

12 FULL APPLICATION – CHANGE OF USE FROM AN A1 (SHOP) TO AN A5 (HOT FOOD TAKEAWAY) AT BROOK HOUSE, MAIN ROAD, HATHERSAGE (NP/DDD/1218/1185 SPW)

APPLICANT: MR DALE HEFFREN

Site and Surroundings

1. 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 off road parking spaces are associated with Bank House, the nearby restaurant, so not available to Brook House. 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.
2. The ground floor has a lawful use as an A1 shop but is currently vacant. It was most recently occupied by the Post Office. Post office services are now available in the Spar shop at the garage across the main street. Above the shop at first floor is a 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.
3. Behind the building the ground level immediately rises by approximately 2m to the garden of the neighbouring dwelling house to the north, Thornfield. There is a terrace of listed cottages adjacent to north-east side of the building, and the former bank building adjacent to the south is now operating as a restaurant.
4. The property adjoined to the west is also in use as an A1 shop at ground floor level with flat above.
5. An minor access road to the properties to the north and east runs up past the Bank House restaurant and east of the application building.
6. The site is within the Hathersage Conservation Area.

Proposal

7. 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 internal up to roof level where it then would be housed within a stone chimney.
8. The proposed opening hours are Monday to Friday 11:30 to 21:00 and on Saturdays, Sundays and Bank Holiday Mondays 11:00 to 21:00.

RECOMMENDATION:

9. **That the application be APPROVED subject to the following conditions or modifications:**
 1. **Standard time limit**
 2. **The development shall not be carried out other than in complete accordance with the submitted plans A3_01, A3_04, and specifications subject to the following considerations or modifications.**

3. **Opening hours, Monday to Friday 11:30 to 21:00 and on Saturdays, Sundays and Bank Holiday Mondays 11:00 to 21:00.**
4. **Before the use hereby permitted takes place, the final detailed specification and design for the extraction and filtration system shall be installed in accordance with a scheme to first be submitted to and approved by the National Park Authority. The approved scheme shall achieve a target level of no more than 33dbLAeq 1m from the façade of the nearest dwelling (assessed in accordance with BS4142:2014). The specification for the extraction and filtration system shall thereafter be operated and maintained in accordance with that approval throughout the lifetime of the development to prevent noise and odour nuisance.**
5. **Prior to commencing the use hereby permitted the extraction unit and systems stated in the ‘Purified Air - Specification & Defra Report’ shall be installed and throughout the lifetime of the development these shall be permanently maintained in accordance with the submitted ‘Purified Air – Preventative Maintenance Contract’.**
6. **The chimney hereby approved shall be made of natural gritstone and sited on the ridge to match the existing chimneys on the same terrace of properties.**

Key Issues

10. Principle of loss of the existing community facility of the post office/shop and its conversion to a hot food takeaway; any amenity issues in particular in relation to noise, odour or other disturbance.

History

2018 - (NP/DDD/0417/0350) Advertisement consent granted for new signage for the proposed chip shop.

2017 - planning permission for change of use to a hot food takeaway was refused as no noise impact assessment had been submitted and due to the extraction equipment's proximity to neighbouring residential properties it was likely to have a significant adverse impact on the amenity of these neighbours. The proposal was also refused because of the size, appearance and positioning of the extraction equipment which would adversely affect the character and appearance of the Conservation Area and the visual amenity of the neighbouring property.

2017 - Enquiry 28991 related to this property. The proposal was for conversion to a pub (Artisan beer house). The enquirer was advised that post offices are community facilities and therefore received protection as such in the development plan policies. So any forthcoming application would need to demonstrate that the existing use can be released. Advised that to demonstrate that the use is no longer viable then this would normally require a period of marketing (usually 1 year) the premises as a going concern. If no interest within a year then this would usually demonstrate the facility is no longer viable. Residential amenity would need to be protected by the proposal and the proposal would need to conserve and enhance the character and appearance of the conservation area.

11. Consultations

12. Highway Authority, Derbyshire County Council – No highways objections
13. District Council – No response to date.

14. District Council Environmental Health – 07/02/2019 In principle, I do not object to this application for a change of use of the premises to create a fish and chip shop. I am satisfied that the applicant has provided details of a noise survey undertaken to assess the possible impacts of noise on nearby residential premises and do not believe that a noise nuisance should result from the operation of the extraction unit. I do have some concerns, however, that there is the potential for odour from the operation of the fish and chip shop to impact on nearby premises. Although an odour nuisance may not result from smell emanating from the premises, it is likely that some odours will escape from the unit and impact on neighbouring premises, both commercial and residential. However, there are other commercial food premises in the locality that have the potential to create odour nuisance from cooking processes etc. and we have not received complaints from local residents regarding odour nuisance. Therefore, if adequate extraction facilities are in place, such a food outlet can operate without creating odour issues on nearby premises.

18/02/2019 Thank you for your email with the attached information regarding proposed extraction systems. Having read the supporting documents, I would comment that if the proposed unit and systems are used and the correct maintenance and servicing to the equipment is undertaken, I believe that it is possible for the premises to be run as a fish and chip shop takeaway premises, without an odour nuisance ensuing. Although some odours may naturally escape from the premises, it is not anticipated that these would be excessive or at a level likely to give rise to statutory nuisance. Therefore, I would not suggest that the application be rejected on grounds of excessive odours.

15. Hathersage Parish Council – ‘In 2018 Hathersage won a landscape award for the new village centre. The proposed hot food takeaway is 20 yards from this area in the Conservation Area. The proposal will lead to major problems with litter, noise, smell, parking and loss of amenity.

The proximity to numerous dwellings is unacceptable as, no matter how many extractor units are involved, the odour from the opening of the shop door will lead to unpleasant smells for all the neighbours.’

They are also concerned about lack of litter bin and parking provision which the applicant cannot offer due to the lack of curtilage.

They consider there are enough eating options on Main Road and that the unhealthy nature of fish and chips is problematic.

They are concerned about noise of extraction units.

Representations

41 representations have been received. 25 object and 16 are in support. The full representations can be found on the electronic file. The material planning issues raised are summarised below.

Support is raised on the following points –

- Will enhance the look and ambience of the village.
- Use a vacant building, having been vacant for approximately 2 years.
- No problems with car parking and just as many cars/vans stopping when this was a post office.
- Provides employment.
- Would add to the vitality of the village, being a hive of activity.

- Good for tourism and visitors.
- Will not create any further parking problems as short stay on street parking is available close to the business and also pay and display within a short walk.

Objection is raised on the following points. –

- The takeaway facility and associated extraction equipment represents an overbearing presence to the property Thornhill (which is behind the site).
- Odour (smell)
- Negative impact on the amenity of nearby residents.
- No off street parking for staff or customers
- Litter
- Vermin
- Concern that the recently completed community spaces will be used to eat takeaway food.
- Negative impact on the Conservation Area.
- Opening hours of 9.5-10hrs a day will provide no respite for residents.
- Will harm the peaceful enjoyment of nearby properties including their gardens.

Main Policies

16. Relevant Core Strategy policies: GSP1, GSP2, GSP3, GSP4, DS1, L3, HC4, HC5.

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

National Planning Policy Framework

18. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect. It's now on its 3rd version which was published in 2019. The Government's intention is that the document should be considered to be a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the Authority's Core Strategy 2011 and saved policies in the Peak District National Park Local Plan 2001. Policies in the Development Plan provide a clear starting point consistent with the National Park's statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and more recent Government guidance in the NPPF with regard to the issues that are raised.'
19. 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.
20. Core Strategy policies DS1 details the development strategy for the National Park. It identifies Hathersage as a named settlement.

21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. Local Plan Policy LC10 addresses shop fronts, requiring a design and appearance that conserves the character and appearance of a building and its locality.
30. Section 12 and in particular para 127 of the National Planning Policy Framework sets out national policy on achieving well-designed places. 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;

31. The Development Plan is in accordance with the policies in the National Planning Policy Framework as 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.
32. The Hathersage Conservation Area Appraisal was adopted in 2011 and is a further material consideration.
33. The Authority has reached an advanced stage in the production of Development Management Policies. The process has now moved beyond publication and examination, taking into account earlier representations and the Inspector's interim views on soundness. Owing to the advanced stage of the document, the Authority considers that a revised version of the Publication Document (incorporating all proposed modifications) addresses the remaining soundness issues and as such may be afforded significant weight as a material consideration. When adopted these policies will replace the existing saved Local Plan policies (adopted 2001) in their entirety.
34. For the purposes of this application the following development management policies are relevant. DM3, DMC5, DMC7, DMC8, DMS2, DMS4, DMT6. These in general offer similar protection to community facilities, amenity, heritage assets and require a high standard of design.
35. **Assessment**
36. Principle of loss of Post Office / A1 shop use
37. This application is a resubmission. The previous application was refused for issues relating to noise, impact on conservation area and visual amenity. The previous application dealt with the principle of the loss of the existing post office and its proposed use as a hot food takeaway.
38. In the previous application it was accepted that the existing Post Office ceased trading from the premises some time ago and they currently stand vacant.
39. In the previous application the applicant provided correspondence from both the former manager of the Post Office branch, and from a representative of the estate agency marketing the property. They confirmed 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 was accepted that this use of the building is no longer viable. Officers note that post office facilities have now been accommodated within the nearby garage shop.
40. While the current application does not include information on these issues as they have already been accepted in the applicant's earlier application it cannot be introduced at this resubmission stage as a reason for refusal. 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 (post office).
41. 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.
42. The emerging Development Management policies offer greater detail on what is

required before an A1 shop use is released (including a viability assessment and marketing the property through the local authority Economic Development Team for at least 12 months). This property has been vacant for 2 years, it is considered that for this application releasing the A1 use has already been demonstrated to be acceptable in planning terms.

43. Principle of change of use to a takeaway

44. 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.
45. 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.
46. Given the property's character and size the most obvious alternative community use would be as a modest affordable dwelling. However, officers recognise that may not be desirable in planning terms as it could erode the vitality and viability of the town centre if a town centre use (a use with an active frontage) was lost.
47. On the applicant's previous application officers have contacted the Rural Housing Enabler at Derbyshire Dales District Council to discuss housing need in Hathersage. At that stage 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 bed roomed 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.
48. Officers found it difficult to imagine what other community use the building might serve, given its size and the existing community provisions within the village. It should be noted that an artisan beer house has been discussed at the pre application stage, however it's not known if this came forward as a viable offer on the premises; seemingly not based on the owner's representation. Officers therefore accept that the building can be converted to the proposed takeaway use under the terms of the Core Strategy Policy HC4.
49. 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.
50. 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.
51. Impacts on living conditions and amenity are addressed later in this report (and found to be acceptable). 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 takeaway options available to local people, and would not lead to the loss of a commercial premises. Furthermore, 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.

Matters of design and appearance

52. There is only one external alteration proposed and that is a new stone chimney to the front facing roofslope. A new scheme of signage has been permitted already, but this is controlled under the advertisement regulation regime and does not prejudice the outcome of this application.
53. On the front facing roofslope the new chimney is proposed to be constructed of natural stone and will act as the outlet for the extraction system. This has been detailed to match the two other chimneys on the terrace, however it is sited off the ridge. The new chimney would therefore be out of keeping with both the Park's building tradition for ridge chimneys as well as the existing two ridge chimneys. Although it is considered to be a high quality aesthetic for a ventilation flue, and one which is considered to be sympathetic to the character and appearance of the existing building, no justification has been submitted as to why it cannot be sited properly on the ridge and in order to conserve the character and appearance of the building and the Conservation Area, a condition requiring a ridge chimney is necessary.
54. A row of listed cottages lies to the east, approximately 12m from the chimney. The high quality finish of the proposed chimney (flue) enhanced by appropriate siting would ensure that the setting of these listed buildings will not be harmed.
55. The proposal, as amended by the above condition, is therefore considered to conserve the character and appearance of the built environment, the conservation area, and the nearby listed buildings as required by policies L3, LC4, LC5, LC6, and LC10.

Noise impacts on living conditions and amenity

56. The main issues this proposal raises in relation to amenity are those of noise, odour and potentially any other disturbance.
57. In terms of noise, the first reason for refusal from the previous application related noise from the extractor system not having been properly assessed via a noise assessment.
58. This application has been supported by a noise assessment (a noise design target assessment). The calculations of the noise target has been based on the criterion that the noise rating level of the new mechanical services should not exceed the background noise level (DBLA90) outside the nearest residential windows when assessed in accordance with BS4142:2014.
59. The noise design target assessment has found the background noise levels in the area to be 38dB. The assessment explains that the total permissible specific noise level from the extract system should not exceed 33 dBLAeq, this includes a 5dB penalty for acoustic features (tonality and impulsive/intermittency characteristics). It assumes that the extraction equipment will not be in use after 23:00, officers note that this fits with the stated opening times (which show that the premises will close at 21:00). The report concludes that 'it is expected that it will be feasible to design appropriate mitigation measures to meet the criteria', those criteria being to meet the target level of 33dBLAeq at the nearest residential windows (when assessed in accordance with BS4142:2014).
60. The District Council Environmental Health Officer (EHO) has been consulted and is satisfied that the submitted noise survey assess the possible impacts of noise on nearby residential premises and does not believe that a noise nuisance should result

from the operation of the extraction unit.

61. Planning officers consider that a planning condition will be required to ensure that noise level of the proposed extraction unit does not exceed the stated 33dbLAeq when measured at 1m from the façade of the nearest residential property. The nearest would be the flat above the proposed chip shop itself. The condition will need to be a pre-condition (prior to commencing use) as resolving this matter goes to the heart of the permission and the extraction equipment will need to be in operation from the time the use actively commences.
62. Concerns are raised in the objections about general disturbance from customers and deliveries. Subject to the proposed opening times it is considered that the proposed use would not otherwise cause any other noise or disturbance significant enough to warrant refusal on amenity grounds. In accordance with the policies of the development plan and in the interests of amenity, planning conditions can secure the proposed opening hours.
63. We consider that on the basis of the evidence, that the activity and noise generated by the development would not 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.
64. If the ground floor did not already have lawful use as a retail unit then we 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 insofar as the associated activity would be more likely to be restricted to specific parts of the day.

Odour impacts on living conditions and amenity

65. As submitted there were no details about odour and this was a concern for us and the Environmental Health Officers, as well as objectors.
66. Following our requests for this information, these details have been provided including a specification and Defra report.
67. The report scores the impact risk based on a range of criteria and this proposal has scored as a very high impact risk.
68. The report therefore explains that a high level of odour control is required to comply, and the proposed type is ESP (Electrostatic Precipitator) followed by UV ozone system. It provides the details of such system and also the details of a maintenance schedule.
69. The Environmental Health officers have been consulted with these details and they accept that if these units and systems are used and the correct maintenance and servicing to the equipment is undertaken then they believe that it is possible for the premises to be run as a fish and chip shop takeaway premises without an odour nuisance occurring.
70. Officers are satisfied that the proposal will have be acceptable in terms of the odour the premises creates. This is subject to conditions which secure the extraction unit and systems stated in the 'Purified Air - Specification & Defra Report' installed and

maintained in accordance with the submitted 'Purified Air – Preventative Maintenance Contract'. The extraction unit and systems will need to be installed prior to commencing use as it goes to the heart of the permission and without such mitigation the impact from odour is unlikely to be acceptable.

71. Officers note that objectors perceive both noise and odour could diminish the enjoyment of nearby residential properties including their gardens and also the adjoining shop. Officers are satisfied that the evidence is that the proposed system with the appropriate maintenance will ensure that the impact is acceptable and the issues the neighbouring properties have concerns about do not materialise as a result of the proposed development.
72. Subject to conditions, the impact (noise, odour other disturbance) of the proposal on the amenities of the area is acceptable and in accordance with the policies of the development plan which protect amenity including Core Strategy policies GSP3, HC5, Local Plan Policy LC4, LS1 and the NPPF.

Highway safety and Parking

73. The premises and those adjacent to it have no off street parking. No additional parking is proposed as part of the proposal. However there is on street public parking available which is restricted to short stay and also a nearby pay and display car park.
74. We consider that the use of the premises as a takeaway would not lead to any significant increase in parking demand than the former post office use.
75. 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.
76. The Highway Authority have also raised no objections to the proposals.
77. Officers therefore consider the proposal would therefore have no adverse highway impacts.

Other matters

78. 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. And the policies of the development plan do not require demonstration of need for the proposed use.
79. Details have been provided to show how the waste from the site would be stored and this is now inside the premises and described by the applicant as being removed daily by themselves. Refuse collections would need to be accommodated outside of the building, but this applies similarly to the current A1 shop use.
80. 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 has sufficient weight to justify refusal of planning permission.

81. The development would have to comply with building regulations and other legislative regimes which would ensure the safe operation of the business.
82. 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

83. Releasing the existing use as a shop is acceptable and so is the principle of the proposed use. The detailed matters of the impact of the proposed use on amenity by virtue of noise, odour or other disturbance are also demonstrated to be acceptable in the submitted noise assessment, odour details and the environmental health officer's response which accepts the impact. The external elements of the proposed chimney will complement the existing built environment and heritage assets. Officers therefore consider the proposal to be in accordance with the policies of the development plan and material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan.

84. **Human Rights**

85. Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

86. Nil

Report Author : Steven Wigglesworth, Planner