

Application Number:	2016/0575	Application Type:	Full
Proposal:	Variation of Condition 3 of Planning Permission 2015/0107 (to extend the Opening Hours)	Location:	Rear of 38-42 Market Street, Edenfield
Report of:	Planning Manager		
Report to:	Development Control Committee	Committee Date :	28 th February 2017
Applicant:	Mrs Choi-Yong Fu-Davies	Determination Expiry Date:	3 rd March 2017
Agent:			

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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	
Other (please state):	At the request of the Chair

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 the variation of Condition 3 is refused for the reason set out within Section 9

2. SITE

The application relates to part of the ground-floor of a two storey end of terrace building situated on the corner of Market Street (B6527) and Elizabeth Street (a short un-adopted street that gives access to the communal passageway running to the rear of the terrace).

Whilst the ground floor space fronting Market Street is occupied by a solicitors, beauty salon and clinic, the Applicant operates the Drop Off Café (Use Class A3) from the part of

the ground-floor to their rear. The café has a floor area of approx. 100sq m and its front entrance to Elizabeth Street. The first floor of the building has been refurbished but appears vacant.

The rest of the properties in the terrace are in residential use, and are reliant on Market Street for parking. The properties on the opposite site of the main road are also in residential use. Beyond the communal passageway to the rear of the building the land rises by approx. 1m up to the rear gardens of houses that front Heycrofts View, the rear garden of No 2 bounded by a 4m high conifer hedge and the back elevation of its garage closing-off the view down Elizabeth Street.

The site is within the Urban Boundary in Edenfield.

3. **Relevant Planning History**

2015/0107 Change of use to Café (Use Class A3)

The application sought Permission for the change of use of this part of the ground-floor to a cafe within Use Class A3 (for the sale of food and drink for consumption on the premises) with opening times of 0900-2100 Monday to Sunday.

The Council's Environmental Health Unit expressed concern that the intended hours of opening would cause noise disturbance to residential neighbours. The Applicant amended the opening hours to: 0900-1900 Monday to Friday; 0900-1700 on Saturday; and 1000-1600 on Sunday.

On this basis the Environmental Health Unit raised no objection. Two residents of houses on Market Street objected to the proposal, concerned principally that they already have difficulty finding space to park their cars near to home and this will become more difficult when the café opens.

With the amended hours of opening LCC Highways advised that the submitted parking surveys demonstrated there to be adequate on-street parking capacity on Market Street to accommodate any vehicles that would be generated by the cafe.

In June 2016 planning permission was granted for the change of use. Condition 3 reads as follows:

The premises shall not be open for customers outside the following hours:
0900-1900 Mondays – Fridays; 0900-1700 Saturdays; and 1000-1600
Sundays and Bank Holidays.

Reason: To ensure the development avoids undue harm to neighbour amenity in accordance with Policy 24 of the Adopted Core Strategy (2011).

4. **PROPOSAL**

Permission is now sought to vary the wording of Condition 3 to enable opening of the premises as follows:

0800- 2330 Mondays –Saturdays
0800-2300 on Sundays

The Applicant has stated on the Application Form that this change is required as "*The business is not viable with the times of opening available to us. Without the extension to the times the business will fail*".

To curb any noise for the neighbours the Applicant has also advised that they have “*already invested in specialised acoustic fabric which will be draped around the entire front entrance and all windows. In addition to this we will strongly forbid any drinking/sitting outside the cafe late at night & we will manage this with door persons if necessary*”.

5. **POLICY CONTEXT**

National

National Planning Policy Framework

- Section 1 Building a Strong Competitive Economy
- Section 2 Ensuring the vitality of town centres
- Section 4 Promoting sustainable transport
- Section 8 Promoting healthy communities

Development Plan

RBC Core Strategy (2011)

- AVP 5 Area Vision for South West Rossendale
- Policy 1 General Development Locations & Principles
- Policy 8 Transport
- Policy 11 Retail and other town centre uses
- Policy 13 Protecting Key Local Retail and other Services
- Policy 23 Promoting High Quality Designed Spaces
- Policy 24 Planning Application Requirements

6. **CONSULTATION RESPONSES**

RBC Environmental Health

Objection

LCC Highways

No Objection

7. **NOTIFICATION RESPONSES**

To accord with the General Development Procedure Order a site notice was posted and neighbours were notified by letter.

Nine representations have been received from neighbours/customers:

- 6 comments of support
- 3 comments of objection

Those in support have stated:

- The Drop Off Cafe is a very welcome addition to the village - it has provided a vital hub to the community. To have a night-time alternative to pubs would be welcome.
- It is a vibrant business that has without doubt added to the village. Any business looking to invest in a small rural community should be backed by the local authority - it could provide jobs.
- As a keen cyclist I would often bypass Edenfield as there was no reason for me to stop, since the café opened myself and a number of friends now often frequent the café and it would be great to be able to visit in the evening also.

Those in objection have stated:

2 Heycrofts View

- I had no objection to a change of use to a café based on the original application site and hours as approved - there was no mention in the application to use the outdoor space

for eating. Over the past 12 months, my family and I have seen our quality of life significantly reduced by the café, in terms of loss of privacy, noise and car parking.

- Our rear garden is so close to the café that when we sit outside in summer we can see/hear customers and their children playing/dogs barking, and assume they can hear/see us. The land extending north of Elizabeth Street up to Heycrofts View is also part of our garden. We enjoyed gardening this piece of land at the weekend but now find this uncomfortable as we are being watched by the diners.
- Although many customers do visit on bikes or walk, there are many more that visit by car. Parking on Market Street is not adequate and as a result Heycrofts View is now the parking place of choice for customers and is now full of parked cars during the working day and weekends, many of which are parked on the footpath, restricting access for pedestrians and diminishing the safety of children of the family-houses in Heycrofts View to play on the street.
- I fear that this is going to become significantly worse if the café is allowed to open in the evening.

Others

- The previous application was approved with conditions that the café would operate on a restricted hours basis to reduce the impact on neighbours. Unfortunately, the parking situation has worsened significantly since the original permission was granted. Many visitors to the café arrive in vans with bikes in the back and park on Market Street whilst they go for bike rides. As well as this, the café is often visited by people who arrive in cars and park in Market Street. My wife and I regularly find ourselves blocked into our drive and visibility when manoeuvring out of the drive is also difficult.
- Bearing the right of the neighbourhood to get some peace, opening to 9pm is acceptable.

8. **ASSESSMENT**

The main considerations of the application are:

- 1) Neighbour Amenity; and 2) Access/Parking

Neighbour Amenity

The Environmental Health Unit initially objected to the application for the following reasons:

1. The proposed extension to the opening hours have the potential to be detrimental to the community and cause noise nuisance due the proximity of the noise sensitivity properties.
2. At the time of the original planning application the applicants wished to cater for users of the countryside. EH would not object to an extension to the opening times on Saturday and Sunday staying open until 7pm.

As a result of receipt of these comments, and those of local residents objecting to the proposal, the Applicant was asked to consider ways in which they could minimise the likelihood of noise disturbance for neighbours, including consideration of:

- the lateness of the hours at which they would close on different days of the week
- the evenings on which they might open to pre-booked groups rather than be open to the general public
- the means by which they might limit the public use of outside areas

The Applicant has made it clear that they which the application to be determined on the basis of opening being allowed to 11.30pm Monday to Saturday and to 11pm on Sunday, and with no restriction on the evenings they are open to the general public.

Accordingly, the Environmental Health Unit (EH) continues to object to the proposed variation to opening hours. It has considered what the Applicant has said about use of specialised acoustic fabric to drape around the front entrance and windows and willingness to forbid drinking/sitting outside the cafe late at night. However, it has concluded that that due to the location of residents' properties the only effective means of preventing noise nuisance is to restrict the opening hours, especially as during the summer months sitting outside would be appealing and the nearby residents would also wish to make use of their gardens and have bedroom windows open.

If the use of the outside space could be effectively restricted then EH would request a noise impact assessment to be carried out to determine if complaints are likely whilst operating the café/restaurant area during the proposed hours assuming doors and windows were kept closed. This would take into account needing mitigation measures such as acoustic curtains as suggested by the applicants. The closing of windows and doors creates further problems in itself due to lack of ventilation for customers and staff. It is the view of EH that effective noise screening of the outside space would not be an option.

The enforceability of a condition to prohibit external eating/drinking is questionable but would not enable the area to be closed-off entirely and would still be subject to people coming and going into the premises.

The proposal is considered likely to detract to an unacceptable extent from the amenities residential neighbours currently enjoy or could expect to enjoy by reason most particularly of noise and disturbance when customers are outside the building and moving between it and their cars in the late evening.

The applicant has cited other similar premises within the Borough which open late into the evening. These include Pearsons and the Village Store, both in Helmsshore. The Village Store does not have planning permission and is subject to separate Enforcement Action.

By way of Application 2016/0320 the premises occupied by Pearsons (at 2 The Parade, on Broadway) were granted retrospective permission for a change of use to a Cafe/Wine Bar (A3/A4). (The Drop Off Café has permission for an A3 café only, not a mixed use including A4 drinking establishment as Pearsons has). This mid-terraced ground-floor unit sits within a parade of shops near to the Broadway/ Helmsshore Road junction that is the principal retail/service centre for Helmsshore. It is between a general store/post office and a chemist (both of which open some evenings), with flats above that are separately accessed from the rear. The building as a whole is owned by Green Vale Homes and neither it or any tenants objected to the application. Should any flat resident complain to Green Vale Homes about noise and disturbance arising from Pearsons it could be expected to investigate/remedy matters as Pearsons' landlord. Nevertheless, to safeguard the amenities of local residents, it was considered appropriate that the permission be granted with more restricted hours than originally applied for (with agreement of the applicant). Condition 2 of the Permission reads as follows:

The premises shall not be open to the public outside the following hours:

Monday to Wednesday	8am - 8pm
Thursday to Saturday	8am - 11pm
Sunday	9am - 6pm

Accordingly, the permission granted to Pearsons does not set a precedent for granting permission for extending the opening hours of the Drop Off Café in the manner sought.

Access / Parking

LCC Highways has advised as follows:

The applicant has demonstrated that there is spare capacity on Market Street during the peak period (Saturday evening) and I have visited the premises myself and seen a similar amount of space capacity.

The applicant has not stated the number of customers anticipated at peak periods which means that an accurate measure of the amount of spaces cannot be determined. However we can refer to the maximum parking standards within the Rossendale Core Strategy which requires 12 spaces for an A3 use of 100m², which could be reduced to 8 spaces for an area of high accessibility and would be applicable in this case due to the local customers that will be generated which are likely to arrive on foot during the summer months.

When considering the parking standards, the size and location of the premises there appears to be sufficient space to accommodate the additional vehicles generated by the development without impacting upon the parking provision of the neighbouring properties.

Given the comments above and that no highway safety concerns are raised by the Local Highway Authority the proposed variation of hours is considered to be acceptable from a highway safety perspective.

9. Reason For Refusal

The proposed extension to the opening hours of the café (Use Class A3) will detract to an unacceptable extent from the amenities residential neighbours currently enjoy or could expect to enjoy by reason most particularly of noise and disturbance from the premises late into the evening, contrary to Core Principles of the National Planning Policy Framework and Policies 1 and 24 of the Council's adopted Core Strategy (2011).