

<b>Application Number:</b>	2018/0178	<b>Application Type:</b>	Variation of condition
<b>Proposal:</b>	Variation of Condition 3 of Planning Permission 2015/0107 (Opening Hours)	<b>Location:</b>	Ground Floor Rear of 38-42 Market Street Edenfield
<b>Report of:</b>	Planning Manager	<b>Status:</b>	For Publication
<b>Report to:</b>	Development Control Committee	<b>Date:</b>	24 July 2018
<b>Applicant:</b>	Mr C Davies	<b>Determination Expiry Date:</b>	28 May 2018
<b>Agent:</b>	Mr S Hartley		

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<b>REASON FOR REPORTING</b>	
<b>Outside Officer Scheme of Delegation</b>	<b>Yes</b>
<b>Member Call-In</b> Name of Member: Reason for Call-In:	
<b>3 or more objections received</b>	
<b>Other (please state):</b>	

## 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

Approval subject to the conditions set out in section 10.

## APPLICATION DETAILS

### 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); the application site does not include any external space on Elizabeth Street.

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 has its front entrance facing Elizabeth Street.

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 side of the main road are also in residential use. To the opposite side of Elizabeth Street is a grassed garden area belonging to the residents of 2 Heycrofts View. To the opposite side of the communal passageway running to the east side of the café the land rises up by approximately 1m to the level of the rear garden of the house at 2 Heycrofts View, which is bounded by a detached garage and a 3m+ high conifer hedge. Works are well advanced on the extension of the garage upwards to provide a games room on the first-floor and to the south side to provide a garden room that links to the house (permitted by Planning Permission 2016/0434).

The site is within the Urban Boundary of Edenfield.

### 3. RELEVANT PLANNING HISTORY

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

The application sought Permission to change the use of this part of the ground-floor of the building to a cafe within Use Class A3 (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 would become more difficult when the café opened.

LCC Highways advised that the submitted parking surveys demonstrated there to be adequate on-street parking capacity on Market Street to accommodate the vehicles likely to be generated by the cafe.

In June 2015 permission was granted with Condition 3 reading 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)."*

This application sought to vary the wording of Condition 3 to enable opening of the café at wider hours: 0800- 2330 Mondays –Saturdays and 0800-2300 on Sundays.

Notwithstanding that Permission 2015/0107 related to use of the building as a café and not to use of any part of Elizabeth Street as such, the Applicant advised that to curb any noise for the neighbours they had *“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”*.

Nine representations were received from neighbours/customers : 6 of support and 3 of objection.

Whilst LCC Highways did not object, the Council’s Environmental Health Unit recommended refusal of the application. It advised that it did not have objection to an extension to the permitted opening times to enable the Café to open until 7pm on any day of the week.

The Applicant made it clear that they wished 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 opened to the general public (rather than to pre-booked groups).

Accordingly, the Environmental Health Unit continued to recommend refusal of the application.

The application was considered at the meeting of Committee on 28 February 2017 and was refused for the following reason:

*“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).”*

This application sought to vary the wording of Condition 3 to read as follows :

- a) New customers will not be permitted access to the premises after 22:30 hours on Mondays to Saturdays included and after 22:00 hours on Sundays. Consequently the premises shall not be open to customers after 23:00 hours on Mondays to Saturdays included and after 22:30 hours on Sundays and Bank holidays.
- b) Specialised acoustic fabric which will be draped around the entire front entrance and all windows and kept in place as long as the premises are open.
- c) No “take-away” facility shall be offered from the premises.
- d) The use of the premises shall be restricted to Use class Order A3 of the General Permitted Development Order (as amended).

- e) Permission for the extended hours shall be granted for a 12 month period only unless a further approval relating to extended hours is granted by the LPA.

The Applicant submitted a petition of support bearing 105 signatures, together with copies of a dozen and a half other letters/emails of support.

A total of 61 representations were received, of which 3 expressed objection to the proposal and the rest support; those in support included Edenfield Village Residents Association and those objecting included the resident of 2 Heycrofts View and the resident of a house on the opposite side of Market Street.

Whilst LCC Highways did not object, the Council's Environmental Health Unit recommended refusal of the application.

The extension of opening hours being sought was considered at the meeting of Committee on 21 June 2017 and, contrary to the Officer Recommendation, was granted for a trial period. The decision notice was issued on 26 June 2017 with the following Condition:

*"For a period of 12 months from the date of this permission the premises shall only be open to customers between the hours of*

*09:00-23:00 Monday to Saturday (inclusive); and  
10:00-22:30 on Sundays and Bank Holidays*

*No new customers will be permitted to enter the premises after:*

*22:30 Monday to Saturday (inclusive); and  
22:00 on Sundays and Bank Holidays*

*Following the 12 month period the premises shall only be open to customers between the hours of:*

*09:00-19:00 Monday to Friday (inclusive);  
09:00-17:00 on Saturday; and  
10:00-16:00 on Sundays and Bank Holidays.*

*Reason : To enable the premises to operate with extended hours for a temporary period to identify the level of harm to the neighbours' amenities."*

#### **4. PROPOSAL**

The current application seeks to vary Condition 3 of Planning Permission 2015/0107 to read as follows:

- a) The premises shall only be open to customers between the following times  
09:00-23:00 Monday to Saturday (inclusive); and  
10:00-22:30 on Sundays and Bank holidays
- b) New customers will not be permitted access to the premises after 22:30 hours on Mondays to Saturdays included and after 22:00 hours on Sundays. Consequently the premises shall

not be open to customers after 23:00 hours on Mondays to Saturdays included and after 22:30 hours on Sundays and Bank holidays

- c) Specialised acoustic fabric which will be draped around the entire front entrance and all windows and kept in place as long as the premises are open.
- d) No “take-away” facility shall be offered from the premises.
- e) The use of the premises shall be restricted to Use class Order A3 of the General Permitted Development Order (as amended).

The Planning Statement accompanying the current application states that:

- LCC Highways did not have an objection to Application 2017/0141 which proposed opening hours for the café as now being sought.
- There is a high measure of support for the proposal - copies of the petition and letters of support that accompanied Application 2017/0141 are again submitted.
- Since approval of the temporary hours extension the Council’s Environmental Health Officer has received no objections to the café with regard to noise or disturbance or for any other reason.
- The café windows facing towards the house at 2 Heycrofts View are non-opening and any potential noise towards this house from customers use of Elizabeth Street is baffled by the neighbours garage, which is presently being extended upwards.
- The café/restaurant provides local jobs and should be encouraged.

## 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 9 Accessibility
- Policy 11 Retail and other town centre uses
- Policy 13 Protecting Key Local Retail and other Services
- Policy 14 Tourism
- Policy 23 Promoting High Quality Designed Spaces
- Policy 24 Planning Application Requirements

### **Other Material Planning Considerations**

#### Planning Practice Guidance

## 6. CONSULTATION RESPONSES

Consultee	Comment
RBC Environmental Health	No objection
LCC Highways	No objection

## 7. REPRESENTATIONS

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

136 representations have been received expressing support for the application. Two objections have been received, raising the following issues:

### 2 Heycrofts View

- To give the trial period a fair opportunity I have chosen to wait for the trial to complete and have objection on the basis of its 10-month operation.
- The applicant has only had a limited number of functions (up to a dozen) and none of these have been in the summer months.
- Despite the placing of acoustic curtains when there is a live band playing noise is still audible in the 2 rear bedrooms of the house - the outside door to their kitchen is regularly (almost always) open and exacerbates the noise.
- Many customers travel by car and, as the premises have no parking of their own, there has been a significant increase in traffic and car parking to both sides of Heycrofts View, including on the yellow lines extending round onto Market Street.
- Customer parking outside our house is occurring, and we are woken by banging car doors and engines starting after the premises close.

### 47 Market Street

- Ineffective trial period - since obtaining permission for extended opening hours only limited use has been made of them - ticket-only events, for a small number of people, on a few occasions.
- The current planning application relates to the ground floor café but the larger first-floor room is being used :

On 2 June, when hosting a wedding, the music from the café first floor was audible from inside our house through closed windows.

On 16 June I could clearly hear music from the first floor of the café after 11pm in my back garden. I live opposite the café so the music was audible over 100 yards from the building and across a main road. I have photographs showing three taxis waiting on the double yellow lines for passengers, several of whom were noisy and shouting as they alighted.

## 8. ASSESSMENT

1. The Application Form in respect of Application 2015/0107 indicated that change of use to a café was being sought in respect of 100sqm of floor space, equating with the submitted

ground-floor plans. The red-edged site of that application did not include any part of Elizabeth Street. Permission was subsequently granted to Application 2017/0353 enabling its use as an outdoor eating area in association with the café.

2. Accordingly, the current application to vary Condition 3 of that Permission 2015/0107 cannot relate to use of Elizabeth Street. The following Report, in respect of Application 2018/0177, relates to the hours at which Elizabeth Street can be used.
3. It must be borne in mind that refusal of the current application would not require use of the ground-floor of the building behind 38-42 Market Street to cease use as a cafe. However, it would be in breach of planning control if it were to operate outside the hours of 0900-1900 Mondays – Fridays; 0900-1700 Saturdays; and 1000-1600 Sundays and Bank Holidays.
4. The main considerations of this application are: 1) Traffic and Parking; and 2) Neighbour Amenity.

### Traffic and Parking

5. Objectors have referred to traffic and parking issues that the café gives rise to. When dealing with Application 2015/0107, which proposed evening use of the café, LCC Highways required that the applicant undertake parking surveys to demonstrate that there would be adequate on-street parking capacity on Market Street to accommodate the vehicles likely to be generated by the cafe. Being satisfied that this was the case LCC Highways raised no objection to permission being granted to Application 2015/0107 or subsequently to Application 2016/0575 or Application 2017/0141.
6. In respect of the current application LCC Highways initially advised as follows:  
*“There is no objection to the proposal to make the temporary arrangements permanent. The applicant has previously demonstrated that there is spare capacity to accommodate the on-street parking in the extended evening periods. There have been no collisions recorded in the vicinity of the site and no significant changes have been made on the network in the previous 12 months.”*
7. One of the objectors alluded to café customers regularly parking their cars on the yellow lines at the western end of Heycrofts View and on Market Street, and *“this has become worse since the parking charges were introduced at the Rostron Arms and since the car park at the Horse & Jockey was closed off due to permanent site development”*.
8. The objector does not indicate that their concern relates particularly or, indeed, at all to evening use of the café. Nevertheless LCC Highways was asked to comment on this matter. It advised as follows:  
*“I am not aware of the date when the Rostron Arms and Horse and Jockey car parks were closed/charging commenced for the wider public. If this has occurred since the parking surveys were carried out by the applicant then I would recommend that the applicant gathers and submits the evidence again.”*
9. As a consequence the Applicant undertook further Parking Surveys on the evenings of 16 and 17 June 2018 and LCC Highways has given consideration to the results and has advised as follows:

*“The survey is not conclusive. However there is no evidence of illegal parking on the yellow lines at the junction of Heycrofts View and this gives weight to there being no severe parking problem.*

*There is on-street parking partly on the footway of Heycrofts View demonstrated during the survey period. However this is a widespread County-wide problem that has become more acceptable over the recent years. Unless the parked vehicles are preventing pedestrians from travelling along the footway then this can be afforded very little weight.*

*With the evidence presented I would say that the original comments still stand and that the Horse & Jockey and Rostron Arms car parking losses have not made a significant change to the on-street parking on Market Street in the vicinity of the site.”*

10. Accordingly, it is not considered that evening opening of the café could be refused on the grounds that it will cause unacceptable detriment to highway safety by reason of obstruction or inconvenience its associated on-street parking will cause to other road users and pedestrians.

### Neighbour Amenity

11. The Council’s Environmental Health Unit initially advised that it was *“unable to conclude that the proposed scheme will not have a detrimental impact on nearby residents as the 12 months to include the potential warmer months of May and June are required”*.
12. The 12 month trial period has now come to an end and the Environmental Health Unit has also progressed its investigation of noise complaints it has itself recently received about the premises and noise when people return to vehicles on-street. However, having regard to the information arising from the full term of the trial period it has not objected to the current planning application.
13. Neither the Environmental Health Officer or the case officer received complaint about evening use of the ground-floor café until submission of the current application.
14. The residential property nearest to the café is at 2 Heycrofts View, the rear garden of this property approximately 4m from the café building and with the rear windows of the house facing towards it.
15. When Committee considered it appropriate to grant permission for evening use of the café for a trial period this neighbour’s rear garden was bounded by their detached garage and a 3m+ high conifer hedge. Works are well advanced on the extension of the garage upwards to provide a games-room on the first-floor and to the south side to provide a garden-room that links to the house (permitted by Planning Permission 2016/0434), which will act as more of a visual screen and baffle to noise.
16. Should future complaints about noise emanating from or relating to the building be received the Environmental Health Unit has powers to investigate and take action if they constitute a statutory nuisance. Likewise, the Council’s Licensing Unit has other powers which may be exercised in this regard if necessary.



## 9. RECOMMENDATION

Approval

## 10. CONDITIONS

1. The development shall be carried out in accordance with the following unless otherwise required by the conditions below:

- Application form signed and dated 10/03/15; and
- 'Proposed Ground Floor Plan' date stamped 04/05/2015.

Reason: To ensure the development complies with the approved plans and avoids undue harm to visual or neighbour amenity, in accordance with Policy 24 of the Adopted Core Strategy (2011).

2. The premises shall not be open to customers outside the following hours:

09:00-23:00 Monday to Saturday (inclusive); and  
10:00-22:30 on Sundays and Bank holidays

New customers shall not be permitted access to the premises after 22:30 hours on Mondays to Saturdays (inclusive) and after 22:00 hours on Sundays.

Reason: To ensure the development avoids undue harm to neighbour amenity.