

**6. FULL APPLICATION – CHANGE OF USE FROM SHOP TO FOOD TAKEAWAY, COUNTRY CHOICE, MAIN ROAD, GRINDLEFORD (NP/DDD/1112/1194, P.11009, 03/01/2013, 424382 377692/KW)**

**APPLICANT: MR MICHAEL PECKETT**

**Site and Surroundings**

The shop is situated on the south-eastern side of the main road, about 34m north of the junction of the main road with the B 6001 Grindleford – Hathersage road. It is the northernmost of a terrace of three properties. The central property in the terrace is residential and there is a veterinary clinic at the southern end. To the north of a shop is a garden and there are a terraced residential properties on the opposite side of the road, 16.5 metres to the north-west. The shop and the other properties in the terrace are situated just outside the boundary of the Conservation area.

The shop is constructed of natural materials, with a hipped-roof form. It has a two-storey form on to the roadside, with a basement floor at the rear. There is a residential flat on the upper floor. There is a small parking area on the lower ground to the rear, which is bounded by existing trees and vegetation. The shop premises have an attractive shopfront with a small raised forecourt area. There is unrestricted roadside parking within the vicinity of and directly outside the shop.

The shop was effectively the only 'local' shop in the village and operated as a convenience store prior to its closure in September 2011. There is a specialist art gallery/art shop lower down the main street. Members may also recall the former post office at the bottom of the village street which closed around 2010 and has been converted to additional living accommodation for the house within which it was formerly located.

**Proposal**

Change of use of the ground floor shop premises to a hot food takeaway selling primarily indian meals. The proposed opening hours are 10.30-23.30 Monday–Thursday, 10.30-23.30 on Fridays, Saturdays, Sundays and Bank Holidays.

The sole external change to the appearance of the building is the installation of a 5.0m long x 500mm diameter stainless steel extraction flue fitted to the rear (south-east) external corner of the building and projecting 1.0m above the eaves line of the building

**RECOMMENDATION:**

**That the application be REFUSED for the following reasons:**

- 1. Contrary to policies HC5 and LS2, insufficient evidence to demonstrate that the existing A1 shop use is not viable or that other alternative community needs could be accommodated within the building.**

**Key Issues**

1. Whether the change of use of the shop is justified and complies with Core Strategy policy HC5 and Local Plan policy LS2.
2. The impact of the proposed food takeaway use on the residential amenities of the neighbouring properties.

3. The impact of the external changes to the building on the character and setting of the locality and the nearby Conservation Area.

### History

1980 – Consent granted for change of use from bank to shop.

1987 – Detailed consent granted for the erection of a three-storey gabled extension to the rear elevation.

1989 – Consent granted for change of use of bank to additional living accommodation.

1999 – Detailed consent granted for alterations to shop front, internal alterations to shop incorporating existing ground floor living accommodation, provision of first floor flat and creation of vehicle parking (4 vehicles) at the rear.

### Consultations

Highway Authority – No objection.

Parish Council - Object on the following grounds

- The Council considers it essential to retain the existing shop premises in order to enable a commercial or community shop to be re-established at the earliest opportunity.
- The Council is aware of a number of potential operators for a 'general store' in the premises, on both a commercial and community basis, subject to a reasonable market rent being agreed.
- The proposal is contrary to the existing Peak District National Park Authority policies, and in particular HC4 and LS2, which seek to retain essential local shop facilities, including in Grindleford (policyDS1):
- The applicant has not demonstrated that the operation of a shop is not viable, in particular in relation to the rental levels that are currently being sought, which the Parish Council consider totally unrealistic; this view is supported by research commissioned by the Grindleford Community Shop Committee.
- The applicant has not demonstrated that a shop is not needed.
- There is no other general store in the village, which is causing hardship to residents and in particular the significant number of elderly people.
- the applicant has not followed the required sequential test, in seeking an alternative community use for the premises.
- the applicant's statement in his letter of supporting documentation that "we have not had a single interested party enquiring about the unit..." is erroneous and incorrect. Members of the Parish Council are aware of a number of parties who have shown interest in renting or purchasing the premises with a view to continue to operate as a village shop.
- The proposed use would result in unacceptable loss of amenity to residents who live immediately adjacent to and nearby the premises, by way of:
  - i) an unacceptable increase in vehicular traffic on Main Road through the operation of a take-away' service
  - ii) fumes and/or smells caused by the operation of the cooking facilities

- iii) the proposed hours of operation, late into the night until 23.30
- iv) the location of the proposed use adjacent to the Grindleford Conservation Area.
- v) the erection of a large unsightly extractor fan adjacent to a Conservation Area.

In addition, the Parish Council informs the Authority that it is requesting Derbyshire Dales District Council to place the premises on the List of Community Assets, as provided for in the Localism Act.

Environmental Health Officer – No objections subject to the installation of a noise attenuator to the proposed mechanical extract system, which would reduce the noise levels to 30 dB(A), as stated in the submitted details. It is also essential that the flue will project above eaves level and that carbon filters are fitted, in order to prevent odour nuisance.

To prevent undue noise disturbance to residents, the opening times should be restricted to no later than 12 midnight and that there should be no deliveries before 8 am in the mornings.

### **Representations**

94 letters of objection have been received from Grindleford residents raising strong concerns at the loss of the last remaining shop premises in the village. They raise similar objections to those made by the Parish Council (see above). Other additional objections include the following:

- LDF (Local Development Framework) policy HC5 states that the NPA will strongly resist changes of uses of village shops which provide a valuable service to the community and are (or could be) viable under policy HC5.
- The proposed food takeaway use is out of context with the needs of a small rural community and it would be unlikely that a takeaway could be supported by Grindleford alone.
- Potential increased demand on limited roadside car parking particularly when local home owners are all at home in the evenings.
- Detrimental impact upon the adjacent Conservation Area.
- Noise and litter would be detrimental to the environment.

### **Main Policies**

Relevant Core Strategy policies: GSP3 (Development management principles), GSP4 (Planning conditions and legal agreements), DS1 (Development Strategy), HC5 (Shops, professional services and related activities)

Relevant Local Plan policies: LS1 (Retailing and services in Local Plan Settlements), LS2 (Change of use from a shop to any other use), LT 10 (Private non-residential parking)

### **National Planning Policy Framework**

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. 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 East Midlands Regional Plan 2009, 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.'

## **Wider Policy context (if relevant)**

EMRP (Regional Spatial Strategy) policies: 1, 2, 8, 26, 27,

Relevant Core Strategy policies: GSP1 (Securing National Park purposes and sustainable development), GSP2 (Enhancing the National Park).

## **Assessment**

### Introduction

This is a sensitive proposal that has generated significant concerns from the Parish Council and local residents. The key issues are firstly, whether it has been sufficiently demonstrated that the existing shop use is no longer required by the community or is no longer viable. The second issue concerns the impact of the proposed food takeaway on the residential amenities of the neighbouring properties. A third issue concerns the impact of the external changes to the building on the character and setting of the locality and the nearby Conservation Area.

Issue 1 - Whether the change of use of the shop is justified and complies with Core Strategy policy HC5 and Local Plan policy LS2.

The explanatory text to Core Strategy (CS) policy HC5 (para 12.32) states that the National Park Authority will strongly resist changes of uses of village shops which provide a valuable service to the community, and are (could be) viable, under policy HC5. However, if non-viability is satisfactorily proven, attempts must be made to secure an alternative community use in its place before other uses are permitted. CS policy HC5 states, amongst other things, that related activities such as premises for the sale and consumption of food and drink will be permitted provided that there is no harm to the living conditions or to the role or character of the area, including its vitality and viability.

More specifically, LP policy LS2 relates to the change of use of from a shop to any other use. This policy states that a change of use of the ground floor part of a shop will not be permitted where it would reduce the range of community services available locally, unless it can be shown that the shop is no longer required by the community, is duplicated elsewhere within the settlement, or is no longer viable. When considering viability, evidence of reasonable attempts to sell or let the shop as a going concern will be material.

In this case, the shop premises were closed last year following attempts by the applicant and a subsequent tenant to operate it as a going concern. Nevertheless, the retention of the shop and its use as general convenience store is strongly supported by the local village community, as evidenced by the number of individual letters of representation received. In respect of the criteria laid down in LP policy LS2, therefore, the loss of the shop would reduce the range of community services available locally, as it is one of two remaining retail premises in the village, the other being a specialised art gallery. Furthermore, the shop is not duplicated elsewhere in the settlement. Its change of use would not, therefore, be justified unless there is sufficient evidence submitted as part of the application to demonstrate that the shop use would no longer be viable.

In respect of viability, the applicant and his wife operated Country Choice from March 2009 to June 2011. Accounts have been provided showing significant losses during that period. The applicant let the shop from May 2011 to September 2011, however, the tenant decided not to extend the lease as the shop was not making a profit. The shop has been empty since September 2011, however, the applicant has been in negotiation with the potential take-away operator since July 2012, and has a written offer subject to planning which is in excess of the £12,000 yearly rental suggested in the valuations supplied. The applicant marketed the property for a year through commercial letting agents, however, at this time, the shop premises were being advertised at a yearly rent of £16,800. The applicant did not receive any firm offers during this time. The applicant then proceeded to market the property through his own personal

contacts at a reduced rent, but still did not receive any firm offers. He acknowledges that the yearly rental price the property was originally being marketed at was too high and has submitted two rental valuations produced in January 2013 stating that £12,000 per year is a more reasonable valuation. Notwithstanding the marketing of the property, the applicant states that their experience of operating the convenience store demonstrates that this type of use is no longer viable. He states that the key limiting factors encountered were the cost of produce and an inability to compete with some of the larger supermarkets and chain stores. The rising cost of fuel was also a factor.

The desire of local residents for the provision of local convenience store in Grindleford has recently been expressed through the setting up of the Grindleford Village Community Shop Ltd. This was established in 2012 following the closure of both the Country Choice Store and the village post office. They have consulted the residents of the village through public meetings and questionnaires, and found overwhelming support for retaining a village shop. Residents were invited to become shareholders in the community shop organisation and 278 have already bought membership shares. They are currently preparing a feasibility study, testing the viability of the community shop enterprise, and identifying potential locations within the village.

The Grindleford Village Community Shop Ltd state that Country Choice is the only available shop premises in the village and would be the obvious choice for a shop location if it was offered at a commercially viable rent. Whilst informal discussions have been held with the applicant during the last 9 months over the potential lease and rental of the shop, no formal offer has yet been made by the Community Shop Group as they are awaiting the results of the feasibility study, which are expected imminently. It is expected that the feasibility report will clarify the position but the Community Shop Group consider that the rental cost suggested by the applicant is considerably higher than would normally be expected for the size/square footage of Country Choice. The Community Shop Group acknowledges that the shop premises have been vacant for over 12 months and that the applicant, as the owner of the building is keen to make a financial return on his investment. The process of setting up the Grindleford Village Community Shop Ltd, being a community-led venture, has been necessarily slow with as yet, uncertain results. Given that the Country Choice store is the only building that the community shop could be housed in without additional, uncertain, planning permissions being granted, they oppose the change of use application, as if approved it would significantly limit the scope for re-establishing a viable village store. Furthermore they have pointed out to officers that the recent reduction in rent makes a substantial positive difference to their own costings in their feasibility report

In respect of policy LS2, whilst there is a clear desire for the retention of the shop, the policy states that the change of use to another use should be resisted, unless convincing evidence is submitted to demonstrate that the shop use is no longer viable. In support of his application, the applicant has submitted financial accounts and other supporting information to suggest that such a use would not be viable as a commercially run enterprise. This view is also acknowledged by the Grindleford Village Community Shop Ltd in their representations to the Authority, but point out that as a community shop they would be able to reduce staff operating costs considerably by volunteer involvement.

An important consideration when assessing viability is, however, that evidence of reasonable attempts to sell or let the shop as a going concern is submitted with the application. Whilst the applicant initially marketed the property for a year through a commercial letting agency, this was at an unrealistic rental level, as acknowledged in a more recent valuation and by the applicant.

Although the applicant has since carried out his own marketing of the premises at a reduced rent, this is not considered to be sufficient. For this reason it is considered that the applicant has not convinced your officers that the viability test has been satisfactorily carried out. Furthermore, with the results of the feasibility report being carried out by the Community Shop Group being expected very shortly, it is considered premature to relinquish the existing shop use until it is clear whether this could be a viable proposition for both the applicant and the Community Shop Group.

In addition to the assessment of viability, policy LS2 also states that where it proves impracticable to continue a building's use as a shop, new uses should meet another community need (including those for affordable housing for local people or for workspace). Evidence of reasonable attempts to secure such a use will be required before alternatives are permitted. Whilst the applicant has provided some information about the possibility of creating accommodation or holiday-lets, no information has been submitted in respect of conversion to local needs accommodation or for workspace. The proposal does not, therefore, comply with this part of policy LS2.

Issue 2 - The impact of the proposed food takeaway use on the residential amenities of the neighbouring properties.

Notwithstanding the principle of the relinquishing of the shop use discussed in Issue 1 above, consideration of this application also needs to address the policy issues generated by the proposed food takeaway use and in particular, its impact upon the residential amenities of the neighbouring residential properties.

In policy terms, the CS policy HC5 states that within towns and villages related activities, such as premises for the sale and consumption of food and drink will be permitted provided that there is no harm to living conditions or to the role or character of the area, including its viability and vitality. LP policy LS1 states, amongst other things, that development for the sale and consumption of food or drink will be permitted provide that it does not erode the primary retail (use class A1) role of the area or harm its character, viability and vitality. It further states that where the development of a take-away food shop 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.

Additionally, policy LC4 states, amongst other things, that where development is acceptable in principle, particular attention will be paid to the amenity, privacy and security of the development and of nearby properties.

In this case, the shop premises are situated in a prominent roadside position in the centre of the village. The loss of the local shop without overwhelming evidence that it is no longer required or cannot be viable would in your officer's view clearly have a detrimental impact upon the viability and vitality of the village street and the wider community contrary to the aims of Cs policy HC5 and LS1.

There are no external changes to the shop frontage are proposed, so in visual terms, the character and appearance of the street scene will remain unchanged. In terms of the impact on residential amenities, the most significantly affected residential property is the attached property to the south. The shop and attached terrace are part of the main road frontage with a main public footpath and road passing in fairly close proximity to their frontages. The entrance to the shop is at the centre of the shop frontage. Given its position on the main road frontage and, although the surrounding properties are now almost all residential, it is not considered that the operation of the food takeaway shop would cause significant noise, pollution or disturbance to these properties, subject to there being a restriction on operating hours as proposed by the applicant. This is also subject to the noise mitigation measures and fitting of carbon filters to the proposed flue in order to prevent odour nuisance. The applicant has also agreed to position the flue extraction fan within the building to further minimise noise pollution issues. The Environmental Officer has raised no objections, subject to the submitted details, which propose the fitting of carbon filters and a noise attenuator to the mechanical extract system and the flue terminating above eaves level.

A further area of strong concern raised by the residents is the impact of the proposed use on roadside parking, particularly in the evenings when all the residents who live along both sides of the main road have returned home. It is acknowledged that the introduction of a food takeaway use would generate additional vehicular traffic; however, this would also be the case to a certain

extent in respect of a convenience store. There is presently unrestricted roadside parking available along the main road and no objections to the proposal have been raised by the Highway Authority. Additionally, it is not expected that not everyone will travel to the premises by car. In these circumstances, it is not considered that refusal is justified on highway/parking grounds.

Issue 3 - The impact of the external changes to the building on the character and setting of the locality and the nearby Conservation Area.

The only external change to the building is the installation of a 5.0m long x 500mm diameter stainless steel extraction flue fitted to the rear (south-east) external corner of the building and projecting 1.0m above the eaves line of the building. It is not possible to install the flue pipe internally. The section of flue pipe terminating above the eaves line of the building will be visible from a short section of the main road; however it will be framed by adjacent boundary trees and if painted matt black would not be particularly obtrusive. Other potential viewpoints from the roadside are screened by existing mature conifer planting in the adjacent roadside garden to the north-east. It is considered, therefore, that the proposed flue pipe would not significantly impact upon the character and appearance of the existing street scene or the setting of the nearby Conservation Area.

## **Conclusion**

The principle of the proposed change of use of the existing shop premises is considered to be unacceptable on policy grounds as insufficient evidence has been submitted to demonstrate that the existing shop use no longer remains viable or that other community needs could be accommodated in the building. The proposal would therefore be contrary to Core Strategy policy HC5 and Local Plan policy LS2.

## **Human Rights**

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

List of Background Papers (not previously published)

Nil