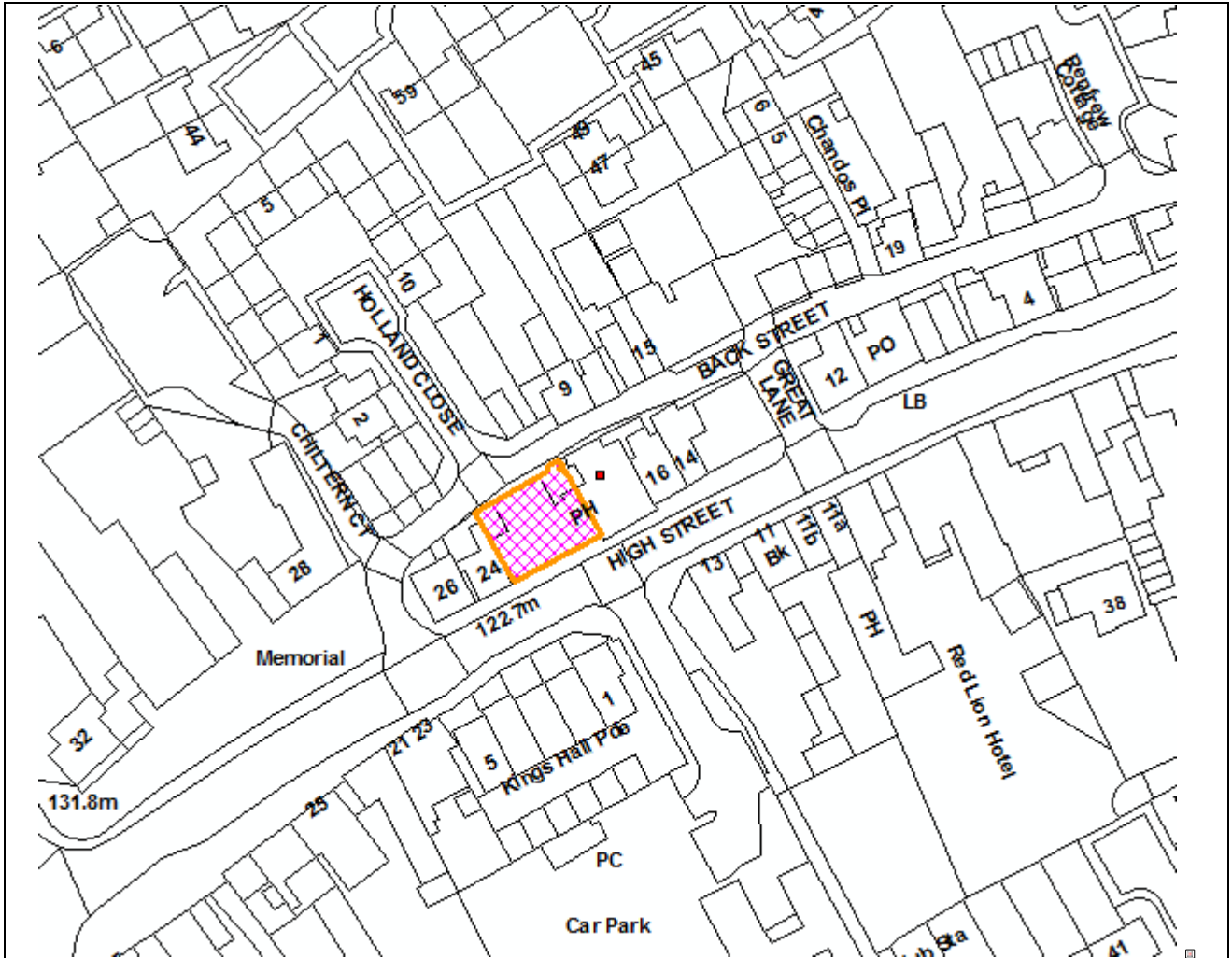


18/03244/APP



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REFERENCE NO	PARISH/WARD	DATE RECEIVED
18/03244/APP	WENDOVER The Local Member(s) for this area is/are: -	14/09/18
RETENTION OF FLUE AND COWL, LUCCA, 20 HIGH STREET, HP22 6EA MR SIMON DENNIS	Councillor Steve Bowles Councillor Peter Strachan Councillor Richard Newcombe	
STREET ATLAS PAGE NO.131		

1.0 The Key Issues in determining this application are:-

- a) Impact on appearance and character of the property, street scene and wider area
- b) Impact on the character and appearance of the conservation area and the setting of the listed building
- c) Impact on the amenity of neighbouring occupiers
- d) Other matters

The recommendation is that permission be **GRANTED**, subject to conditions

1.0 Conclusion and recommendation

- 1.1 The material considerations of the current retrospective application for the installation of a flue to the rear of 20 High Street, Wendover, are the impact of the development on the character and appearance of the street scene and the impact on the setting of the conservation area and listed building and the amenity of neighbouring occupiers.
- 1.2 Given that the site is located within a mixed-use area, it is not considered that the flue appears as an incongruous feature. Furthermore, the flue is conservative in size and design and sensitively located in the rear roof slope of the building, and therefore has a limited impact on the character and appearance of the streetscene, the Conservation Area and the host Listed Building.
- 1.3 With regards to the amenity of neighbouring occupiers, whilst the flue produces noise and odours, following investigations by officers of Environmental Health it is concluded that the noise generated from the flue, when restricted at 67.0dB LAeq (5 mins), does not have a materially adverse impact on the amenity of neighbouring occupiers. Furthermore, it has been concluded that the odours experienced from the flue are not frequent or for long enough periods to materially impact on the amenity of neighbouring occupiers. It is therefore concluded that the flue accords with Policies GP.8, GP.35, GP.53 and GP.95 of the Development Plan, the NPPF and guidance as well as sections 66 & 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

- 1.4 It is therefore considered that the application is **APPROVED**, subject to the following condition:

1. The sound level from the kitchen extraction flue as measured 1.2m above the ground in the rear courtyard and within a 2m radius from the extractor flue as it exits the kitchen must not exceed 67.0 dB LAeq (5 mins).

Reason: In order to safeguard the local amenity and ensure that local residents are protected from adverse impacts associated with noise and in accordance with policy GP8 of the AVDLP and the NPPF.

INFORMATIVES

WORKING WITH THE APPLICANT/AGENT

In accordance with paragraphs 38 and 39 of the National Planning Policy Framework, Aylesbury Vale District Council (AVDC) takes a positive and proactive approach to development proposals and is focused on seeking solutions where possible and appropriate. AVDC works with applicants/agents in a positive and proactive manner by offering a pre-application advice service and updating applicants/agents of any issues that may arise in the processing of their application as appropriate and, where possible and appropriate, suggesting solutions.

In this case, the agent was informed of the issues arising from the proposal and given the opportunity to submit amendments/additional information in order to address those issues prior to determination. The agent responded by submitting additional information which were found to be acceptable so the application has been approved.

2.0 INTRODUCTION

- 2.1 The application needs to be determined by committee as the Local Member Councillor Newcombe has requested that the application be heard at committee. Councillor Newcombe reiterated the objection comments raised by a third-party objector which are set out in detail within the report. The main concern of this third-party objection, is that the flue produces levels of noise and odours which are detrimental to the amenity of neighbouring occupiers. The suitability of the flue has also been questioned.

3.0 SITE LOCATION AND DESCRIPTION

- 3.1 The application relates to a Grade II Listed Building which is located within a row of listed buildings (not including property no. 26). The site is also located within the designated Wendover Conservation Area. The property is sited within a prominent location located on the northern side of the High Street, opposite the road to the public car park and library. The building has a rendered frontage painted cream, under a red clay plain tile roof. The frontage lies within the 'key shopping frontage' and the site is within 'Central Commercial Area'. Its frontage is directly adjacent to the highway footpath. Similarly, the rear of the building runs directly adjacent to the highway (Back Street). The frontage slopes dramatically where it is higher on the western side. The rear however is on a levelled ground. The building has a 2 storey and single storey rear extension. The flue is located to the rear of the property and fronts onto Back Street. The surrounding area features a mixture of uses due to its central location on the high street. There are residential properties to the rear and adjacent to the west.

4.0 PROPOSAL

- 4.1 The current application is for the retention of the flue and cowl, which is located on the western roof slop of the single storey rear element of the building. The flue projects approximately 0.95m above the existing single storey roof slope and has been painted black. For completeness, the flue replaced two flues that were located on the same roof slope previously.

5.0 RELEVANT PLANNING HISTORY

- 5.1 00/00411/ALB - External lighting to front elevation and general maintenance/repairs – consent granted
- 5.2 03/00749/ALB – Internal alterations including timber frame lining and partition with brick infill to walls – consent granted
- 5.3 03/00750/APP & 03/00751/ALB - Erection of bin store, gates and timber pergola – consent and planning permission granted
- 5.4 05/03102/ALB & 06/00184/AAD - Replacement of existing signage with two fascia signs and one projecting sign – Consents granted
- 5.5 07/01533/ALB - Replacement of canopy over front door – Consent granted
- 5.6 18/03245/ALB - Retention of flue and cowl- Pending Consideration

6.0 PARISH/TOWN COUNCIL COMMENTS

- 6.1 Wendover Parish Council- Objects to the application and has the following comments to make;

“The cowl should be rotating and the flue needs to be higher. The Environmental Policy needs to be taken into consideration and the fact that Lucca is a listed building. WPC have already advised AVDC that they do not like to see retrospective applications.”

7.0 CONSULTATION RESPONSES

7.1 Environmental Health Officer

- 7.2 Following complaints from residents and a subsequent investigation, the Environmental Health Team have been working with the current occupier of this building to ensure that there is no statutory noise nuisance associated with the use of the kitchen extraction system. It has been concluded by the officer that the flue has an acceptable impact on the amenity of nearby uses so long as the noise from the flue does not exceed 67.0 dB LAeq (5 mins). As such, the officer has recommended a condition to ensure that the noise from the flue does not exceed this level.

- 7.3 The officer has also provided a justification for the height of the flue. It is appreciated that normally for sites the team are not familiar with they would ask for flues to terminate 1 metre above the eaves of any building within 15 metres. However, the officer notes that they have visited this property a number of times over the past two years in response to complaints and they have not established a significant problem in relation to odour. As such, given their local knowledge in relation to these premises, the height of the flue is not objected to by the officer.

- 7.4 The Environmental Health team have visited 24 High Street, Wendover on 9 occasions between September 2017 and August 2018 to witness reports about odour, including one visit since the alterations were made to comply with the noise abatement notice. On a small number of these occasions' odour has briefly been witnessed in the rear garden, however it was not frequent or for long enough to contribute adversely to occupiers of 24 High Street. The team have never witnessed cooking smells inside the property.

7.5 Heritage and conservation

To the rear of the building is Back Street, which to one side are the rear extensions (modern and historic) and service blocks of the buildings fronting the High Street. This side of the street suffers from a proliferation of clutter such as satellite dishes, air condition units and external vents. On the other side of Back street is a mixture of historic and modern development.

- 7.6 The age of the single storey kitchen extension has not been confirmed, however the position of the flue through the roof replaces that of a previous and therefore there is no impact to the fabric of the building.
- 7.7 The heritage officer states that whilst an external flue/cowl is not ideal, these type of systems are a necessity of current commercial kitchens such as Lucca's and the viable use of the listing building is a consideration in planning terms. Examining the existing external part of the system being considered as part of the application it is noted it is small in scale, sits beneath the ridge and has been painted black (from galvanised steel) to reduce its negative aesthetic impact to an acceptable level.
- 7.8 The officer concluded that the scale and appearance of the proposed flue/vent is considered acceptable within the street scene of Back Street and would therefore preserve the identified heritage assets.
- 7.9 Archaeology
Have consulted the Buckinghamshire Historic Environment Record (HER) and conclude that this proposed development would not affect a heritage asset recorded on the HER. Also, on present evidence, the application site is not thought to have significant potential to include as yet unidentified heritage assets of archaeological interest.
- 7.10 Buckingham and River Ouzel Drainage Board
No comments to make on the application

8.0 REPRESENTATIONS

- 8.1 Comments have been provided by a consultant acting on behalf of residents and there are 11 objection comments on the case file for the application from 5 objectors. Their concerns are listed below:
- The new extraction unit creates problems regarding noise and odours which were not experienced with the previous unit. The noise and smells are experienced in neighbouring properties gardens and within the properties and along Back Street.
 - The noise level 67.0 dB LAeq (5 mins) is too high and is contrary to Local and National Policy. It is necessary that the applicant be required to assess the extract equipment fully in accordance with BS 4142:2014.
 - The condition that was initially proposed by the Environmental Health Officer did not specify the distance from the equipment nor the measurement height to which 67.0 dB LAeq (5 mins) applies.
 - Third parties would have no rights of access to the courtyard where the condition applies. Therefore it may not be possible to carry out sound measurements to verify that the target noise level required under the condition has actually been achieved.
 - The measures that have been put in place to reduce the noise of the flue through the Noise Abatement Order have exacerbated the odours from the flue.
 - The height of the flue is not appropriate.

- The flue does not work properly.
- A number of issues unrelated to the case have also been raised with regards to the application, including; noise from the air conditioning units, unlawful installation of CCTV cameras and lighting on the building and noise from the premises in general.

9.0 EVALUATION

9.1 The application has been assessed against the Aylesbury Vale District Local Plan (AVDLP) (2004), the National Planning Policy Framework (NPPF) and the Planning (Listed Building and Conservation Areas) Act 1990. It is acknowledged that Wendover is in the process of creating a Neighbourhood Plan and this is currently being consulted on in accordance with regulation 14 The Neighbourhood Planning (General) Regulations 2012. Since the Neighbourhood Plan is not 'made' it does not have sufficient weight at this stage and will not be used to assess the application.

Impact on appearance and character of the property, street scene and wider area

9.2 Policy GP35 of the Aylesbury Vale District Local Plan (AVDLP) states that the design of new development proposals should respect and complement the physical characteristics of the site and surroundings; the building tradition, ordering, form and materials of the locality; the historic scale and context of the setting; the natural qualities and features of the area; and the effect on important public views and skylines.

9.3 The frontage of the building would remain unchanged, the only external alteration would be the provision of the extraction flue which would be positioned to the rear of the property, which would not be visible from the High Street. It is acknowledged that the flue would be visible from Back Street, however by virtue of its low position, colour and form it would not be visible in the wider street scene nor overly prominent in views from Back Street. Given that the property is located on the high street, within the central shopping area, with a mix of surrounding uses, there are other similar features (flues, air conditioning units) visible from Back Street. It must also be noted that the previous flues were considered to be bulky in design and of poor condition and the singular flue significantly reduces the amount of roof area used.

9.4 As such, in this context and on the basis of the external parts of the structure being modest and finished in black, the flue is not considered to be an incongruous feature within this area and as such the development would accord with AVDLP policy GP35.

Impact on the character and appearance of the streetscene, the conservation area and the setting of the listed building

9.5 AVDLP Policy GP35 requires, that all forms of development should complement the physical characteristics of the site and its surroundings, the building tradition of the locality, and the scale and context of the setting.

9.6 Policy GP53 of the AVDLP states, that proposals for development will not be permitted if they cause harm to the character or appearance of Conservation Areas, their settings or any associated views of or from the Conservation Area. However, Policy GP53 is not entirely consistent with the NPPF on this ground, in so far as it does not go on to comment whether the proposal would result in substantial or less than substantial harm that needs to be outweighed by the public benefits of the scheme. As such, Policy GP53 cannot be given full weight, although moderate is still considered appropriate as part of the planning balance.

9.7 The NPPF at paragraph 192 emphasises the desirability of sustaining and enhancing the significance of heritage assets, the positive contribution that the conservation of heritage assets can make to sustainable communities, and the desirability of new development making a positive contribution to local character and distinctiveness.

- 9.8 Paragraph 193 and 194 advise that, when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed or lost through alteration or destruction of the heritage asset, or development within its setting. Any harm or loss should require clear and convincing justification.
- 9.9 While it is noted that external flues/cowls are not preferable features on Listed Buildings or within Conservation Areas, it is appreciated that these types of systems are a necessity of current commercial kitchens like that found in the application property and integral to the viability of the business operation. The flue, in this instance is small in scale, sits beneath the ridge of the single storey structure and has been painted black. These features mitigate the impact of the flue on the Listed Building and wider Conservation Area such that the significance of the listed building and conservation area would be preserved.
- 9.10 It is further noted that the flue the subject of the current application is visibly less intrusive than the previous dual flue that was located on the same roof slope and this should be given significant positive weight towards the assessment of the visual impact of his flue.
- 9.11 The application has been reviewed by the Local Authority's Heritage officer, who concluded that the scale and appearance of the proposed flue/vent is considered acceptable within the street scene of Back Street and the context of the application property and would, therefore, preserve the identified Designated Heritage Assets.
- 9.12 Special attention has been paid to the statutory test of preserving or enhancing the character or appearance of the conservation area under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, and to the statutory test of preserving the setting of the listed building under section 66 of the Planning (Listed Building and Conservation Areas) Act 1990, which are accepted as a higher duty. It has been concluded that the development would preserve the character and appearance of the conservation area and that the setting of the listed building would be preserved and so the proposal accords with section 66 & 72 of the Act.
- 9.13 In addition, on the basis that no greater harm would be caused to the significance of the heritage asset than the double flue that was removed to make way for the current flue, the proposal accords with policy GP35 and GP53 of the AVDLP and the guidance contained within the NPPF.

Impact on the amenity of neighbouring residents and uses

- 9.14 Policy GP.95 states, that in dealing with all planning proposals the Council will have regard to the protection of the amenities of existing occupiers. Development that exacerbates any adverse effects of existing uses will not be permitted.
- 9.15 Policy GP.8 states that planning permission will not be granted where the proposed development would unreasonably harm any aspect of the amenity of nearby residents when considered against the benefits arising from the proposal. Where planning permission is granted, the Council will use conditions or planning obligations to ensure that any potential adverse impacts on neighbours are eliminated or appropriately controlled.
- 9.16 Paragraph 127 of the NPPF seeks to ensure that developments create places with a high standard of amenity for all existing and future occupants.
- 9.17 In order to assess the impact of the flue on the amenity of neighbouring occupiers, it is important to assess the extent to which the proposal would exacerbate any adverse effects. It must be appreciated that noise from units such as flues is entirely typical within local centre locations, such as Wendover High Street, and having regard to the fact that historically this area has featured a mix of uses. Notwithstanding this, the application site is located on the High Street and while the flue is to the rear of the building background noise from the High Street is still audible from this location. The flue is approximately 3.5m from the shared boundary with property no. 24 High Street. From this property, the

Environmental Health officer found that traffic noise exceeded the noise of the fan during the majority of the day. Using the results from the Environmental Health investigation it was found that the flue has an acceptable impact on the amenity of neighbouring occupiers, so long as the noise from the flue does not exceed 67.0 dB LAeq (5 mins).

- 9.18 The consultant acting on the behalf of the local objectors has stated that the noise level 67.0 dB LAeq (5 mins) is too high and is contrary to Local and National Policy. They have also stated that it is necessary that the applicant be required to assess the extract equipment fully in accordance with BS 4142:2014. The Environmental Health Officer has maintained that in order to make a judgement about the impact developments would have on amenity, PPG firmly signposts to the Noise Policy Statement for England (NPSE). This document confirms that the level in which noise mitigation is required occurs at the point in which the noise starts to cause small changes in behaviour and or attitude (e.g. turning up the volume of the TV or having to speak more loudly, sleep disruption etc). This is classed as the Lowest Observed Adverse Effect Level (LOAEL). In the officer's view, these negative impacts do not occur as a result of the extraction fan being turn on. While it is acknowledged that the fan can be heard, and the test results confirm this, it is considered that the effects of the fan noise are not sufficient to cause any change in behaviour in the context of the wider noise environment - being a town centre location next to a number of commercial operations and a busy high street. Furthermore, the noise monitoring results inside the kitchen with the extraction fan on are below the level set by the World Health Organisation (WHO) which states that moderate annoyance can be expected if the noise level exceeds 35dB during the daytime. The internal level recorded during our monitoring are around 7dB lower than this. As such it is concluded by the officer that there is No Observed Adverse Effect Level (NOAEL) as a result of the extraction fan noise. As a result (in the context of NPPF 2018), PPG and NPSE confirm that no further mitigation is required or necessary under planning and that the noise level of 67.0 dB LAeq (5 mins) is appropriate.
- 9.19 The consultant also raised the issue that third parties would have no rights of access to the courtyard where the condition applies and therefore it may not be possible to carry out the sound measurements to verify that the target noise level required under the condition has actually been achieved. It has however been confirmed by the Planning Enforcement Team that officers have specific powers of entry in order to check compliance with planning conditions and should future information suggest that this condition is not being complied with a visit to the premises will be made to confirm/deny this and appropriate action taken
- 9.20 Given that the flue is entirely typical of its location, and having regard to the investigation carried out by the Environmental Health team, it is considered that noise generated from the flue would not exacerbate noise nuisances in this area, on the condition that noise levels would not exceed 67.0dB, and would not therefore materially harm the amenity of neighbouring occupiers, in accordance with Policy GP.95 of the AVDLP.
- 9.21 It has been reported by objectors that the odour from the flue has become a greater nuisance since controlling the noise from the flue. The representations have noted that cooking smells have been witnessed in nearby properties and on Back Street. The Environmental Health officer states that on a small number of visits to the property' odour has briefly been witnessed in the rear garden area of adjoining neighbour no.24; however, it was not frequent or for long enough to contribute adversely to occupiers of this property. The team have never witnessed cooking smells inside the property. This is corroborated by the fact that a number of the objectors note that the odours experienced from the flue are not a constant nuisance and instead are noticeable at intervals throughout the day.
- 9.22 It is appreciated that during the times that the odours are detectable, this may have an impact on the amenity of residents. However, it must be reiterated that this is a town centre location with a mix of uses, where standards of amenity reflect a commercially active area, rather than standards of a solely residential area; and therefore, where noises and smells

are likely to occur. Notwithstanding this, by virtue of the fact that there is not a continuous odour associated with the flue the impact is not considered to be material to the amenity of nearby occupiers and would not warrant a reason for the refusal of the application.

- 9.23 The suitability of the height of the flue has also been raised through the representations. It is appreciated that normally flues are required to terminate 1 metre above the eaves of any building within 15 metres. However, the Environmental Health Officer notes that the Environmental Health Team have visited this property a number of times over the past two years in response to complaints and they have not established a significant problem in relation to odour. As such, given their local knowledge in relation to these premises, the height of the flue is not objected to by the officer.
- 9.24 Whilst it is acknowledged that the flue can be heard from nearby properties and Back Street, and does produce limited and intermittent odours, these effects are typical of a high street location. Following the investigations carried out by the Environmental Health officer, officers are satisfied that the noise generated from the flue would not materially harm the amenity of neighbouring occupiers, subject to a condition. Furthermore, it is not considered that the odours produced by the flue are frequent enough or for long enough periods to contribute adversely to amenity of neighbouring occupiers. It is therefore considered that the proposal would accord with Policy GP8, GP.95 of the AVDLP and paragraph 127 of the NPPF.

Other matters

- 9.25 A number of issues unrelated to the case have also been raised with regards to the application, including; noise from the air conditioning units, unlawful installation of CCTC cameras and lighting on the building and noise from the premises in general.
- 9.26 These issues are not material considerations that should be taken into account for the assessment of this application.

Case Officer: Hannah Mitchell

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