage area and a terrace house on the other side. The terraced house has a "velux" style widow in the roof therefore one would assume that they are using that space. The Flue from the kitchen would be positioned on the opposite pitch of the roof within approx 2m of this window. It was not possible to see if there was a velux on the same pitch of the roof. We would therefore object on the grounds of the likelihood of odour and noise nuisance at the adjacent properties."

Whitworth Town Council expressed support for the proposal. LCC Highways and the Police Architectural Liaison Officer raised no objection.

An objection was received from the occupier of the attached house (No. 719), making the following points :

- The walls between the properties are only one brick thick therefore I have concerns regarding smell, fire risk, and rodents;
- Concerns regarding late night disturbance from visitors 7 nights per week, queuing outside my door.
- Concerns regarding security.
- Concerns regarding parking.
- Noise from the existing Fudge Factory and Berni Inn restaurant, and the vehicle garage is minimal as they are not open 7 days per week and any noise in the evening is limited.

The application was Refused on 26/9/14 for the following Reason :

The proposed change of use from shop (A1) to hot food take away (A5) relates to a building which is adjoined by existing residential properties. Due to the proximity of the development to these residential properties, it provides the potential to unacceptably harm the neighbours' living conditions with regard to noise, disturbance and odour, contrary to the Interim Policy Statement: Hot Food Takeaways, Policies 7 and 24 of the adopted Core Strategy and the National Planning Policy Framework.

4. **PROPOSAL**

Permission is now sought to change the use of the premises to a restaurant, a plan accompanying the application showing the ground-floor of the end-terraced element is to provide the tables & seating the public will have access to and the kitchen occupying the ground-floor of the side extension; the drawing also shows the scheme of sound insulation to be applied to the party-wall with the attached house. Thus, the public would make use of the existing front door to enter the restaurant, the first-floor providing toilets and staff/storage facilities for the restaurant, and retain a small flat.

The submitted drawings show the only external alteration proposed is the installation of a flue on the rear roof-plane of the end-terraced element of building, which will project approximately 0.5m above the ridge of the roof.

The Application Form and accompanying letter & statement provided by the Agent make the following points :

- The property is not located within a recognised area/centre for retail, has been vacant for 3.5 years and has been marketed by an estate agent over this period without any A1 occupier materialising. The application has been submitted as the estate agent has advised that there is demand for A3 premises in the area.
- The property fronts a main road and could be occupied without the need for further permission to be obtained by an off-license or other retail use with greater footfall than a restaurant and with evening/weekend opening.
- The intended restaurant operator has not yet been found but it is envisaged that the opening hours will not extend beyond 1100-2300 7 days per week.
- The proposed hours are not dissimilar to those of nearby premises and the proposed use/hours will not result in anti-social behaviour in the early hours of the morning or littering.
- An acoustic wall treatment is proposed for the party-wall with the attached dwelling to protect the neighbour from noise disturbance.
- The proposed flue will not have a negative visual impact on the street-scene and will ensure odours are omitted at a sufficiently high level to ensure their dispersal without unacceptable detriment to neighbours.
- Car parking cannot be made available within the grounds of the property but is available on-street and in the adjacent car park.
- All deliveries will take place during normal working hours and will be taken in at the front entrance located on Market Street. Refuse/glass bottles will not be disposed of in outside receptacles following close of business at 11pm and will then be collected by a specialist refuse contractor.

5. **POLICY CONTEXT**

National

National Planning Policy Framework (2012)

Section 7 Requiring good design

Section 8 Promoting healthy communities

Development Plan Policies

Rossendale Core Strategy DPD (2011)

- AVP1 Strategy for Whitworth, Facit & Shawforth
- Policy 1 General Development Locations & Principles
- Policy 8 Transport
- Policy 9 Accessibility
- Policy 13 Protecting Key Local Retail and Other Services
- Policy 23 Promoting High Quality Designed Spaces
- Policy 24 Planning Application Requirements

Other Material Considerations

RBC Interim Policy Statement : Hot Food Takeaways (2011)

6. CONSULTATION RESPONSES

RBC Environmental Health

To address its initial concerns about the adequacy of the proposed odour dispersal system the Agent has submitted further information about the carbon filters and fan velocity of the system they have in mind. On this basis it is satisfied that a system can be installed which will adequately protect neighbours from cooking odours, but seek Conditions to ensure that once the applicant has agreed upon the intended restaurant operator :

- 1) they submit full details of the proposed scheme to control odour and nuisance which includes specific details/drawings of the size, design, siting, finish and acoustic treatment and odour abatement for the flue extraction system; &
- 2) the flat within the building is not occupied by a person unless employed in the restaurant (or a dependant thereof).

LCC Highways

No objection to the proposal.

The A3 restaurant use is likely to generate traffic movements and parking during the evenings and at weekends when the volume of traffic travelling along Market Street is at its lowest.

There is a car park adjacent to the premises which appears to be open to the public with no signage or barriers which would indicate otherwise. However, I have been informed that the car park is within private ownership and that no formal rights of access exist for the applicant. There are no parking restrictions on Market Street outside the premises and during off-peak hours, parking at this location would not present a highway safety risk.

There is a newly created access point to the south and opposite the premises named Facit Fold. There is a proposal to place double yellow lines along the frontage of that development to ensure adequate sightlines are maintained. This will also prevent any double parking, which at peak times would cause congestion on Market Street.

Whitworth Town Council

It was resolved that Council objects to this application. It is not convinced that the issues around odour, noise and disturbance have been addressed through this application, especially in relation to the immediate neighbours to the side and above the premises. Further there are concerns around Highways and parking – Spring Place car park is noted as being 'open to the public' however this is not a public car park. It is not clear in the application whether the restaurant also intends to offer fast food, which would seem likely as most restaurants offer this service.

7. **NOTIFICATION RESPONSES**

The application has been publicised by way of letters to neighbours on 14/1/15.

The following comments have been received :

The Fudge Factory, Spring Place

We write to you not to oppose the application but with questions and concerns with regard to the application.

All services, deliveries and such would have to take place at the front of the property as there is no legal passage or right of access to the side and rear of the property.

The Car Park fronting The Fudge Factory / BCH Engineering is a private Car Park, solely for the use of their patrons, visitors and staff only and not for public use. How would the applicant police such an issue as we feel that a visiting customer would not choose to use a car park 50m away when one would be available right next to the business?

We feel this application would directly impact on the business operation of our property and feel, quite rightly, we should have answers and reassurances to our legitimate questions with regards to the application.

Berni Inn, Spring Place

I currently trade as Berni Inn, which is the restaurant directly behind 715 Market Street and object to planning consent being granted.

A previous application submitted by Mr Soran Karim (2014/0315) has been made to change the use of these premises to a hot food takeaway, which was refused on the basis that it could cause harm to the neighbour's living conditions when considering odour, noise and disturbance. These issues are still a major cause of concern for the proposed restaurant.

Although planning has now been applied for by the landlord, Equinox Properties, it still appear to be connected to Mr Soran Karim.

Also the proposed plan shows a counter - surely a restaurant wouldn't need a counter ? I note from the same plan that there are no facilities for a bar area or customer toilets, which a restaurant would certainly require. My conclusion is that this is still a hot food takeaway, but with a few tables inside.

I also have major concerns regarding parking issues. The application states that customers will park on Spring Place. Although there are 2 Spring Place car parks - one being where my customers park, which is privately owned, and the other being some 100m plus further away, at the rear of 741 Market Street. This could potentially cause disruption to my customers as we cater for large functions, and make full use of the parking spaces to the front of our premises.

Butcher & Baker, 741 Market Street

My objection is concerned with parking facilities in the area, together with future arrangements for deliveries, removal of waste, etc - it's difficult enough for us to park on Market Street, without exacerbating the problem.

Lower Fold Head Farm, Hallfold

As a part-owner of the Spring Place car park they wish it to be known that it is not a public car park, but a private car park leased to Coates Engineering.

8. **ASSESSMENT**

The main considerations of the application are:

- 1) Principle; 2) Visual Amenity; 3) Neighbour Amenity; & 4) Car Parking.

Principle

The application relates to a property located within the Urban Boundary and well served by public transport. To this extent the property is in a sustainable location.

Although the property is presently vacant its use for retail use (without restriction on opening hours) can resume without the need for permission to be sought.

Policy 13 (Protecting Key Local Retail and other Services) of the adopted Core Strategy reads as follows :

“It is proposed that smaller retail and other service centres will be supported and protected.

The important role of smaller, independent shops will be supported in all defined shopping centres with schemes to enhance and / or expand such facilities given positive consideration.

The Borough has a supply of ‘corner shops’ which serve local communities. These need to be protected to avoid longer trips being made to other centres, which has implications for inclusivity, as well as reducing the need to travel. Where the Council considers the loss of the retail facility may have negative impacts for the local community, it will be necessary to provide additional information and market the building for a period of at least 12 months, or less in exceptional circumstances, using a methodology agreed by the Council...”

As the property lies outside the Town Centre of Whitworth (as defined in the Core Strategy), but is within 10 minutes walking distance of the shops and services within it, I do not consider it would be appropriate to seek to resist loss of this retail unit in any case. That the property has been vacant for 3+ years reinforces the case for allowing its conversion to an alternative use.

Notwithstanding the attached property being a house and recently-constructed houses standing on the opposite side of the main road, this property forms part of a largely commercial area to the west side of Market Street/north side of Millfold that comprises of engineering works, a commercial car repair garage, The Fudge Factory and Berni Restaurant. Accordingly, I do not consider there to be an objection in principle to conversion of this property to a restaurant.

Visual Amenity

The only external alteration to the building being proposed is the installation of a flue on the rear roof-plane of the building that will exceed the ridge-height by 0.5m. I do not consider that it would detract to an unacceptable extent from the character and appearance of the building or the area.

A condition is recommended to ensure that waste/waste receptacles are not stored in the area between Market Street and the part 1-storey/part 2-storey flat-roofed extension projecting from the southern gable.

Neighbour Amenity

In dealing with Application 2014/0315, proposing change of use of the property to a hot food takeaway, it was appropriate to have regard to the Council's Interim Policy Statement on Hot Food Takeaways :

Policy HFTA 2 states: "*Planning permission for hot food takeaway establishments will not normally be granted where a unit of residential occupation exists directly above or adjacent to the proposed hot food takeaway.*"

Policy HFTA 7 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 0800-2200 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.*"

That application proposed a hot food takeaway with opening hours of 1100-2300 7 days per week, to which the occupier of the attached house objected and the Council's Environmental Health Unit recommended refusal on the grounds of odour and noise nuisance at the adjacent residential properties (the adjacent dwelling & flat above). Under delegated powers Officers refused this application.

The current application proposes a change of use of the property to a restaurant and, as such, the Interim Policy Statement on Hot Food Takeaways is not applicable to it. Nevertheless, the Council must be equally mindful of the need to protect the amenities of neighbours. Whilst permission is sought for restaurant opening hours of 1100-2300 7 days per week, restaurants do not generally have such a high through-put of customers in the late evening as hot food takeaways, and less likelihood of anti-social behaviour/ littering in the street. It would be appropriate to impose a Condition to limit the opening hours to those sought.

The Council's Licencing Officer advises that the proposed restaurant would require a Premises Licence and that the Licences Premises for the Fudge Factory/Berni Inn enables opening from 9am to Midnight 7 days a week.

The current proposal has not drawn objection from the occupier of the attached house and the Council's Environmental Health Unit has not recommended refusal. Having regard to the acoustic wall treatment proposed for the party-wall with the attached dwelling, and having received additional information about the proposed odour dispersal system, it is satisfied that neighbours can be afforded adequate protection from noise and cooking odours, subject to Conditions to ensure implementation of agreed schemes.

Access / Parking

As submitted the application suggested that restaurant customers and staff would have use of the car park to the front of the Fudge Factory. As it appears that they will not have the right to do so LCC Highways has assessed the proposal on the basis that this car park will not be available to restaurant customers and staff. On this basis it has raised no objection to the proposal, concluding that the need for parking the proposal will give rise to is of a scale and at times when parking on Market Street to the front of the premises is permissible and will not cause congestion.

9. SUMMARY REASON FOR APPROVAL

The proposed change of use from A1 shop to A3 restaurant is considered acceptable in principle for a property within the Urban Boundary fronting a main road and, subject to the

conditions, will not detract to an unacceptable extent from visual and neighbour amenity or highway safety. The proposal has been considered most particularly in relation to Policies AVP1 / 1 / 8 / 9 / 13 / 23 / 24 of the Council's adopted Core Strategy DPD (2011).

10. **RECOMMENDATION**

That Permission be granted subject to the following Conditions.

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 premises shall not be open other than between the hours of 1100 to 2300 hours on any day.
Reason : To protect the amenities of neighbours, in accordance with Policies 1 / 24 of the Council's adopted Core Strategy DPD (2011).
- 3) The development shall be carried out in accordance with the submitted drawings, unless otherwise required by the conditions below or otherwise first agreed in writing by the Local Planning Authority; most particularly dining tables/chairs for customers shall be limited to the area indicated on Drwg No 1031a/2.
Reason : For the avoidance of doubt.
- 4) Notwithstanding what is shown on the approved drawings / in submitted documents, prior to the commencement of any works details shall be submitted to and approved in writing by the Local Planning Authority in respect of :
 - a. the scheme to control odour and nuisance which includes specific details/drawings of the size, design, siting, finish and acoustic treatment and odour abatement for the flue extraction system;
 - b. the scheme to control transmission of noise to the attached house and flat within the building; &
 - c. the scheme/arrangements to be made for the storage of waste/waste receptacles. The approved schemes /arrangements shall be implemented prior to first use of the premises as hereby permitted and thereafter adhered to.Reason : To protect the amenities of neighbours and character & appearance of the area, in accordance with Policies 1 / 24 of the Council's adopted Core Strategy DPD (2011).
- 5) The flat within the building shall not be occupied other than by a person employed at the premises (and the dependants thereof).
Reason : To ensure occupiers of the flat enjoy the residential amenities they could reasonably expect to enjoy, in accordance with Policies 1 / 24 of the Council's adopted Core Strategy DPD (2011).
- 6) No external shutters shall be installed without submission and approval of an application for planning permission.
Reason : For the avoidance of doubt and to protect the character and appearance of the building and area in which it is located, in accordance with Policies 1 / 24 of the Council's adopted Core Strategy DPD (2011).

