

Application Number:	2015/0169	Application Type:	Full
Proposal:	Variation of Condition 3 (Windows) from Planning Approval 2014/0031	Location:	Maza, (formerly Madison Park Wine Bar) 2 Burnley Road Rawtenstall
Report of:	Planning Unit Manager	Status:	For publication
Report to:	Development Control Committee	Date:	21 July 2015
Applicant:	Mr Urfan Munir	Determination Expiry Date:	02 July 2015
Agent:	Hartley Planning and Development Associates		

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REASON FOR REPORTING	
Outside Officer Scheme of Delegation	
Member Call-In Name of Member: Reason for Call-In:	YES Cllr Janet Graham That the improvements made to the building are acceptable in terms of visual amenity and any change forced upon the business would be damaging to the business
3 or more objections received	
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 refuse Permission for the reasons set out in Section 10.

2. SITE

The building is a 19th century two-storey former public house of stone, with elevations fronting on to Burnley Road and Haslingden Old Road. It has recently opened as a

restaurant and has apartments above. Planning permission was granted for the apartments under planning reference 2014/0031.

It is located in a prominent position at the crossroads of St. Mary's Way / Burnley Road, Haslingden Old Road and Newchurch Road. There is a yard to the rear enclosed by high retaining walls extending upwards close to the buildings ridge height. Beyond the wall are residential properties. Commercial properties are attached to the building. 'Tufties' Hairdressers, formerly The Ram's Head PH occupies the Grade II Listed Building opposite, close to the junction of Burnley Road and Newchurch Road.

Prior to their replacement the ground floor windows comprised one large, vertical pane with two smaller panes above divided into two by a vertical glazing bar. The windows were timber and were painted in white gloss. The first floor windows were a traditional timber vertically sliding sash.

The site is located within the designated Urban Boundary of Rawtenstall, and is in the Rawtenstall Town Centre Conservation Area, described within The Rawtenstall Conservation Area Character Appraisal and Management Proposals Plan as a 'Positive' Unlisted Building of Medium Quality.

3. RELEVANT PLANNING HISTORY

2015/0175 Two internally illuminated fascia signs displaying the name "Maza" (Retrospective)
Submitted concurrently with 2015/0169 and also subject to Member Call-in.

2014/0031 Change of use from public house with apartment and function room above to public house with three apartments above.
Approved under delegated authority.

Condition 3 of the approval reads:

"Any window frames replaced as part of the scheme hereby approved shall match in colour, form, design, appearance and materials those that they are to replace, and shall be similarly recessed into the opening, unless otherwise first agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity and to preserve the character and appearance of the building and the area, in accordance with Policies 1, 16, 23 and 24 of the adopted Core Strategy DPD."

Following approval of application 2014/0031, the owner replaced the windows with those that can be seen today.

This was brought to the attention of the LPA who considered that the windows are in breach of condition 3.

4. PROPOSAL

The applicant has applied for planning permission to vary condition 3 of planning permission 2014/0031 to regularise the insertion of the windows. The proposal is for the condition to be varied to read: *"The external windows to the building shall be installed as per the submitted plans"*.

Accompanying the planning application is a statement to support the application for the variation of the condition. As summarised, it states:

- The building is not Listed.
- The replacement windows are set into the exact same openings.
- The general design of the replacement windows conforms to those which have been replaced.
- There have been no objections to the replacement windows from members of the public.
- The applicant has spent a large amount of money rescuing a vacant and increasingly derelict building in the town centre and conservation area. He should be applauded for his initiative.
- The replacement windows are in keeping with both the building and with the Conservation Area.
- On the 7th of May, 2014, prior to fitting the replacement windows, the applicant wrote to the LPA to confirm that the new windows would be acceptable (Having previously sent details to the LPA via Building control). The Council did not respond to say that the proposed replacement windows were not acceptable and in such circumstances the applicant considers that he was fully entitled to proceed. A copy of the correspondence is included with the application. In the event that the LPA may now seek to require the windows to be replaced then the applicant will expect financial redress from the Council.
- In any event, for the reasons stated above the condition is not a reasonable one for a change of use application and the replacement windows constitute permitted development.

5. **POLICY CONTEXT**

National

National Planning Policy Framework (2012)

- Section 1 Building a Strong Competitive Economy
- Section 6 Delivering a Wide Choice of High Quality Homes
- Section 7 Requiring Good Design
- Section 12 Conserving and Enhancing the Historic Environment

Development Plan Policies

Rossendale Core Strategy DPD (2011)

- AVP 4 Rawtenstall
- Policy 1 General Development Locations and Principles
- Policy 16 Preserving and Enhancing Rossendale's Built Environment
- Policy 23 Promoting High Quality Design & Spaces
- Policy 24 Planning Application Requirements

Other Material Planning Considerations

Rawtenstall Conservation Area Character Appraisal (2011)

6. **CONSULTATION RESPONSES**

RBC (Conservation Officer)

The application is to vary condition 3 of 2014/0031, which reads:

“Any window frames replaced as part of the scheme hereby approved, shall match in colour, form, design, appearance and materials to those that they are to replace, and shall be similarly recessed into the opening unless otherwise first agreed in writing by the local planning authority”

The windows that have been installed on the ground and first floor have caused harm to the non-designated heritage asset and harm to the character and appearance of the Rawtenstall Town Centre Conservation Area. The building is identified as a positive unlisted building in the Rawtenstall Conservation Area Character Appraisal.

First floor windows

The windows that have been installed are a timber, outward-opening, top hung casement. The windows they replaced were timber vertically sliding sash windows.

The first floor windows cause harm to the building’s character and the wider conservation area through the trickle vents at the top of the windows, which are not a traditional feature, and appear incongruous in the conservation area. Secondly, the windows are hinged at the top, so they open outwards, again appearing incongruous on both the building and the conservation area, and breaking up the flat planes of the building on both Burnley Road and Haslingden Old Road. Each window can be opened outwards, and this detracts visually to the overall appearance of the building, and views towards the building experienced from within the conservation area. The frames of the replacement windows also appear overly chunky.

Ground floor windows

The ground floor windows are also hinged at the top, and the top opening casements do not sit flush within the frame of the windows, which is not a traditional design feature, and again appears as incongruous both on the building and in the wider conservation area. The attractive timber moulding features including the mullion dissecting the top pane of the original window has been replaced with a flat, metallic looking frame, which has diluted the overall character of the building and creates a utilitarian appearance, whereas the original windows contributed richness to the character of the building.

The Urban Structure map that accompanies the Rawtenstall Town Centre Conservation Area appraisal marks *Important pedestrian routes*, one leading directly to 2 Burnley Road from the south of Burnley Road, which then crosses at the junction of Burnley Road and Haslingden Old Road, where 2 Burnley Road is situated, and leads to Newchurch Road. 2 Burnley Road is clearly visible from this important pedestrian route. Another important pedestrian route leads north from Bank Street to Newchurch Road, where 2 Burnley Road is highly visible.

Appeal decision reference APP/M2325/A/14/2217398 (within another Lancashire Authority) relates to replacement of existing single glazed, white painted, wooden windows with double glazed white UPVC windows of the same design.

At paragraph 10, the inspector states:

“...several of the replacement windows would open differently from the existing windows. Specifically, the method of opening by top hung casement on the bottom half of the window would break the plane of the window when in the open position. Consequently, when one or more of the windows are open, they would appear dominant and prominent. This would emphasise the incongruity of the material and the design of the windows within the building, the terrace and the streetscene on St

Annes Road East. As a consequence, the proposal would cause harm to the character and the appearance of the SARECA [St Annes Road East Conservation Area]" (p2).

The appeal decision concludes that the appeal proposal would not preserve or enhance the character or appearance of the conservation area and is dismissed (p3).

The opening method of the first floor windows at 2 Burnley Road would also cause harm to the character and appearance of the conservation area, for the same reasons: the windows appear dominant and prominent when open, and this also emphasises the incongruity of the design of the windows.

Appeal decision reference APP/M2325/A/14/2218727 (again from another Lancashire Authority) relates to development originally described as replacing wood frame windows with PVC (retrospective). At paragraph 6 the inspector states:

"their method of opening would break the plane of the window, jutting out of the face of the building. As a result the plastic frames have an inappropriately crude, heavy and overly prominent appearance that fail to preserve or enhance the character and appearance of the conservation area" (p2).

Although the windows installed at first floor at 2 Burnley Road are timber, the frames appear overly thick and heavy, which is emphasised when open, and they also jut out from the face of the building.

In considering applications, special attention must be paid to the desirability of preserving or enhancing the character or appearance of conservation areas under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Less than substantial harm has been caused to the character of the building and character and appearance of the conservation area, and this harm is emphasised by the buildings prominent corner location. The windows are contrary to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 due to their design. The harm to the non-designated heritage asset and the conservation area is emphasised by the prominent corner location and place within the conservation area, as the building is experienced from at least two important pedestrian routes.

Paragraph 134 of the NPPF requires less than substantial harm of a designated heritage asset (the conservation area) to be weighed against the public benefits of the proposal, including securing its optimum viable use. The reuse of the building did not require the replacement windows, so the harm caused was unnecessary, and contrary to paragraph 134.

Paragraph 132 of the NPPF makes clear that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. The windows are contrary to paragraph 132 of the NPPF as no justification for the development was provided.

Paragraph 135 of the NPPF states *"the effect of an application on the significance of a non-designated heritage asset [2 Burnley Road] should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage*

assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

7. NOTIFICATION RESPONSES

To accord with the General Development Procedure Order a press notice was published on 12/06/2015 and a site notice was posted on 01/06/2015.

No representations have been received.

8. ASSESSMENT

Members should be aware that contrary to what is stated within the planning submission, the applicant was advised prior to installation to apply for condition 3 to be varied or to submit a separate planning application for the replacement windows. Following this, the case officer advised that the mock type window proposed did not appear the same as the existing windows.

The applicant considers that the windows meet the requirements of condition 3, but also that in any case they constitute permitted development. They also consider that the condition is invalid. Notwithstanding their considerations as described above, rather than appeal against the imposition of the condition, or apply for a lawful development certificate to formerly establish that the windows are lawful and thus not subject to enforcement action, they have applied for planning permission to vary condition 3 of planning permission 2014/0031 to regularise the insertion of the windows, and therefore the application must be determined on that basis.

Accordingly, the main considerations of the application are:

1) Principle; 2) Visual Amenity / Heritage Impact

Principle

Replacement windows are acceptable in principle within Conservation Areas subject to design considerations, as assessed below.

Visual Amenity /Heritage Impact

As stated within the Conservation Officer comments, Section 72 of the T&CP (Listed Buildings & Conservation Areas) Act 1990 requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.

In addition, Policy 16 of the adopted Core Strategy states that the Council will protect, conserve, preserve and enhance Rossendale’s historic built environment. The heritage assets all contribute to the local distinctiveness and character of the area. Their future, including their settings will be safeguarded and secured by:

“Promoting the positive management of the Borough’s heritage assets, avoiding unnecessary loss and requiring appropriate mitigation of any negative impacts.

It will also be ensured that all development is:

“a. Located in a way that respects the distinctive quality of the historic landscape and setting and retains or enhances the character and context;

b. Of a high standard of design, reinforcing the local distinctiveness of Rossendale.”

It is considered that the comments received by the Conservation Area fully set out the reasons as to why the replacement windows are contrary to Section 72 of the T&CP (Listed Buildings & Conservation Areas) Act 1990, in addition to local and national planning policy. They are included in full in a preceding section of this Report; therefore, there is no reason to repeat them here.

I concur with the comments and consider that the windows unacceptably detract from the character and appearance of a prominent building within the Conservation Area.

The applicant's agent has referred to Member's recent decision to grant planning permission for the change of use of Bacup Conservative Club to apartments (ref 2015/0085) and draws similarities between the two proposals as follows:

"...it relates to the former Bacup conservative club – like Madisons it is in a town centre conservation Area but is not Listed. I was at DC Committee tonight when the former conservative club was approved for apartments – including window details which sound remarkably like the ones at Madisons. The Bacup former club is to have plastic windows - there was no condition put on the approval to the contrary. See my highlighted part."

Officers are mindful that planning law requires applications to be determined on an "each case on their merits" basis. Notwithstanding this, Officers have considered the key differences between the two applications which are listed below:

- This application site is located in a highly visible location at an important junction between Burnley Road, St Mary's Way and Haslingden Old Road.
- It is located opposite a Grade II listed building (The Rams Head).
- The windows subject to this application are located on two main road frontages, not at the rear like the Conservative Club.

For the reasons above Officers conclude that the windows cause unacceptable harm to the character and appearance of a prominent building within the Conservation Area, contrary to Policies 1, 16, 23 and 24 of the Core Strategy, in addition to Section 6 of the NPPF and the Rawtenstall Conservation Area Character Appraisal (2011).

9. RECOMMENDATION

That the application be refused.

10. REASON FOR REFUSAL

1. The windows cause unacceptable harm to the character of the building and the character and appearance of the Rawtenstall Town Centre Conservation Area. Most particularly the windows are considered to be non-traditional features and appear incongruous and therefore harmful to: a prominent positive building in the Conservation Area; and the wider Conservation Area itself by virtue of their form and the way they function. Therefore the proposal is contrary to Policies 1, 16, 23 and 24 of the Core Strategy, in addition to Sections 6, 7 and 12 of the NPPF and the Rawtenstall Conservation Area Character Appraisal (2011).