

**12. DCNC2004/0014/F - CHANGE OF USE OF EXISTING SHOP TO HOT FOOD TAKE-AWAY PIZZA/KEBAB RESTAURANT AND NEW RENDERED ENCLOSURE FOR EXTRACT DUCT AT 3 CRUXWELL STREET, BROMYARD, HEREFORDSHIRE, HR7 4EB**

**For: Mr T Acar per Linton Design, 27 High Street, Bromyard, Herefordshire, HR7 4AA**

**Date Received:**  
5th January 2004

**Ward:**  
Bromyard

**Grid Ref:**  
65330, 54740

**Expiry Date:**  
1st March 2004

Local Members: Councillors P J Dauncey and B Hunt

**1. Site Description and Proposal**

- 1.1 Vacant ground floor shop unit to a 3-storey Grade II Listed building between Whitehorse Public House, which is also vacant, and the Leisure Centre. The site is located in a secondary shopping frontage and the Bromyard Conservation Area. There are residential flats above and to the rear of the shop. On the opposite side of the road are shops and a café.
- 1.2 The application is for the change of use only of the shop unit to A3 hot food takeaway. An extract flue duct is proposed to be located on the north east elevation of the building.

**2. Policies**

- 2.1 PPG 6 – Town Centres and Retail Developments  
PPG 15 – Planning and the Historic Environment

**2.2 Malvern Hills District Local Plan**

Shopping Policy 1 – Shopping Hierarchy  
Shopping Policy 2 – Principal Shopping and Commercial Areas  
Shopping Policy 3 – Restrictions on Development within the Principal Shopping and Commercial Areas  
Shopping Policy 5 – Secondary Shopping Frontages  
Conservation Policy 2 – New Development in Conservation Areas  
Conservation Policy 9 – Alterations and Extensions to Listed Buildings  
Conservation Policy 10 – Alternative Uses for Listed Buildings

**2.3 Herefordshire Unitary Development Plan (Deposit Draft)**

HBA1 – Alterations and Extensions to Listed Buildings  
HBA3 – Change of Use of Listed Buildings  
HBA6 – New Development within Conservation Areas  
TCR4 – Secondary Shopping Frontages  
TCR6 – Non Retail Uses (Classes A2 and A3)

### 3. Planning History

NC2003/1272/F Change of use to A3 License (hot food takeaway). Refused 16.9.2003

### 4. Consultation Summary

4.1 None.

### 5. Representations

5.1 Bromyard and Winslow Town Council raise no objection to the application.

5.2 Letters of objection have been received from:

A. Seldon, 84 Old Road, Bromyard  
Mr L Hemsley, 4 Cruxwell Street, Bromyard  
MC Ewing, 5 Cruxwell Street, Bromyard  
Mr and Mrs Forrester, 6 Cruxwell Street, Bromyard

who make the following points:

- a) Noise nuisance – we already have constant problems with another takeaway about 25metres from this application.
- b) During many nights, in particular at weekends crowds of rowdy people mainly youths loiter around the takeaway and nearby residences including mine creating unacceptable noise levels, vandalism and bad behaviour.
- c) My family rarely has a full nights sleep. I am particularly affected, as the business I run requires me to rise 5am (newsagent).
- d) The application site is situated on a narrow street at probably the busiest road junction for vehicles and pedestrians in Bromyard.
- e) The parking around the proposal is worse than the previously mentioned takeaway, which is usually illegal and chaotic between 1700 – 1900 hours.
- f) This proposal unlike a residential property does not provide any parking.
- g) All takeaways have litter problems caused by unthinking and unreasonable customers.
- h) We already have to put up with the smell from the present takeaway which may be acceptable to increase one's appetite when passing by but the constant smell emanating from a takeaway six days a week creates smell pollution a to be offensive.

5.3 The Flying Pig Pizza, 28 High Street, Bromyard, is concerned that it would put them out of business.

5.4 The full text of these letters can be inspected at Northern Planning Services, Blueschool House, Blueschool Street, Hereford, and prior to the Sub-Committee meeting.

## 6. Officers Appraisal

- 6.1 This application has been submitted following the refusal of an earlier application for an A3 takeaway use, NC2003/1272/F refers, the application was refused for the following reason:

“The proposal would be contrary to Shopping Policy 5 of the Malvern Hills District Local Plan in that the proposal would be likely to give rise to noise disturbance and smell that would adversely affect the residential amenities of surrounding dwellings.”

- 6.2 Following the refusal of this application the applicant has been in consultation and negotiation with the Environmental health Officer in respect of potential nuisance from cooking smells and noise nuisance. This application proposes to extract cooking smells by way of an external flue system and restrict business hours to no later than 11.00pm.
- 6.3 The site is located in a secondary shopping frontage as shown on inset map no.13.1 Bromyard in the Malvern Hills District Local plan. Within this area Shopping Policy 5 is considered appropriate. Secondary shopping frontages are areas characterised by a mix of retail and service uses, which are important to the overall function of the town. It is also an area where A3 uses can be permitted except where they would adversely affect, either by themselves or cumulatively the vitality and viability of an area or the residential amenity of neighbours by reason of vehicle generation, noise, smell, operating areas or general activity or jeopardise highway safety. This is also recognised in PPG6.
- 6.4 In terms of its cumulative impact, there are already A3 uses in the locality, a café opposite the site, a Chinese takeaway at the junction of Tenbury Road and Old Road and the vacant Whitehorse Pub. However, it is not considered a further A3 use would have a detrimental cumulative impact on the vitality or the viability of the secondary shopping frontage. The issue of competition with other similar uses is not a planning consideration.
- 6.5 It is acknowledged that A3 uses can potentially be a nuisance to the amenity of neighbours through nuisance of noise, cooking smells and operating hours. However, cooking smells can be alleviated by an efficient extract fan system and venting of the kitchen. It is further acknowledged that some odour will escape the filtration system even if the equipment is well maintained to a high standard. The extract fan is to be installed in an external flue on the north east elevation. The flue will be in an unobtrusive position that will not affect the character or appearance of this Listed building or to the character of the conservation area.
- 6.6 The local environment is characterised by a mix of uses, shopping, A3 uses and residential flats. It is also on a busy road close to a major road junction which leads to Bromyard Industrial Estate and retail stores. There are also double yellow lines along this side of Cruxwell Street. While the double yellow lines will prohibit parking, they will not deter all customers from parking outside the premises. It is human nature when buying hot food takeaways to park as close as possible to the premises which could cause a nuisance to other road users. Illegal parking is a matter for the police. The Transportation Manager has raised no objection to this application thereby considering such parking would not be detrimental to highway safety.

**RECOMMENDATION**

That planning permission be granted subject to the following conditions:

- 1 - A01 (Time limit for commencement (full permission) )

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990.

- 2 - The use hereby permitted shall not be open to customers between the hours of 11pm and 9am Mondays to Sundays.

Reason: To safeguard the amenities of the locality.

- 3 - F37 (Scheme of odour and fume control )

Reason: In order to ensure that fumes and odours are properly discharged and in the interests of the amenities of residential property in the locality.

- 4 - F38 (Details of flues or extractors )

Reason: In the interests of the amenity of the area.

**Informative:**

1. N15 (Reasons for grant of pp)

**Malvern Hills District Local Plan**

**Shopping Policy 1 - Shopping Hierarchy**

**Shopping Policy 2 - Principal Shopping and Commercial Areas**

**Shopping Policy 3 - Restrictions on Development within the Principal Shopping and Commercial Areas**

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**Conservation Policy 2 - New Development in Conservation Areas**

**Conservation Policy 9 - Alterations and Extensions to Listed Buildings**

**Conservation Policy 10 - Alternative Uses for Listed Buildings**

Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies