

**10. APPLICATION FOR CHANGE OF USE FROM A1 SHOP TO A5 HOT FOOD TAKEAWAY
– BROOK HOUSE, HATHERSAGE (NP/DDD/0417/0351, P.6175, 04/04/17, 423115/381560,
MN)**

APPLICANT: MR DALE HEFFREN

Site and Surroundings

Brook House is an end of terrace property situated on Main Road in the centre of Hathersage village. The property is set back from the main road behind a footpath and a row of six parking spaces. The property is a 19th century building of gritstone construction under a stone slate roof. The front wall is staggered, stepping in at the eastern end.

The ground floor has a lawful use as an A1 shop, and was most recently occupied by the Post Office. It is currently vacant. Above the shop is a first floor 1 bedroom flat. The only external space associated with the property is a thin strip of yard area to the rear, accessed through the building.

Behind the building the ground level immediately rises by approximately 2m to the garden of the neighbouring dwellinghouse to the north, Thornfield. There is a terrace of listed cottages adjacent to north east of the building, and the former bank is adjacent to the south which has just gained consent for change of use to a restaurant.

The property adjoined to the west is also in use as an A1 shop at ground floor level with flat above.

An access road to the properties to the north and east runs up past the east of the building.

The site is within the Hathersage Conservation Area.

Proposal

To change the use of the ground floor of the building from an A1 shop use (most recently a Post Office) to an A5 takeaway. Externally this would require a kitchen extraction/ventilation system, which would be affixed to the rear of the building with the flue running up the rear elevation and venting above the eaves.

RECOMMENDATION:

That the application be REFUSED for the following reasons:

The proposed extraction system would be situated in close proximity to two neighbouring properties. No noise assessment has been submitted to allow a detailed consideration of noise impacts to be undertaken. In the absence of this it is considered that noise from this system is likely to have a significant adverse impact on the amenity of these neighbours due to the nature of the equipment and proximity to neighbours.

Key Issues

- The principle of the loss of the A1 shop use
- The principle of use of the building as an A5 takeaway
- Amenity impacts resulting from the change of use

History

There is no relevant planning history.

Consultations

Derbyshire County Council - Highways

No objections

Derbyshire Dales District Council – Environmental Health

In terms of the design, the specification is per the DEFRA guidance ‘Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems’ published in 2005. It is recommended that the ventilation system is maintained as a minimum in accordance with this standard (or any subsequent updates to this guidance), both for the ductwork and the odour control equipment. Recommend specifying that the kitchen can only be used when this equipment is fully operational.

It is advised that comment cannot be offered on noise impacts because a noise assessment has not been submitted, but recommend some conditions to impose in this regard if the Authority is minded to approve the application.

Full responses are available on the Authority’s website.

Hathersage Parish Council

The Council object to the proposal on the following grounds:

- Impact of the appearance of the development on the heritage assets of the area (conservation area, listed buildings);
- No space for refuse storage or collection;
- No space for customer parking or deliveries;
- Littering arising from the proposed use;
- Noise and disturbance to neighbours due to the proposed use;
- Noise and odours associated with the proposed flue would adversely affect the immediate neighbour;
- Odours from the business more generally would have an adverse impact on the surrounding area;
- Fire risk associated with the proposed use;
- The development would increase congestion and block access to nearby properties;
- There are already other food outlets within the village.

The full response is available on the Authority’s website.

Representations

At time of writing 30 letters of representation have been received. 22 object to the proposal, 6 support, and 2 make general observations.

The grounds for objection are summarised as follows:

- Impact of development on the character and appearance of the area;
- No space for refuse storage or collection, leading to problems with vermin;
- No space for customer parking or deliveries;

- Smells and littering detrimental to other local businesses;
- Littering arising from the proposed use;
- The development would detract from the proposed redevelopment of part of the village centre proposed as part of the Heart of Hathersage project;
- Noise and disturbance to neighbours due to the proposed use;
- Noise and odours associated with the proposed flue would adversely affect the immediate neighbour;
- Odours from the business more generally would have an adverse impact on the surrounding area;
- Impact on road safety due to proximity to pelican crossing;
- Fire risk associated with the proposed use;
- The development would increase congestion and block access to nearby properties;
- There is no requirement for the proposed use as there are already other food outlets within the village serving fish and chips, as well as a visiting fish and chip van and other cuisines.

The grounds for support are summarise as follows:

- The village lacks a good fish and chip shop, and that this would meet the needs of both local people and visitors
- The proposal would benefit the village and local businesses, by generating footfall and attracting more people to the village centre
- Other similar businesses in the village adequately manage smells and waste
- Chip shops in other villages such as Castleton and Bradwell do not have a litter problem, and the situation would be no different here

The general comments request that if permission is granted that a condition is imposed to prevent parking in the Bank House customer car park, and another makes general observations regarding recent increase odours and noises from businesses operating in the area.

Main Policies

Relevant Core Strategy policies: GSP1, GSP2, GSP3, DS1, L3, HC4, HC5.

Relevant Local Plan policies: LC4, LC5, LC6, LC8, LC10, LS1.

Core Strategy policy GSP1 reiterates that the Authority has a statutory duty to foster the social and economic welfare of local communities in the National Park whilst GSP2 states opportunities to enhance the National Park should be acted upon.

Core Strategy policies DS1 details the development strategy for the National Park. It identifies Baslow as a named settlement.

Core Strategy Policy HC4 sets out the criteria for considering the change of use of a community facility stating that proposals to change the use of buildings or sites which provide community services and facilities including shops and financial and professional services to non-community uses must demonstrate that the service or facility is:

1. No longer needed; or
2. Available elsewhere in the settlement; or
3. Can no longer be viable.

It goes on to say state that wherever possible the new use must either meet another community need or offer alternative community benefit such as social housing, and that evidence of reasonable attempts to secure such a use must be provided before any other use is permitted.

Policy HC5 of the Core Strategy requires that any new shops and related activities are of an appropriate scale to serve the needs of the local community and the settlements visitor capacity. It also states that premises for the sale and consumption of food and drink will be permitted in villages provided there is no harm to living conditions or to the role or character of the area, including its vitality and viability.

Local Plan policy LS1 reiterates some of these points, adding that there must be adequate facilities for the storage and disposal of goods, waste, and delivery of stock.

It also states that proposals for the sale and consumption of food or drink will be permitted provided that it does not erode the primary retail role of the area or harm its character, viability and vitality. It notes that where the development of a take-away foodshop is proposed, particular care must be taken to protect the amenity of nearby property (for example by restricting opening times) and to ensure local traffic safety.

Core Strategy policy GSP3 and policy LC4 of the Local Plan seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy LC4 also notes, amongst other things, the particular attention will be paid to the impact of developments on the amenity, privacy and security of nearby properties.

Local Plan policy LC5 states that development in conservation areas should assess and clearly demonstrate how the existing appearance of the conservation area will be preserved and, where possible, enhanced.

Core Strategy policy L3 requires development to conserve historic assets. Local Plan policy LC6, which states that any applications for development affecting listed buildings must clearly demonstrate how the building will be preserved and enhanced and why the development is desirable or necessary.

Local Plan Policy LC10 addresses shop fronts, requiring a design and appearance that conserves the character and appearance of a building and its locality.

Paragraph 17 of the Framework sets out the core planning principles that should underpin decision-taking. These include always seeking to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;

Overall the Development Plan is considered to be in accordance with the policies in the National Planning Policy Framework when taken as a whole because both documents seek to support the prosperity of rural communities, and promote the retention and development of local service provision, including local shops. Both documents also seek to secure high quality design that would conserve the valued characteristics of the National Park, and to protect the amenity of residents.

The Hathersage Conservation Area Appraisal was adopted in 2011 and is a further material consideration.

Assessment

Principle of loss of Post Office / A1 shop use

In this case the existing Post Office ceased trading from the premises some time ago and they currently stand vacant.

The applicant has provided correspondence from both the former manager of the Post Office branch, and from a representative of the estate agency marketing the property. They confirm that the Post Office use ceased as it became unviable, principally due to cutbacks in the commission

rates offered by the Post Office to those running the business, and due to changing shopping habits (for example, road tax being purchased online and parcel deliveries being similarly arranged). Whilst the loss of a local Post Office is regrettable, based on the evidence provided it is accepted that this use of the building is no longer viable.

Details have also been submitted regarding how the property has been marketed as an A1 unit since August 2016. These include advertising through appropriate commercial estate agency channels. A record of interest in the unit has also been provided. This interest has been low, with nobody other than the applicant pursuing anything beyond an initial enquiry. It is the view of the estate agency that there is severely limited demand for commercial units of this size, other than for food, drink or leisure related uses – particularly for a unit as small as this one.

On this basis it is accepted that the shop has been adequately advertised and Officers accept there is currently no need for the premises as an A1 shop.

For these reasons the development is in accordance with policy HC4, in so far as it relates to the change of use of a community facility to another use.

Principle of change of use to a takeaway

Policy HC4 also requires the change of use of a community facility such as an A1 shop to consider other community uses, including the provision of affordable housing. Only if it is found that such alternative use is not viable or required should other non-community uses be considered.

In terms of the Authority's policies, a takeaway business, as proposed, would not be considered to represent a community facility – although it is acknowledged that it would be likely to be frequented by people living within the village.

Given the property's character and size the most obvious alternative community use would be as a modest affordable dwelling.

Officers have contacted the Rural Housing Enabler at Derbyshire Dales District Council to discuss housing need in Hathersage. The most recent survey they undertook in the village was in May 2016. This found a relatively large unmet housing need in the village. However, that survey concluded that there are already sufficient one and two bedroomed affordable flats within the village. On that basis – and because the premises are not large enough for conversion to anything other than a one bed flat – conversion of the premises to an affordable dwelling would not meet a community need.

It is also difficult to envisage what other community use the building might serve, given its size and the existing community provisions within the village. Officers accept that the building cannot viably provide an alternative community facility, and consider the conversion to a takeaway use to be acceptable under the terms of the policies HC4.

The premises are modest in size and on this basis it is considered that the development would be of a scale to serve the needs of the local community and the settlements visitor capacity as required by HC5.

Policies HC5 and LS1 also requires that living conditions and amenity are conserved by development, and that the role or character of the area is not harmed by development, including its vitality and viability.

Impacts on living conditions and amenity are addressed later in this report. In terms of vitality and viability, Officers consider that the proposed use would not harm the vitality or viability of the village centre; the use would maintain an active frontage to the building, would contribute to the

range of dining options available to local people, and would not lead to the loss of a commercial premises. Further, there are numerous other shops in the vicinity ensuring a good range of local service provision would be maintained. The proposal is therefore considered to comply with HC5 and LS1 in this regard.

Matters of design and appearance

No changes are proposed to the building frontage. It is anticipated that new signage would be required, but this is controlled under the advertisement regulation regime and would be subject to a separate application.

To the rear, a proposed extraction flue is proposed to project through the wall at ground floor level and run up the back of the building, terminating just above the ridge of the building. The flue is large in diameter, and in most circumstances it would be necessary to route the pipework internally so as to reduce its prominence and impact on the built environment. However, in this case the ground floor of the building is cut out into a rising bank, which means that the flue is not visible until it reaches first floor level. In addition, the rear wall of the building is staggered, and therefore much of the flue would be screened from view by the projecting wall to the immediate east. The only part which would remain open to wider public view is the top metre or so that would project above the roof slopes. The flue would not be visible when viewing the property from the front.

On this basis, and subject to the flue being painted matt black at time of installation, it is not considered that it would have a significant impact on the character or appearance of the building or the conservation area.

A row of listed cottages lies to the east, approximately 12m from the flue. The flue would not be seen in the context of these cottages in many views. Where it was, it is considered that its distance from them and its discreet positioning would not affect the character, appearance, or significance of the buildings or their setting to any significant degree.

The proposal is therefore considered to conserve the character and appearance of each of the built environment, the conservation area, and the nearby listed buildings as required by policies L3, LC4, LC5, LC6, and LC10.

Noise and odour impacts on living conditions and amenity – use of site

It has been suggested in the parish consultation response and representations that the premises could become a gathering place, leading to noise that would detract from the tranquillity of the village and adversely affect the amenity of local residents. However, the site is in the centre of the village and on the main road, amongst other commercial uses.

In that context it is not considered that the activity and noise generated by the development would have a discernible impact above that of the existing uses. Officers also note the comments made by the Inspector when issuing the Appeal Decision at Bank House – the property next door to the application site – in June 2017. In allowing conversion of the former bank to a restaurant the Inspector noted that, in a mixed use area, residential occupiers would typically expect some degree of noise and disturbance from neighbouring uses.

There is also no evidence to suggest that the premises would become a meeting place that would result in adverse impacts.

If the application was to be approved then hours of operation should be controlled to ensure that noise was not generated by the development at unsociably early or late hours, which would be likely to adversely affect the amenity of nearby residents given that noise from most other uses would have ceased at those times.

If the ground floor did not already have lawful use as a retail unit then Officers may have had concerns regarding the impact of noise from activity associated with the proposed use on the amenity of the occupiers of the flat above. However, the comings and goings and deliveries associated with the use are unlikely to be any more harmful than those of a shop use; indeed there would be an improvement in so far as the associated activity would be more likely to be restricted to specific parts of the day.

Noise and odour impacts on living conditions and amenity – physical works

It is not considered that the physical changes to the building would be overbearing or oppressive to any neighbour, although the flue would be clearly visible to the neighbour to the north, and from a window of the first floor flat above the development.

The flue would be positioned immediately adjacent to the boundary of the property to the north, Thornfield, which is set at a higher level than the application building – the ground level at the neighbouring property is at a similar height to the first floor of the application building, with the ground held back from it by a tall retaining wall. A 2m tall timber fence has been erected above this wall, forming the boundary between the two properties.

The neighbour's garden is 2m from the proposed position of the extraction system, on the other side of the timber fence. The flue would vent approximately 5m above the level of the garden (so approximately 3m above the head height of people standing in it).

There are two small patio areas immediately behind the boundary fence; one of which is adjacent to where the flue would be located, and the other is only a short distance to the west. In such close proximity – and given the likely frequency and timing of the use of the extract – odours from the extract have the potential to impact on the amenity of the neighbour as there is little separation between it and the neighbours garden in which any odour could disperse.

The flue would also vent 3m above a window of the first floor flat over the premises at a distance of only 1m away from it. This is an opening window and so odour from the flue would be likely to percolate in to the flat when the window was open if the odour was not sufficiently mitigated within the extraction system.

A technical specification has been provided for the odour control equipment proposed, although this does not make an assessment of, or draw any conclusions on, the impacts to this neighbour or any other property.

In commenting on the application the Environmental Health Officer advises that in terms of the specification for the proposed odour control system this is in accordance with the DEFRA guidance 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems'.

They still urge caution in approving the proposal however, and recommend that if the Authority approves the development, conditions should be imposed to ensure that the system is maintained and fully functional at all times.

Given the information submitted, the position of the Environmental Health Officer, and the lack of any evidence to demonstrate that the odour control system would not sufficiently purify the air Officers consider that refusal of the application on grounds of harm to amenity due to odour impacts could not be sustained.

There are however concerns in relation to noise impacts arising from the operation of the extraction system.

The flue and extraction equipment would be entirely external, and at this distance from the boundary of Thornfield could create noise for sustained periods that could prevent this neighbour from enjoying their garden, and the patio areas in particular, if it was at a significant volume.

Further, due to the close proximity of the first floor window of the flat noise from the flue also has the potential to significantly disturb them inside their property.

A noise assessment has not been submitted with the application and the applicant has indicated that they are reluctant to go to the expense of commissioning one without some certainty that the proposal will be supported. Such an assessment is considered fundamental to establishing whether the development is acceptable however, and in the absence of this Officers consider that there is a significant risk of adverse noise impacts to these two neighbouring properties.

For these reasons the application fails to comply with policies LC4, LS1, and HC5.

Highway safety

The premises and those adjacent to it are served by six parking spaces in front of them. No additional parking is proposed as part of the proposal.

It is not considered that the use of the premises as a takeaway would lead to any significant increase in parking demand than the former post office use, or that which could be generated by a new A1 shop use.

Objection has been made on the grounds that the business would increase deliveries to the site. However, the site already has an extant A1 use and it is not considered that the proposed use would lead to a significant intensification in this regard.

The Highway Authority have also raised no objections to the proposals.

The proposal is therefore considered to have no adverse highway impacts.

Other matters

Some representations have stated that the village does not need a fish and chip shop, with such provision being available elsewhere. Whilst the current applicant is proposing a fish and chip shop, the application is for a change of use to a takeaway, which would not be restricted to a fish and chip shop. Given the size of Hathersage it is not considered that such provision would exceed a scale to serve the needs of the local community and the settlements visitor capacity.

No details have been provided as to how waste from the site would be stored. There is a narrow yard area to the rear (where the extract would be positioned) however that could be used for this purpose should external storage be required. There are also two rooms within the building that could be utilised. Refuse collections would need to be accommodated outside of the building, but this applies similarly to the current A1 shop use.

Concerns have been raised that the proposed development would lead to littering. The possibility of the takeaway use generating litter is a material consideration, even though it is also controllable by other legislation. Given the scale of the proposed development, and in the absence of a known littering problem in the area that would be exacerbated by the development, Officers do not consider this to be sufficient reason for refusal of planning permission.

The development would have to comply with building regulations and other legislative regimes which would ensure the safe operation of the business.

No environmental management measures have been proposed, although the development would

be required to comply with building regulations. Given the scale of extension proposed, this is considered sufficient for the development to comply with the Authority's climate change policies.

Conclusion

Officers have assessed the application against all relevant planning policy and other material considerations.

Whilst the proposal is considered acceptable in most regards, the applicant has not demonstrated that noise generated by the development would conserve the amenity of local residents.

In the absence of an adequate assessment of noise and given the close proximity to neighbouring properties Officers consider that the development would result in significant adverse noise impacts. As a result the application fails to comply with policy LC4 of the Development Plan and Paragraph 109 of the Framework.

The application is therefore recommended for refusal.