

Planning Committee 6 March 2018
Report of the Planning Manager, Development Management

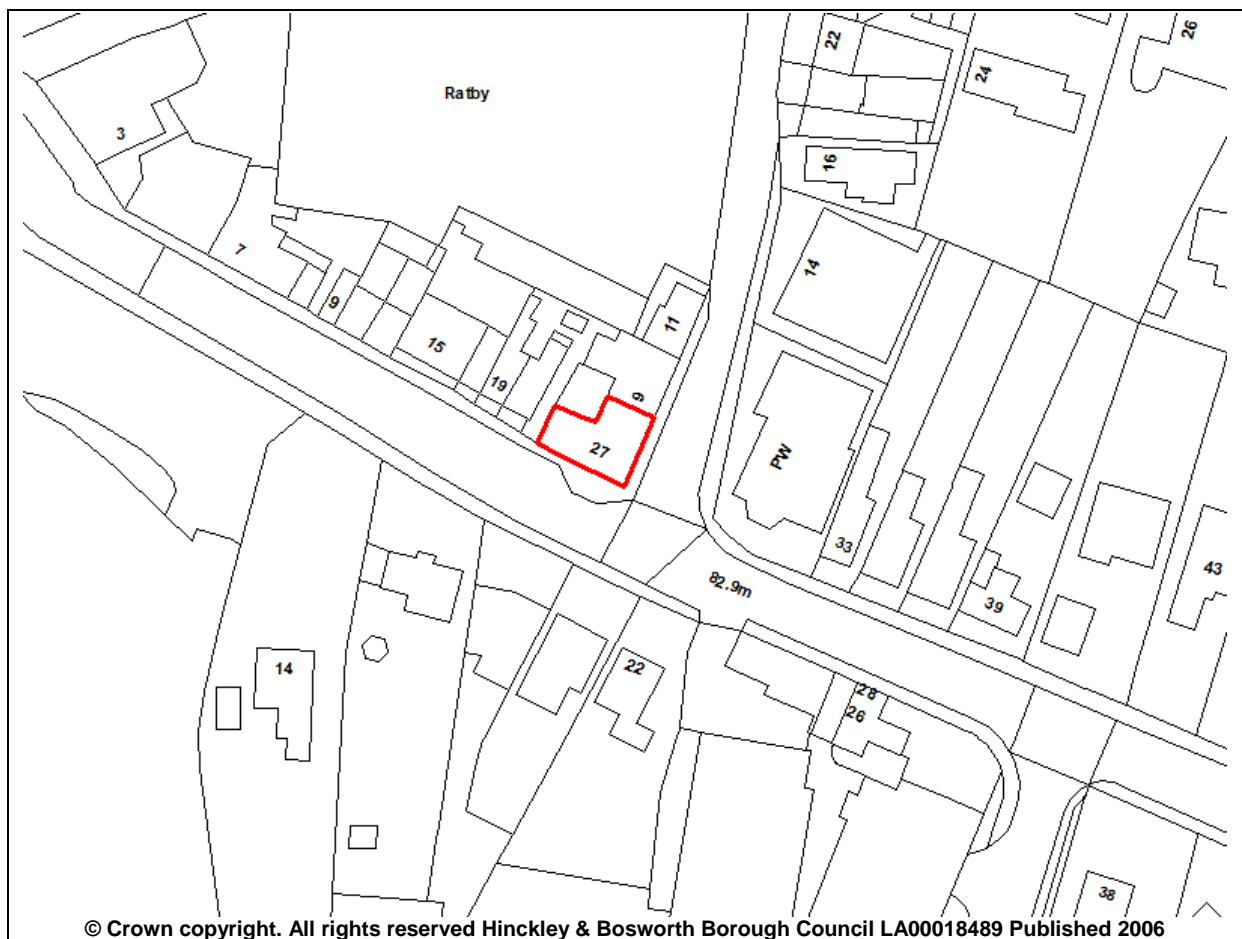


Hinckley & Bosworth
Borough Council

Planning Ref: 17/00862/CONDIT
Applicant: Mr Tuhel Miah
Ward: Ratby Bagworth And Thornton

Site: 23 Station Road Ratby

Proposal: Variation of condition 2 of planning permission 15/01090/FUL to extend the flue by 1 metre and to reflect the correct position of the flue



1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report.

1.2. That the Planning Manager, Development Management be given powers to determine the final detail of planning conditions.

2. Planning Application Description

2.1. The applicant seeks planning permission for the variation of condition 2 of planning permission 15/01090/FUL.

2.2. The original planning permission was for the erection of a new ventilation system to reduce odours emitted. Condition 2 of planning permission 15/01090/FUL required

the development to be built in accordance with the approved plans. The applicant is proposing to increase the height of the already erected flue by one metre above the ridge of the restaurant and retain the current position of the flue on the rear elevation.

3. Description of the Site and Surrounding Area

- 3.1. The property sits on the corner of Station Road and Chapel Lane with the majority of the premises fronting onto Station Road. The site is located within Ratby Conservation Area, which is within the settlement boundary.
- 3.2. The property has large windows along the Station Road elevation forming a traditional shop front with the door to the premises located on the corner of Station Road and Chapel Lane. To the rear of the premises is a yard accessed via a passageway between No. 21 and the building, used for the storage of waste bins.
- 3.3. Adjacent to the premises is a row of traditional terraced residential properties No. 15 to No. 21. To the other side of Chapel Lane is Ratby Methodist Church. Directly opposite the site are a number of detached residential properties Nos. 16, 18 and 20 which are set back from the highway behind front gardens/driveways.
- 3.4. There is no off-street parking within the site. Parking is available on street to the front of the property. Adjacent to the premises is a row of terraced houses which have no street parking available, on the opposite side of the road there are no restrictions in terms of parking and wait times.

4. Relevant Planning History

13/00350/COU	Change of use from A1 (Shop) to A3 (Cafe) (Retrospective)	Permitted	30.07.2013
14/00277/CONDIT	Variation of condition 2 of planning permission 13/00350/COU to change opening hours to 17:00 - 22:30 Monday to Thursday 17:00 - 23:00 Friday to Saturday and 17:00 - 21:30 Sunday	Permitted	28.05.2014
14/01283/COU	Change use from restaurant to a mixed use restaurant and hot food takeaway (retrospective)	Refused	03.06.2015
15/00020/ENF	Without planning permission the change of use from the use within Class A3 of the Use Classes Order 1987 (as amended) (the Order) for the sale of food or drink for the	Appeal Allowed	09.03.2016

consumption on the premises to a mixed use for the sale of food and drink for consumption on the premises and for the sale of food and drink for consumption off the premises Class A5 of the Use Classes Order 1987 (as amended) (the Order)

15/01090/FUL	Erection of new ventilation system to reduce odours emitted	Permitted	24.02.2016
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5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site.
- 5.2. Eight letters of objection have been submitted from eight separate addresses in relation to this application, with the comments summarised below:
- 1) The raising of a flue by one metre will have an affect on the conservation area and would be out of keeping with the surrounding area
 - 2) Within the plans there is room for a odour neutraliser to be fitted, which this should be now fitted to reduce all the odour

6. Consultation

- 6.1. No comments were received from Ratby Parish Council.
- 6.2. HBBC Environmental Health (Pollution) has no objection.

7. Policy

- 7.1. Core Strategy (2009)
- Policy 8: Key Rural Centres Relating to Leicester
- 7.2. Site Allocations and Development Management Policies DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM10: Development and Design
 - Policy DM11: Protecting and Enhancing the Historic Environment
 - Policy DM12: Heritage Assets
- 7.3. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2012)
 - Planning Practice Guidance (PPG)
 - Planning (Listed Buildings and Conservation Areas) Act 1990
- 7.4. Other relevant guidance and legislation
- Ratby Conservation Area Appraisal (2014)
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8. Appraisal

8.1. Key Issues

- Assessment against strategic planning policies
- Design and impact upon the character of the conservation area
- Impact upon neighbouring residential amenity

Assessment against strategic planning policies

8.2. Policy DM1 of the Site Allocations and Development Management Policies DPD (SADMP) sets out a presumption in favour of sustainable development and states that development proposals that accord with the development plan should be approved unless other material planning considerations indicate otherwise.

8.3. The site is located within the settlement boundary of Ratby which is considered to be a sustainable location and therefore the proposed variation of condition to raise the height of the flue by one metre and for the relocation of the flue is considered acceptable in principle subject to other material planning considerations.

Design and impact upon the character of the conservation area

8.4. The existing restaurant and takeaway is located in the Ratby Conservation Area and consideration needs to be given to the development and its impact upon the Conservation Area.

8.5. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1900 states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

8.6. Section 12 of the NPPF provides the national policy on conserving and enhancing the historic environment. Paragraph 132 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given the asset's conservation.

8.7. Policy DM11 and DM12 of the SADMP seek to protect and enhance the historic environment. Development proposals which affect the setting of a listed building will only be permitted where it is demonstrated that the proposals are compatible with the significance of the building and its setting. Development proposals should ensure that the impact of a development proposal on the setting of a conservation area preserves and enhances its significance.

8.8. Policy DM10 of the SADMP require developments to complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.

8.9. At the junction of Chapel Lane and Station Road is the visually distinctive Methodist Church and former Sunday School rooms. Opposite are the former premises of a 19th Century hosier which are now used as a restaurant with flats above. These elevations, a mixture of brick and stone, highlight the changes made to the buildings since their construction and are an important historical record in the street. Adjacent is a group of granite and brick cottages built around 1850. These buildings are identified as important local building in the Ratby Conservation Area Appraisal (2014).

8.10. The proposed flue would be constructed one metre above the ridge line of the existing restaurant. Therefore the flue would be visible from the street scene and would have an impact on the Conservation Area. To mitigate this the proposed flue will be clad in brick so that it would have the appearance of a chimney. There are other similar brick chimneys on neighbouring properties. It is therefore considered that it would not adversely affect the character of the conservation area with the

addition of brick cladding on the flue. It is therefore considered that the proposed flue would be in accordance with Policy DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD.

- 8.11. In terms of the re location of the flue, this is in the yard to the rear of the restaurant. There are restricted views of the flue from the Conservation Area and would therefore have limited impact on the character of the surrounding area.
- 8.12. The proposal is therefore considered to have a positive impact on the Ratby Conservation Area and preserves its significance in accordance with the principles of the Ratby Conservation Area Appraisal. Therefore it complies with Policies DM1, DM11 and DM12 of the Site Allocations and Development Management Policies DPD, Section 12 of the NPPF and the statutory duty of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Impact upon neighbouring residential amenity

- 8.13. Policy DM10 of the SADMP states that developments will be permitted providing that the development would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings including matters of air quality (including odour) and noise.
- 8.14. When the application was approved in 2015 for the flue it was designed with several features to reduce odour and noise generated. The flue was installed with silencers to reduce the noise generated by the turbo fans installed; further to this, vibration pads were also introduced to further reduce the noise.
- 8.15. Since the installation of the flue, complaints from local residents about the flue causing unacceptable odour and noise have reduced significantly. Some complaints are still being received from affected properties adjacent to the premises and properties on the other side of Station Road. By raising the height of the flue the odour from the restaurant will be dispersed further into the atmosphere and therefore provide an improvement over the current situation. Environmental Health (Pollution) have agreed that the raising of the height of the flue is likely to reduce further complaints being made to the Council in terms of odour and noise.
- 8.16. Comments have been received stating that an odour neutraliser should be fitted into the flue. It is envisaged that by raising the height of the flue the impact of noise and odour on the neighbouring properties will be reduced. However, if this is still unsuccessful there is capacity within the flue to install an odour neutraliser which HBBC Environmental Health (Pollution) would have the jurisdiction to ensure this is implemented if the issue persists.
- 8.17. It is therefore considered that the proposed raising of the flue by one metre above the ridge line would reduce the odour from the flue and therefore would be an improvement on the amenity of surrounding residents and is considered to be in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD.

Other matters

- 8.18. The six conditions imposed on the original application 15/01090/FUL needs to be reconsidered as part of this application.
- 8.19. Condition 1 related to the commencement of development. As only some of the works have occurred in regard to this application, this condition will be re imposed.
- 8.20. Condition 2 stipulated that development is to be carried out in complete accordance with the submitted application details in respect of application reference 15/01090/FUL. As the application changes the approved plans then this condition will be amended to reflect the approved plans.

- 8.21. Condition 3 was for a maintenance schedule to be submitted and approved in writing prior to the commencement of development. This was submitted and agreed however the condition should be re worded to include the details submitted under reference 15/01090/FUL.
- 8.22. Condition 4 related to the log approved under condition 3 should be retained on site. This condition shall be re imposed to ensure that the approved log is available on site for inspection.
- 8.23. Condition 5 related to the fan on Chapel Lane should be used for air intake only. This condition will be re imposed to ensure that this does not become a source of annoyance to neighbouring residential properties.
- 8.24. Condition 6 related to samples of the external finish of the flue. As this is to be changed with brick slips to match the existing then this condition is no longer applicable and will not be imposed.

9. Equality Implications

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.
- 9.3. There are no known equality implications arising directly from this development.

10. Conclusion

- 10.1. The proposal will not harm the special character, and thus significance of the Conservation Area as the proposed flue would have the appearance of a chimney which is a traditional feature of the locality. The raising of the flue would reduce the impact in terms of odour and noise on neighbouring properties and is therefore considered that the development is in accordance with Policy DM1, DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD, Section 12 of the NPPF and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, and is therefore considered to be acceptable.

11. Recommendation

- 11.1. **Grant planning permission** subject to:
- Planning conditions outlined at the end of this report.
- 11.2. That the Planning Manager, Development Management be given powers to determine the final detail of planning conditions.

11.3. Conditions and Reasons

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows: Existing and Proposed rear elevations – Extraction Ducting detail (Drawing Number: Rev: B) received by the Local Planning Authority on the 5 February 2018.

Reason: To ensure a satisfactory appearance and impact of the development to accord with Policies DM1, DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD.

3. The maintenance schedule submitted on the 18 May 2016 under planning reference 15/01090/FUL shall be undertaken in accordance with these details. Maintenance shall be undertaken in line with the approved maintenance schedule unless an amendment has been agreed in writing by the Local Planning Authority.

Reason: To ensure that the file is maintained so it does not become a source of annoyance for neighbours in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD.

4. A log of all maintenance undertaken in line with the manufacturer`s schedule referred to in Condition 3 of planning reference 15/01090/FUL shall be kept on site for inspection by the Local Planning Authority as required.

Reason: To ensure that the flue is maintained so it does not become a source of annoyance for neighbours in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD.

5. The fan on the external wall facing Chapel Lane, in the kitchen, shall not vent air to the outside and shall be used for air intake only.

Reason: To ensure that the extractor fan does not become a source of annoyance for neighbours in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD.

11.4. Notes to Applicant

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at buildingcontrol@hinckley-bosworth.gov.uk or call 01455 238141.
2. Education of all staff on how to use the full ventilation system is paramount in ensuring its success. All possible controls should be installed to limit operator error that may reduce efficiency of the system.