

**APPLICATION REPORT - FUL/346451/21**  
**Planning Committee: 10<sup>th</sup> November 2021**

Registration Date: 12th March 2021  
Ward: Saddleworth North

Application Reference: FUL/346451/21  
Type of Application: Full Application

Proposal: Change of use of domestic garden ground to form flagged outside seating area for customers of Grandpa Greene's.

Location: Grandpa Greene's, Bridge Bank, Ward Lane, Diggle, Oldham, OL3 5JT.

Case Officer: Dean Clapworthy  
Applicant: Mr R Scholes  
Agent: Mr Mark Jones

## **THE SITE**

No. 5 Ward Lane comprises a three-storey detached house with an extensive curtilage extending northwards from Ward Lane with a lengthy boundary fronting onto the Huddersfield Narrow Canal. The applicant's business is a café bar and ice cream parlour (Use Class E (b)), trading as Grandpa Greene's, and operates from a timber building to the rear of the house.

Either side of this are existing open air customer seating areas. Customers access the premises via a gated entrance fronting the canal footpath or via a ramp down from the car park to the north, which was installed in 2018.

Double yellow lines have been installed along Ward Lane.

## **THE PROPOSAL**

The application is made on a retrospective basis and seeks the retention of an extension to the outdoor seating area into the former garden ground adjacent to the pedestrian ramp leading from the car park.

The area measures approximately 18m x 5m. It is unclear what levels pertained prior to the implementation of the access ramp approved under PA/341262/18. However, the approved landscaping plan to PA/341262/18 clearly indicates that the area would be level (with the bottom of the ramp) as a result of that development.

At the time the application was submitted, the area was bounded by glazed fencing akin to the fencing relating to the existing business (having replaced close boarded timber fencing), and an outside bar was installed. However, these elements have since been removed and do not form part of this application. It is proposed to demarcate the site from the canal towpath with

planters. Moveable tables and chairs would provide for the seating of around 30 additional covers on the level area surfaced with reconstituted stone flags.

### **RELEVANT PLANNING HISTORY:**

PA/341262/18 - 1) Change of use of domestic garden to form 24 car park spaces 2) Erection of disabled person's access ramp for use by members of the public and customers of Grandpa Greene's. Approved 21/03/2018.

PA/339675/17 - Change of use of land to form 24 space car park and erection of disabled person's access ramp for use by members of the public and customers of Grandpa Greene's. Refused 20/04/2017.

PA/333726/13 - Change of use of domestic workshop to provide sheltered customer seating. Approved 22/05/2013.

PA/333206/12 -1) Removal of canopy 2) Retention of customers seating areas and covered passageway 3) Provision of portable toilet building. Approved 23/01/2013.

PA/331008/11 - 1) Retention of existing covered passageway and seating areas 2) Alterations to existing boundary 3) Erection of a portable building to provide a wc. Refused 06/10/2011 (subsequently dismissed at appeal).

PA/330659/11 - 1) Variation of condition 2 of planning permission PA/049571/05 for extension of opening hours from 9am to 7pm 7 days a week. 2) Variation of condition 3 of planning permission PA/049571/05 to allow sale non-alcoholic hot and cold beverages, confectionary, sandwiches and snacks in addition to continued sale of ice cream. (Resubmission of PA/330218/11). Approved 28/07/2011.

PA/330218/11 - 1) Variation of condition 2 of planning permission PA/049571/05 for extension of opening hours. 2) Variation of condition 3 of planning permission PA/049571/05 to allow sale non-alcoholic hot and cold beverages, confectionary, sandwiches and snacks in addition to continued sale of ice cream. 3) Provision of portaloo and retention of covered seating area for customer use. Refused 13/05/2011.

PA/049571/05 - Erection of shed for the sale of ice cream. Approved 11/08/2005.

### **RELEVANT PLANNING POLICIES AND GUIDANCE**

The application site is located in the Green Belt having regard to the Proposals Map associated with the Joint Development Plan Document. As such, the following policies are considered relevant:

Policy 01 - Climate Change and Sustainable Development

Policy 09 - Local Environment

Policy 20 - Design

Policy 22 - Protecting Open Land

National Planning Policy Framework

### **CONSULTATIONS**

Canal and River Trust No objection. There is a risk that litter could enter the canal. It is recommended that a litter management plan is secured. It has been

observed that customers have been using the towpath areas to queue, which causes issues for other users of the network, especially when adhering to social distancing guidelines. Suitable waiting areas on site are advised.

Highways  
Engineer

No objection. Due to previous problems in the immediate area caused by indiscriminate parking the Council introduced waiting restrictions in the affected areas. Customers arriving by private vehicle will have the option of using the dedicated car park or of finding a safe and legal space nearby. The risk of indiscriminate parking has been removed.

Environmental  
Health

No objection.

## REPRESENTATIONS

- 105 support comments have been received.
- 0 neutral comments have been received
- 108 objection comments have been received

The representations received raising objections can be summarised as follows:

### Highways

- There is congestion, speeding traffic and indiscriminate parking in the local and wider area and on footways, causing damage to roads, which are not suitable for the traffic levels generated, and adverse impacts on highway safety. Approval of planning permission will attract more visitors, placing more pressure on the local highway network.
- The car park at the business is inadequate for the numbers of customers attracted to the premises.
- The congestion has restricted access for emergency vehicles and restricts movement of disabled persons.

### Green Belt/Open space/visual amenity

- Adverse impact upon the openness of the Green Belt and a visual impact upon open space (contrary to Local Plan Policy 22 and 23), and there are no very special circumstances that would outweigh the harm nor does it constitute infill development. The fall back as a domestic garden would be unlikely to include a similar level of installations, fencing and activity.
- The design and materials of the fences/structures are not in keeping with the character and appearance of the surrounding area and the adjacent canal.
- The proposal represents an overdevelopment of the site and is disproportionate.

### Amenity

- There has been an increase in litter and vehicle congestion/pollution, a large influx in visitors and loud music/noise nuisance has had an adverse impact upon residential amenity.
- Reports of anti-social and criminal behaviour from customers.
- When the new Saddleworth School is operating the site would become more congested.

#### Canal/ecology

- Towpaths, grass verges and other public infrastructure have been severely eroded due to the significant increase in footfall and an increase in litter/dog fouling causes an environmental hazard.
- The tranquillity of the canal has been undermined.

#### Other matters

- The site was developed without planning permission.
- No site notices were not posted in or around the site.
- The proposal has an unacceptable impact on the setting of the listed canal bridge and associated subway.
- The bench seating alongside the canal is a safety hazard.
- The business has not been responsible throughout the COVID-19 pandemic, putting people at risk and was required to close at weekends.
- The welfare facilities at the site are inadequate for the number of visitors.
- The proposal will lead on to live entertainment licensed premises with late night opening.
- The proposal is causing mental health problems.
- Not all the area that the business is sited upon is their land and they have excavated an area and removed trees.
- The business needs to find alternative premises as it has outgrown the site, as it has become a destination in itself and visitors do not contribute to the rest of Diggle. Diggle is not a theme park.

The representations received supporting the proposal can be summarised as follows:

- The alterations that have taken place improve the appearance of the site.
- Once the pandemic restrictions are lifted the congestion is likely to settle down.
- The proposal would not impact on the openness of the Green Belt.
- Outside seating is sensible given the pandemic and keeps customers safe.
- A successful small business that operates professionally, employs so many people and supports local suppliers should be supported, particularly when so many are struggling coming out of the pandemic.
- The business brings a great amount of positive publicity for Saddleworth and Oldham
- The business conducts litter picks.
- Refusal of the application would displace customers onto the canal towpath.

## **PLANNING CONSIDERATIONS**

The application was referred to Planning Committee by former Councillor Harkness, due to concerns about impacts on the Green Belt and highway safety. However, given the level of

public interest in the application evident by the number of representations received, the application is referred to the Planning Committee for determination at the discretion of the Head of Planning.

The main material considerations are:

1. Principle of the development;
2. Impact on the openness of the Green Belt;
3. Visual impact;
4. Residential amenity; and,
5. Highway safety.

### **Principle of Development**

DPD Policy 1, in the context of this application, seeks to ensure the effective and efficient use of land and buildings by promoting the reuse and conversion of existing buildings, and development on previously developed land, prior to the use of greenfield sites. Policy 1 states that development should promote economic prosperity and meet the needs of existing and new businesses by providing employment land in areas that are accessible by public transport.

Although DPD Policy 22 is relevant for development in Green Belt it places heavy reliance on the position set out in the National Planning Policy Framework (NPPF). Paragraph 149 of the NPPF sets out the exceptions and paragraph 150 refers to forms of other development which is not considered inappropriate in Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it, including engineering operations.

The application site comprises land that was not previously developed. The proposed development does not constitute any of the exceptions or other forms of development which are not considered inappropriate. It therefore represents inappropriate development in the Green Belt. As such, paragraph 148 of the NPPF is engaged and 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Having regard to the above, the principle of the proposed development will only be acceptable if any harm caused to the Green Belt is clearly outweighed by other considerations. These are discussed below.

### **Effect upon openness of the Green Belt**

The assessment of the impact of the proposal on openness of the Green Belt is multi-faceted and would include the present (former in this case due to this being a retrospective application) condition of the land and the visual impact, as well as any increase in the level of development of the site.

In considering the assessment on the openness of the Green Belt, the proposal includes the surfacing of a previously approved levelled area that was screened by close-boarded fencing. As domestic garden, the owner would have been able to undertake paving without requiring planning permission. Furthermore, the area subject to the planning application has been divorced from the remainder of the curtilage associated with the dwelling by the implementation of the car park, access ramp and the existing business premises. The extent of surfacing is relatively modest and is backdropped (from views from the canal) by the access ramp and car park and other existing buildings at Grandpa Greene's, which were previously granted planning permission.

Given the above circumstances, it is not considered that the proposed development, by virtue of its scale and extent would have an extremely low impact on the openness of the Green Belt.

### **Visual impact**

In this case, the proposed development would be seen from short distance views from both sides of the canal. The proposed planters, whilst relatively formal in appearance, would serve to soften the appearance of the paved area. However, the presence of customers assembled at moveable tables and chairs would be clearly perceptible.

However, previous planning permission PA/341262/18 approved the re-profiling of this area of land (to create a levelled area) in association with the construction of the access ramp. Whilst that planning permission removed domestic permitted development rights to erect outbuildings within the curtilage of 5 Ward Lane, the owner would be free to remove fencing and place non-operational domestic paraphernalia upon this area, such as tables and benches and store domestic items. Thus, the differentiation between the proposed use by customers and the continued domestic use of the site could be negligible in terms of visual impact.

This fall-back position is a material consideration of significant weight. Use of the area as an outdoor seating area in the manner proposed would have a negligible impact on the visual openness of the Green Belt.

The use of the area would be seasonal, and it is indicated that during autumn/winter the tables and chairs would be stored elsewhere at the business and the site would revert back to a flagged level area unencumbered by commercial paraphernalia (aside from the single, fixed full-length bench that is set against the banking below the access ramp). However, given the above assessment, even if the furniture was in situ and in use all year round, it would still only have a negligible impact on the visual openness of the Green Belt. The proposed soft landscaping of the boundary to the canal with planters would serve to soften the appearance of the site.

Given the above, it is not considered that the proposed development would have a materially detrimental impact on the visual openness of the Green Belt in this location and context.

### **Residential Amenity**

DPD Policy 9 outlines that new development proposals must not have a significant adverse impact upon the occupiers of neighbouring properties. In this regard it is important to consider the impact on the neighbouring property at 5 Ward Lane, the applicant's property.

Whilst it can be reasonably concluded that the applicant would not object to the application, the Local Planning Authority has a duty, under the provisions set out on DPD Policy 9, to consider the impact of development proposals on future occupiers who may, in the future, occupy the associated property independently of the business.

In this instance, it is not considered that the proposed development would have a significant impact on the amenity of neighbouring dwellings due to the separation distance and the existing intervening business.

Objections refer to a number of matters concerning noise impacts, litter and anti-social behaviour. It would seem that the site was particularly busy during the national lockdown in the earlier part of 2021, but that this has since settled to more typical levels of patronage. Regardless, it should be noted that what is being considered are additional covers to an already operating and successful existing business.

Concerns relating to anti-social behaviour do not relate to activities at the site and raise a more general concern about the actions of individuals away from the site during the national lockdown, when activity locally appeared to be especially buoyant. The proposal is to extend the outdoor seating capacity at an existing cafe/restaurant at a canal side location. Such incidents, if they have occurred, could not be said to have been directly related to, or caused by, the proposal to extend the outdoor seating area or necessarily this business.

Playing music at the premises, if this does occur, is a licencing issue and regardless would relate to the existing venue and would not be directly linked to the proposal under consideration.

The business operates a waste management scheme and this could be formalised to agree such a scheme by condition, as is recommended by the Canal and River Trust.

It is considered that the impact on neighbouring amenity is acceptable in accordance with DPD Policy 9, subject to the inclusion of an appropriate condition for the times at which the outdoor seating area could be used.

### **Highway Safety**

Objections significantly relate to concerns about parking, congestion and highway safety on Ward Lane and on the wider local network. It is clear from the objections that this was at least partially related to the period of the national lockdown and that activity at the site has since calmed to more typical levels of patronage.

The Council's Highway Officer acknowledges that there have been problems in the past on Ward Lane and the immediate area caused by indiscriminate parking by visitors to the area, including Grandpa Greene customers. In response to this, and the danger to highway safety, the Council has introduced waiting restrictions in the affected areas.

The Highway Officer considers that customers visiting Grandpa Greene's now have the option of using the dedicated car park at the business or of finding a safe, legal space to park nearby, if they choose to drive, and therefore considers that the risk of indiscriminate and unsafe parking has been removed with the introduction of waiting restrictions. The Highway Officer does not therefore object to planning permission being granted.

Given the above, it is concluded that vehicular movements associated with the proposal would not warrant an objection and that the proposal to extend the outdoor seating area would be in compliance with DPD Policy 9.

### **Other matters**

Concerning other matters raised in representations objecting to the proposal, the Canal and River Trust (CRT) have not raised an objection or concerns about the erosion of adjacent canal infrastructure. The Trust actively promotes canal and river infrastructure for tourism and recreation. It would appear that any congestion on the canal with pedestrians was a unique occurrence related to the national lockdown and also related to the particular popularity of the existing business as a local facility during this period (as opposed to the additional area subject to this application). However, referring to the specific concern raised by the Trust and objections about pedestrian congestion, customers are able to queue to be served within the site.

The CRT have also raised a concern about the potential risk of litter entering the canal and recommend that a litter management plan is secured. The proposal represents an addition to

the existing canal side business. The applicant has submitted a Waste Management Plan which outlines the present refuse and litter management regime at the site. The existing business is served by 6no. trade waste bins and litter prevention include the provision of up to 6no. private bins for customer/public waste (these are placed on the canal premises and outside of the site subject to the application), which are regularly emptied alongside which staff litter picks in the surrounding area are undertaken.

Given that the risk of litter emanates from the existing business (in addition to the proposed outdoor seating area) and that the waste management regime includes the provision of waste receptacles and litter picks outside of the application site on CRT land a condition requiring adherence to the submitted Waste Management Plan would not meet the 6 tests for attaching a condition set out in National Planning Practice Guidance. However, it is acknowledged that the business considers the issue of litter management in the wider area to be an important issue and takes considerable steps to reduce occurrences.

The proposal is to utilise the existing area for outdoor seating, without any buildings or operational development proposed (only moveable tables and seating) and the site falls further north than the intervening existing business. The proposal would not therefore have a harmful impact on the character, appearance or setting of the listed canal bridge and associated subway to the south of the site.

Despite objections that the bench seating alongside the canal is a safety hazard, this area is not subject to the planning application. This would be a matter for the Canal and River Trust (they have not referred to this being an issue in their consultation response).

Concerns have been raised about Covid-19 regulations, the level of welfare facilities at the site, and encroachment of the business onto third party land. These are not material planning considerations that can be afforded any weight as part of the assessment and determination of the application.

There have also been a significant number of representations supporting the proposal, largely relating to the success of the business and the benefits of job creation and also stating that the additional outdoor seating does not impact on the openness of the Green Belt or unacceptably impact on the appearance of the area.

## **Conclusion**

The proposed development represents 'inappropriate' development in the Green Belt. However, the impact upon openness and the visual amenity of the Green Belt has been assessed as being extremely low. Continued domestic use could have an equal or greater impact. The proposal would enable a successful local business to expand in a responsible manner and in a way that would reduce potential obstruction to the adjacent canal network.

Thus, it is considered that the extremely low harm would be clearly outweighed by other considerations and that these amount to very special circumstances. The proposal therefore accords with the requirements set out in the NPPF and the relevant Local Plan policies. Therefore, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act, the proposal merits approval subject to the imposition of conditions referenced below.

## **RECOMMENDATION:**

It is recommended that the Planning Committee resolves to grant permission, subject to the following conditions:



1. The development must be begun not later than the expiry of THREE years beginning with the date of this permission.

REASON - To comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be fully implemented in accordance with the Approved Details Schedule list on this decision notice.

REASON - For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and specifications.

3. The use of the development hereby permitted shall not be open to customers outside the hours of 09.00 to 19.00 - Seven days a week.

REASON - To protect the amenities of occupiers of nearby properties.

**LOCATION PLAN (NOT TO SCALE)**



