

Name of meeting: PLANNING SUB-COMMITTEE (HUDDERSFIELD)
Date: Friday 16 January 2014

Title of report: Planning Enforcement Update, Baharkat Supermarket 279 Manchester Road, Crosland Moor, Huddersfield

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the Council's Forward Plan ?	No
Is it eligible for "call in" by Scrutiny ?	Yes
Date signed off by <u>Director</u> & name Is it signed off by the Director of Resources? Is it signed off by the Acting Assistant Director - Legal & Governance?	Paul Kemp (Assistant Director) 31/12/2014 No No
Cabinet member portfolio	Cllr Steve Hall

Electoral [wards](#) affected: Crosland Moor
 Ward councillors consulted: None

Public or private: Public

1. Purpose of report

- 1.1 The report is prepared for the information of members of Huddersfield Planning Sub Committee and for members to consider the current position with respect to outstanding breaches of planning control at 279 Manchester Road, Crosland Moor.

2. Key points

- 2.1 The site is located on the junction of Manchester Road and Blackmoorfoot Road, Crosland Moor and the building was formally known as The Junction Public House.
- 2.2 During 2010 the owners of the property commenced operations to alter and convert the formal public house into ground floor shop with ancillary accommodation within the upper floor. The works included alterations to existing window openings, raising of the eaves height,

removal of chimneys and formation of new roof. On the 28 June 2010 a planning application was submitted to the council for the works¹.

- 2.3 In light of the level of representations received, the decision to determine the application was taken to Huddersfield Planning Sub Committee on the 8 March 2011. The application was presented to members with a recommendation to approve. Members resolved to refuse the application on the grounds of highway safety and visual amenity.
- 2.4 The decision to refuse the application was appealed to the Secretary of State on the 11 March 2011. On the 16 August 2011 the inspector resolved to dismiss the appeal and uphold the council's decision, albeit on the narrower grounds of visual amenity only.
- 2.5 A second planning application was submitted on the 23 November 2011 for the change of use for the ground floor shop and apartment, access and car park². This application was approved subject to conditions under powers delegated to officers on the 24 February 2012.
- 2.6 A third application was submitted on the 7 September 2012 for the erection of a canopy above the entrance to the property³. This application was approved under powers delegated to officers on the 7 December 2012.
- 2.7 A fourth application was submitted on the 26 June 2013 for a change of use of the first floor to café⁴. This application was approved under powers delegated to officers on the 6 December 2013 for a temporary period of 12 months.
- 2.8 As a result of the applications determined at the site, the shop and residential accommodation currently benefit from the second planning permission granted⁵. It is noted, however, that the car parking spaces were not laid out entirely in accordance with the approved plans. It is also noted that the access arrangement, in particular the dropped kerb forming the access into the car park has been raised as a concern.
- 2.9 With respect only to this planning permission, under the terms and conditions, it is considered that a requirement to erect iron railings on the south boundary and provision of cycle bay are the only outstanding matters that the authority can consider taking enforcement action upon.
- 2.10 The café use granted under the fourth application has since lapsed although it is understood the café business ceased trading during 2014.
- 2.11 The alterations to install new window frames, raising the eaves height, removal of chimneys and formation of new roof cannot benefit from any planning permissions granted and remain unauthorised. This matter has been the principle focus of investigations.

¹ ref: 2010/91923

² ref: 2011/92749

³ ref: 2012/92278

⁴ ref: 2013/91965

⁵ ref: 2011/92749

3. Implications for the Council

- 3.1 Enforcement officers have been aware of the works carried out to the building since works commenced in 2010 and has monitored the site and decisions of subsequent applications thereafter. Officers remain aware that the physical alterations were and continue to be unauthorised and have previously made the owners aware that the matter requires resolution.
- 3.2 Following the refusal and dismissal of the appeal for the physical works the owner has maintained that the cost of reversing the works would render the business incapable of continuing, particularly at a time when the business first opened. The owner continues to claim the reversal of the works would result in the closure of the business.
- 3.3 In considering enforcement actions in these circumstances officers are required to take all relevant matters into account including the development plan and all other material considerations⁶.
- 3.4 With regard to the development plan, Paragraph 207 of the National Planning Policy Framework states that local planning authorities should act proportionately in responding to breaches of planning control. It is also of note that since the decision of the planning inspector, the policies referred to by the inspector have been superseded by the National Planning Policy Framework. Officers would need to consider the effect of such changes to national planning policy when considering actions, particularly those providing a strong emphasis on supporting sustainable economic growth for businesses.
- 3.5 Other material considerations would include the statutory time frames provided within which the local authority must take action if it is concluded expedient to do so⁷. In this case the period for taking action is 4 years from the date the works were substantially completed.
- 3.6 National planning guidance⁸ also makes is clear the provisions of the European Convention on Human Rights⁹ are relevant when considering enforcement action. It states local planning authorities should have regard to the potential impact on the welfare of those affected by the proposed actions and those affected by a breach of planning control.
- 3.7 Having regard to all of the above, the inspector's decision and general support for the continuing operation of the retail use, officers initially considered it proportionate to allow the fledgling business time to establish itself and become financially stable before addressing the unauthorised physical works to the building. This view was taken having considered the inspectors findings that the uses within the building do not unacceptably impact upon the safety of highway users or on the amenity of the occupiers of nearby residential properties. The impact upon visual amenity, whilst relevant, was not considered to be

⁶ Section 172 – Town and Country Planning Act 1990 (as amended)

⁷ Section 171B – Town and Country Planning Act 1990 (as amended)

⁸ Planning Practice Guidance - Ensuring Effecting Enforcement

⁹ Article 1 of the First Protocol, Article 8 and Article 14

so significantly injurious to warrant immediate action before the owner was allowed time to resolve the matter.

- 3.8 Ultimately, however, the determining factor in taking enforcement action is balancing whether or not the degree of visual harm outweighs the council's and planning policy guidance in promoting business growth. The inspector took the view that the loss of the architectural detailing and proportions of the roof and windows did outweigh sustainable business growth. Notwithstanding this, through the introduction of the National Planning Policy Framework the local planning authority must re-consider whether different weight may be given to both arguments. The local planning authority may also give weight to any disproportionate impact upon the welfare of the owner by taking action or counterweight to others who are affected by the visual appearance of the building.
- 3.9 However, the local planning authority must also have regard to the 4 year time frame in which it needs to take action. On the evidence available to the council it appears the works were nearing completion in January 2011 and consequently the time period for taking action lapses in the near future.
- 3.10 Having re-considered the planning merits in light on the National Planning Policy Framework, officers have found no greater weight can be given to relevant economic growth policy than given by the previous inspector under earlier policy guidance. Whilst there has been work to remove the previously exposed corbels resulting from the raising of the roof, the window proportions of the roof and windows remain unchanged. Officers cannot therefore conclude that the visual harm, as identified by the inspector has been, sufficiently mitigated.
- 3.11 It is also the view of officers that the owner has been provided with sufficient time to address the unauthorised works and thus has acted proportionately in responding to the breach as stated in paragraph 207 of the National Planning Policy Framework. Moreover, whilst taking action will place the owner and the business under financial pressure, the council must now consider action in accordance with the statutory period allowed under law and with regard to all material considerations.

4. Consultees and their opinions

none

5. Officer recommendations and reasons

- 5.1 For the reasons stated in 3.10 & 3.11 above it is officer's recommendation to issue an enforcement notice in order to address the unauthorised works. The requirement of the notice will stipulate that the roof of the building be returned to its external appearance prior to the unauthorised works being carried out.

6. Cabinet portfolio holder recommendation

n/a

7. Contact officer and relevant papers

Kevin Walton – Senior Planning Officer – Enforcement.

8. Assistant director responsible

Paul Kemp – Acting Assistant Director – Investment & Regeneration Service