

DATE INSPECTED:

Ribble Valley Borough Council

**DELEGATED ITEM FILE REPORT - APPROVAL**

Ref: SW/EL

<b>Application No:</b>	3/2007/0949/P
<b>Development Proposed:</b>	Application for a Certificate of Lawfulness for the existing and continued use of 25 Chatburn Road as a shop to sell hot and cold food at 25 Chatburn Road, Clitheroe

**CONSULTATIONS: Parish/Town Council**

Town Council – N/A

**CONSULTATIONS: Highway/Water Authority/Other Bodies**

N/A

**CONSULTATIONS: Additional Representations.**

No representations have been received.

**RELEVANT POLICIES:**

N/A

**COMMENTS/ENVIRONMENTAL/AONB/HUMAN RIGHTS ISSUES/RECOMMENDATION:**

This is a Certificate of Lawfulness application to determine whether the use of the premises for the sale of hot and cold food is established. There was some initial confusion when the application was originally submitted as to whether it was seeking to establish a hot food take away use and upon further clarification from the applicant in a letter dated 31 August 2008, the application is being determined on the basis of a premises selling cold food (sandwiches, pies etc) and hot food prepared at the shop such as hot sandwiches, shepherds pie, hot pot and Chinese dishes. From the written information provided by the applicant it is clear that a hot food take away business is not what is being asked for and there is not sufficient evidence to support that case. Thus the remainder of this report will concentrate on whether the case has been proven for an established A1 use.

The premises has a planning history that reveals an application made under 3/96/0684/P sought consent for a change of use of existing snack bar and sandwich bar to hot food take away. That application whilst recommended for approval by officers, was refused by Planning and Development Committee – it was the same applicant as now who was then in the process of purchasing the premises. The Committee report at that time outlined that the premises had a long standing use and consent as a sandwich bar with ancillary hot food sales. In terms of hours of operation of the business, the previous owner, ie prior to 1997, operated Monday to Friday 0730 to 1430 and on Saturdays 0730 to 1200 hours.

Information submitted in support of the application outlines over the years the opening times of change with menus from 2000 and 2002 introducing teatime/early evening hours. However, the letter dated 26 September 2007 clearly states that 0830 to 1500 hours are the main business hours. I am of the opinion that in order to establish a pattern of opening the hours needs have been operated for 10 years or more. No menus or other substantive evidence has been provided to demonstrate opening beyond those hours operated by the previous owner and thus on the evidence provided I conclude that trading is only proved during the hours 0730 to 1430 Monday to Friday and 0730 to 1200 Saturdays.

Turning to the actual nature of the business, as stated previously, the Council appeared to

have accepted in 1997 that the premises had an established use for the sandwich bar with ancillary hot food sales. Menus of previous owners included hot sandwiches, burger, jacket potatoes, toasties, pies and a chip menu. The menu information provided by the current owner dating from 2000 retains many of these but has replaced the chip menu with a selection of traditional Chinese dishes on the daytime menu. Whilst that menu has extended hours from previous owners (see above for comments on hours restriction) I do not believe that the nature of the daytime business has so significantly changed as to state that it would no longer fit with in use class A1 ie the information provided demonstrates a sale for both hot and cold food. The applicant has provided a number of teatime menus which do show a wide range of what could ordinarily be taken to be hot food takeaway ie none of the cold food appears to be available with a shifting emphasis of the business. However, as stated previously, the applicant has been asked directly if a hot food take away establishment was what the Certificate of Lawfulness is being sought for. Their letter dated 31 August 2008 does not state they are applying for an established use as a hot food takeaway but the introduction of an element of hot food prepared at the shop. They do not explicitly state that they wish to sell exclusively hot food.

In determining this application I am satisfied of the following facts.

1. The hours of operation can only be proven to be 0730 to 1430 Monday to Friday and 0730 to 1200 hours Saturdays with no Sunday opening.

(I am mindful that the current owners January 2000 menu shows 0900 to 1430 ie 0130 hours less than the previous owners and that a letter from them in September 2007 clearly states 0830 to 1500 hours but on advisement from the Council's solicitor it was deemed unreasonable to take time from them that had previously been established ie the 0730 commencement).

2. The premises have, for in excess of 10 years, sold both hot and cold food during daytime hours. The replacement of some of the previous owners dishes on the menu with a small selection of Chinese dishes does not significantly alter this balance.
3. The applicants have been asked directly if they are seeking a hot food takeaway use on the understanding that to do so would be different from the description given on the application form. They have not revised their description to hot food takeaway and even if they had done so, the case for that could not be proven on the evidence provided ie such distinct separate sales outside the daytime service have not operated for in excess of 10 years. Should the owner operate teatime trading with a separate menu this would be beyond the remit of this application and would need addressing under the Council's enforcement powers.

Therefore, having regard to the nature of the application as expressed in both the application form and subsequent letter from the applicant, I am satisfied that the case has been proven for the premises to sell a mix of hot and cold food during the hours 0730 to 1430 hours Monday to Friday and 0730 to 1200 hours Saturday.

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**SUMMARY OF REASONS FOR APPROVAL:**

N/A

**RECOMMENDATION:** That a Certificate of Lawfulness be granted.