

<b>Application Number:</b>	2017/0353	<b>Application Type:</b>	Full
<b>Proposal:</b>	Change of use of land to form outdoor eating area in association with the adjoining café (part retrospective)	<b>Location:</b>	Land At Elizabeth Street Adj To Drop Off Cafe Off Market Street, Edenfield
<b>Report of:</b>	Planning Manager	<b>Status:</b>	For Publication
<b>Report to:</b>	Development Control Committee	<b>Date:</b>	29 August 2017
<b>Applicant:</b>	Mr C Davies	<b>Determination Expiry Date:</b>	21 September 2017
<b>Agent:</b>	Mr S Hartley		

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<b>REASON FOR REPORTING</b>	
<b>Outside Officer Scheme of Delegation</b>	
<b>Member Call-In</b> Name of Member: Reason for Call-In:	<b>Councillor Johnson</b>
<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(S)

That planning permission is approved subject to the conditions in Section 10.

## APPLICATION DETAILS

### 2. SITE

The application relates to land at Elizabeth Street. It is located perpendicular to Market Street, and immediately in front of the entrance to the Drop off Café, which occupies the ground floor at the rear of 42 Market Street. Elizabeth Street is a short un-adopted street

which gives access to the communal passageway running to the rear of the Drop off Café itself and to the rear of the terraced dwellings from 26 to 36 Market Street (evens).

The site extends to approximately 136sqm. It has recently been re-surfaced in stone setts by the applicant as part of the refurbishment of the adjacent building, including the café. The site is bounded by the building containing the café itself on the east side, by a grassed garden area (within the ownership of 2 Heycrofts View) to the west side and by the rear garden of 2 Heycrofts View to the north. The boundary between the site and 2 Heycrofts View comprises a laurel hedge and the rear elevation of the neighbour's garage as illustrated on the photograph below:



The boundary between the site and the adjacent garden land to the west comprises a low wall with a fence above, extending in total to around 1m in height as shown on the photograph below.



The site is accessed via Market Street which is located immediately to the south. Further to the west on Market Street are a number of commercial units within the applicant's ownership, including a solicitors, beauty salon and a clinic. Therefore the land uses surrounding the site are predominantly residential and commercial.

The site is within the Urban Boundary in Edenfield.

### 3. RELEVANT PLANNING HISTORY

There is no planning history relating the site itself however the following applications are relevant to the Drop Off Café where the proposal is intended to serve, and is therefore relevant to the application:

- 2017/0141 - Variation of Condition 3 (to extend opening hours) pursuant to Planning Approval 2015/0107. Approved with conditions by Planning Committee contrary to the Officer's recommendation. Decision dated 26 June 2017.

This consent allows opening hours of 0900-2300 from Monday to Saturday and 1000-2230 on Sundays and Bank Holidays for a temporary period until 26 June 2018. After this date the premises shall be open from 0900-1900 from Monday to Friday, 0900-1700 on Saturdays and from 1000-1600 on Sundays and Bank Holidays (in accordance with planning approval 2015/0107).

- 2016/0575 - Variation of Condition 3 (to extend the Opening Hours) pursuant to Planning Approval 2015/0107. Refused by Planning Committee. Decision dated 1 March 2017.
- 2015/0107 - Change of use to Café (Use Class A3). Approved with conditions under delegated powers, dated 29 June 2015.

### 4. PROPOSAL

Planning permission is sought for the change of use of land at Elizabeth Street to form an outdoor eating area in association with the adjoining café for the following hours:

Temporary hours (for the duration of the planning approval for temporary extended opening hours to the café – until 26 June 2018):

- 0900-1900 Monday to Sunday including Bank Holidays.

After 26 June 2018 the applicant proposes the following opening times:

- 0900-1900 Monday-Friday, 0900-1700 on Saturdays and from 1000-1600 on Sundays and Bank Holidays.

### 5. POLICY CONTEXT

#### Development Plan

#### RBC Core Strategy (2011)

AVP 5	Area Vision for South West Rossendale
Policy 1	General Development Locations and Principles
Policy 7	Social Infrastructure
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

**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

**Other Material Planning Considerations**

Planning Practice Guidance

**6. CONSULTATION RESPONSES**

Consultee	Comments	Conditions
RBC Environmental Health	No Objection	No
LCC Highways	No Objection	No

**7. REPRESENTATIONS**

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

One objection has been received which raises the following key points which are material planning considerations:

- Permitted development rights – the applicant is already using the outside space, with tables and chairs outside 365 days per year.
- Privacy – the site is adjacent to my garden and separated only by a 1m high fence. I am unable to enjoy reasonable amenity one would expect for example gardening without being overlooked by diners.
- Noise – noise from the diners who are sitting 3m away from my rear garden.
- The applicant has ignored the fact that he does not have planning permission to use the outside space, and is continuing to do so.
- Parking and road safety – there has been a significant increase in traffic since the café opened, including congestion on Heycrofts View.

The following comments raised are non-material:

- The applicant is restricting access along the passage to the rear of Market Street.
- Land ownership – it is highly unlikely that the applicant owns the land to which the application relates.
- The applicant has expressed intentions to use the upstairs of the premises for entertainment and has already held functions there.

**Please Note:** The 21 day notification period ends on 23 August 2017 and therefore any further responses will be provided to Members in the Update Report.

## 8. **ASSESSMENT**

The main considerations of this application are residential amenity and highway safety.

### Residential amenity

The key consideration in the determination of the application is the impact that the use of the outside space on Elizabeth Street by the Drop Off Café for dining would have on the amenity of the neighbour at 2 Heycrofts View.

The site lies immediately adjacent to the neighbour's side garden area and is separated from it by a 1m high fence. The neighbour has objected on the grounds that this would hinder the enjoyment of utilising this garden area for example gardening, as this area of land would be overlooked by diners. The neighbour also objects on the grounds of noise within his rear garden from diners who are only 3m away.

Officers have considered the concerns raised by the neighbour and have found that whilst the site does lie next to land within the ownership of 2 Heycrofts View, this land is not the main private amenity space associated with this dwelling. The dwelling's main private amenity space is located to the rear of the dwelling. The land to the side comprises a lawn, trees and a "Heycrofts View" estate sign and can be seen in the photograph below. It is bounded by Market Street to the west, Heycrofts View estate road to the north, Elizabeth Street to the south and the dwelling of 2 Heycrofts View to the east.



Whilst diners would have close range views on to this parcel of land, Officers do not consider that this would give rise to a significant detrimental effect on the neighbour's use of the land, over and above that which exists. This is owing to its location away from the dwellinghouse, and being surrounded on three sides by roads, therefore it is unlikely to be used for private recreation purposes. Officers are also satisfied that the rear garden associated with 2 Heycrofts View is separated almost entirely by the presence of a garage of stone construction, which is sited on land at a higher level than the application site, and the presence of a fence further to the south and a laurel hedge to the north, all of which is within the neighbour's land (see photograph on page 2). For these reasons, and due to the hours proposed, Officers consider that the proposed use of the outside space would not give rise to significant adverse impacts on the residential amenity of the neighbour.

The Council's Environmental Health Officer has raised no objection to the proposal based on the proposed hours.

Accordingly, subject to conditions, the proposed development complies with Policies 23 and 24 of the Core Strategy and the National Planning Policy Framework.

### Highway safety

Lancashire County Council's Highway Engineer notes that Elizabeth Street is privately maintained land and is on an urban cul-de-sac (ref X291). No objection has been received towards either the temporary hours, or the permanent hours following the temporary period.

### Other matters

The objector has raised three matters which are not material planning considerations. In relation to land ownership, the applicant's agent has signed Certificate A of the planning application form to certify that the applicant is the owner of the land edged red on the site location plan.

With reference to paragraph 25 of the Planning Practice Guidance, an application is not valid, and therefore cannot be determined by the Local Planning Authority, unless the relevant certificate has been completed. Being aware that the ownership status of the site has been queried as part of earlier planning applications, upon receipt of the application officers undertook a land registry search which revealed that the land is not registered, whereas the adjacent building is. Without registration of the land providing that it is within the applicant's ownership, officers remained unclear as to whether Certificate A should have been signed. This matter was raised with the applicant and agent who confirmed to officers that whilst the land is not registered the applicant did purchase it and is in possession of the deeds. The applicant and agent are aware that it is an offence to complete a false or misleading certificate, either knowingly or recklessly, with a maximum fine of up to £5,000, and are also aware of the legal requirement to register land. On this basis and with no evidence to the contrary, officers validated the application. Following the determination of this application, should it transpire that the applicant does not own the land, this would be a private legal matter between the applicant and the land owner.

## **9. RECOMMENDATION**

That planning permission be granted subject to the conditions in Section 10.

## **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 12/07/2017;
  - Site Location Plan stamped 27 July 2017; and
  - Site Plan stamped 27 July 2017.

Reason: To define the permission and in the interests of the proper development of the site.

2. Until 26 June 2018 the outside space as defined on the Site Location Plan shall only be open to customers between the hours of:

0900-1900 on Monday to Sunday including Bank Holidays.

Following the 26 June 2018 the outside space shall only be open to customers between the hours of:

0900-1900 on Monday to Friday  
0900-1700 on Saturdays; and  
1000-1600 on Sundays and Bank Holidays.

Reason: In the interests of the residential amenity of neighbours, and to reflect the temporary extended hours of the internal premises in planning approval 2017/0141.