

TITLE: 2006-041 CHANGE OF USE FROM SHOP (A1) TO HOT FOOD TAKE AWAY (A5), 361 ROCHDALE ROAD, BRITANNIA, BACUP.

TO/ON: DEVELOPMENT CONTROL COMMITTEE MARCH 8th 2006

BY: TEAM MANAGER DEVELOPMENT CONTROL

DETERMINATION EXPIRY DATE: 27TH MARCH 2006

APPLICANT: MR G H L BERG

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.

Site and Proposal

The applicant seeks permission for the change of use from a shop (A1) to hot food take away (A5) at the above address. The property is located within the urban boundary.

Relevant Planning History

1997/257 - Change of use from retail to take away was refused on the basis that it would have an adverse effect on the amenity of nearby residents through noise and disturbance and cooking smells and litter. This decision was appealed by the applicant but was dismissed by the Planning Inspectorate on 21/01/98.

Notification Responses

Site notices were posted and the following summarised comments have been received:

Six letters of objection have been received which raise concerns regarding:

- Noise
- Traffic and parking
- Smells
- Congregation of youths

In addition a petition has been received in response to a letter issued by the applicant, which 226 residents have signed stating their support of the application.

Consultation Responses

County Highways

No objections to the proposal on highway grounds.

Environmental Health Department (RBC)

The following comments have been made:

- Fumes, vapours and odours shall be extracted and discharged from the premises in accordance with a scheme (which shall incorporate grease and carbon filters and discharge at roof ridge level with an internal stack) to be submitted to and approved in writing by the Local Planning Authority before the use is commenced. The approved scheme shall be fully implemented before the permitted use is first commenced and shall be maintained in perfect working order thereafter.
- A scheme for the sound insulation of any ventilation equipment referred to in the condition set out above shall be submitted to the Local Planning Authority and no development shall commence until all sound insulation works have been carried out to the satisfaction of the Local Planning Authority. The sound insulation works shall be maintained thereafter to the satisfaction of the Local Planning Authority.

Development Plan Policies

Policy DS1 (Urban Boundary) states *"the Council will seek to locate most new development within a defined boundary - the urban boundary - and will resist development beyond it unless it complies with Policies DS3 and DS5."*

Policy DC1 (Development Criteria) of the Rossendale District Local Plan. The policy states that all applications for planning permission will be considered on the basis of a) location and nature of proposed development, b) size and intensity of proposed development; c) relationship to existing services and community facilities, d) relationship to road and public transport network, e) likely scale and type of traffic generation, f) pollution, g) impact upon trees and other natural features, h) arrangements for servicing and access, i) car parking provision j) sun lighting, and day lighting and privacy provided k) density layout and relationship between buildings and l) visual appearance and relation to surroundings ,m) landscaping and open space provision, n) watercourses and o) impact upon man-made or other features of local importance.

Policy S4 (Hot Food Shops) of the Rossendale District Local Plan states that applications will be judged against the following criteria:

- a) The proposed use should not be situated within an area, terrace or frontage of shop properties which are presently predominantly within A1 classification.
- b) The proposed use would not have any material or significantly detrimental effect upon the local environment.
- c) The proposed use would not cause demonstrable harm to other interests of acknowledged importance, including the amenities of occupiers of dwellinghouses or flats in the town centre, shopping or residential locality, and highway safety.

Planning Issues

Due to the significant amount of public interest in this application both in terms of objection and support it is felt that it is appropriate for the decision to be determined by the Development Control Committee.

The location for the proposed development is within the urban boundary and therefore the proposal complies with Policy DS.1 (Urban Boundary) of the Rossendale District Local Plan.

A number of objections have been received to this application with the main reasons consisting of noise, smell and general disturbance from increased traffic and customers approaching the take away at night on foot. Policy DC.1 (Development Criteria) of the Rossendale District Local Plan states that location and nature of the proposed development should be taken into account as well as relation to surroundings and pollution. It is considered that the proposed change of use from a shop to hot food take away would be contrary to the criteria set out in Policy DC1. It would be expected that car use to the site would be frequent due to the location being on the main road leading to noise pollution in the form of shutting of car doors, car engines and audio equipment. As such it is considered that the amenities of nearby residents would be harmed by such a change of use in this location and the associated disturbance meaning that the

application does not comply with Policy DC.1 (Development Criteria) and Policy S.4 (Hot Food Shops) of the Rossendale District Local Plan.

With regard to the issue of cooking fumes and odours, whilst it is accepted that the provision of an appropriate internally routed extraction system would meet the requirements of the Environmental Health Department there nevertheless remains the likelihood of nuisance being caused to the occupiers of immediately adjacent residential property from residual cooking odours. Insofar as such amenities are likely to be adversely affected the proposal is contrary to Policy S.4 (Hot Food Shops) of the Rossendale District Local Plan.

A similar application was refused on appeal on 21/01/98 by the Planning Inspector for the same reasons of noise and smell primarily because of the close proximity of residential properties to the proposal site. In addition the Inspector acknowledged a similar amount of local support, which has been submitted with this application, however the Inspector felt that such support could not outweigh the perceived harm that would result from an approval of permission. The uses of the properties within the terraced row in 1997 consisted of two shops, a hot food take away and a post office with living accommodation (359), which adjoins the proposal site, as did a hairdressing business (363) at the front, with living accommodation at the rear (363a) and it was on this basis that the decision was made. The current situation has now changed with 363a being solely used for business purposes and no longer partly residential, whilst a former shop (357) has changed to residential use. Ultimately one residential use has been created (357), one has been removed (363a) and the living accommodation as part of the post office (359) remains. Therefore it is considered that the basis of the reasons for refusal in 1997 remain the same in that the overall effect upon residential amenity is comparable.

In summary it is felt that the proposed change of use to a hot food take away would be contrary to Policy DC.1 and S.4 of the Rossendale District Local Plan in terms of an unacceptable level of noise and smell which would impact upon the residential amenity of neighbouring properties and an inappropriate location in a primarily residential area.

Recommendation

That planning permission is refused for the following reason:

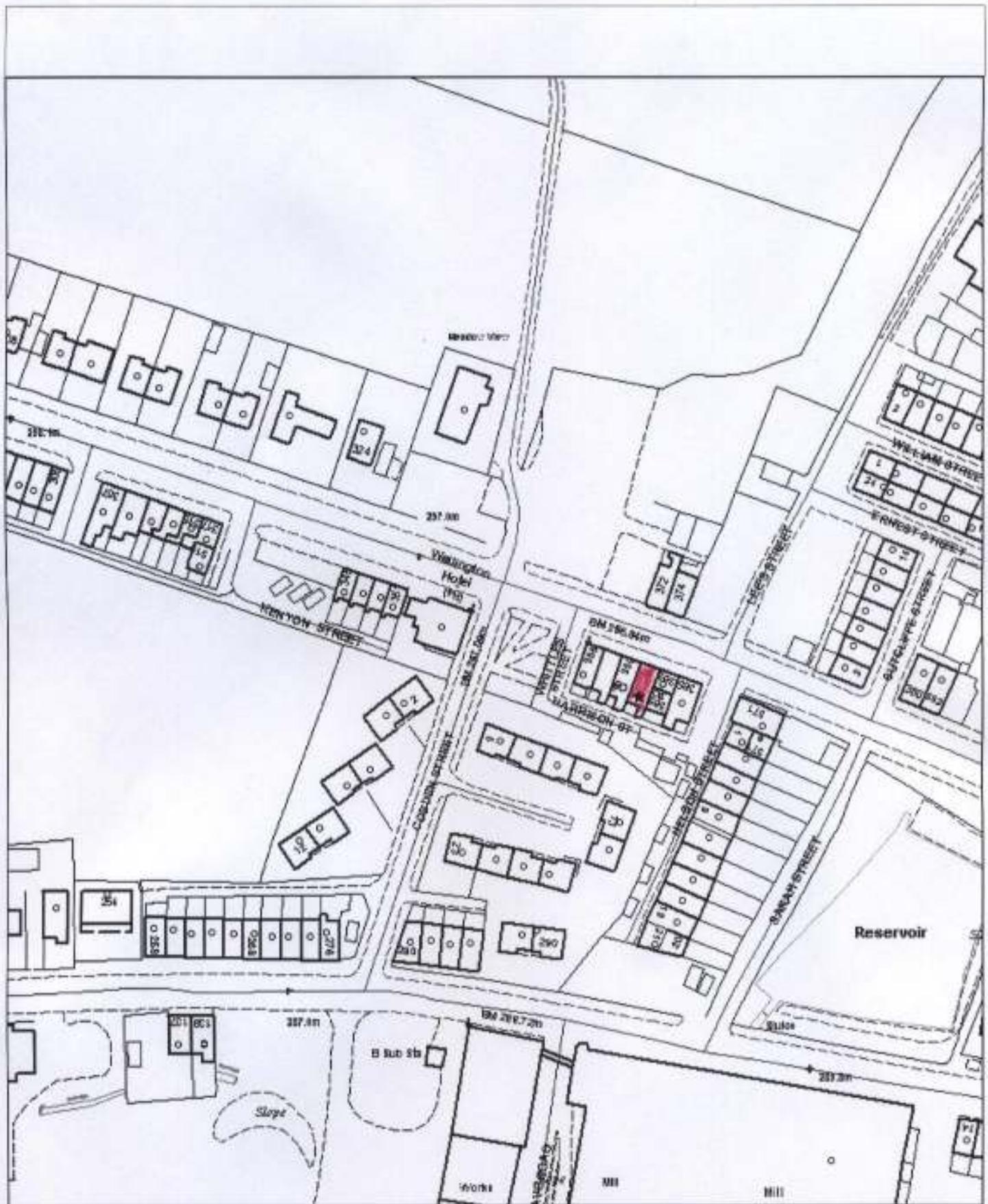
- 1) The proposed take away, which would be situated in close proximity to residential property would seriously harm the living conditions of neighbours by reason of noise disturbance and cooking odours contrary to the provision of policies DC.1 (Development Criteria) and S.4 (Hot Food Shops) of the Rossendale District Local Plan 1995.

Local Plan Policies

DS1

DC1

S4



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Scale 1:1250 Date: 27/02/2006

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