

**ROYAL BOROUGH OF WINDSOR & MAIDENHEAD
PLANNING COMMITTEE**

WINDSOR URBAN DEVELOPMENT CONTROL PANEL

11 November 2015

Item: 1

Application No.:	15/02292/FULL
Location:	Flaming Cow Unit A Windsor Bridge Court 75 High Street Eton Windsor SL4 6BT
Proposal:	Amendments to fenestration/ventilation
Applicant:	Mr Elawadi - The Flaming Cow
Agent:	Mr Scott Wood - CSK Architects
Parish/Ward:	Eton Town Council
If you have a question about this report, please contact: Claire Pugh on 01628 685739 or at claire.pugh@rbwm.gov.uk	

1. SUMMARY

- 1.1 The application seeks planning permission for the alterations to the fenestration of the Flaming Cow restaurant, so that the existing window openings facing High Street and Brocas Street include ventilation grilles. This is proposed to allow for the air conditioning units inside the restaurant to operate more efficiently, thereby removing the need to open windows and doors, which in turn will reduce the odour emitted from the restaurant.
- 1.2 The proposed alterations to the fenestration are considered to cause less than substantial harm to the appearance of the Conservation Area, however, the reduction in odour escaping the restaurant is considered to constitute a public benefit which outweighs this less than substantial harm, in accordance with paragraph 134 of the National Planning Policy Framework (NPPF). As the harm would be very limited, it is considered that the proposed development would preserve the appearance of the Conservation Area, in accordance with the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires development to either preserve or enhance the character or appearance of the Conservation Area.

It is recommended the Panel grants planning permission with the conditions listed in Section 9 of this report.

2. REASON FOR PANEL DETERMINATION

- The Director of Development and Regeneration considers it appropriate that the Panel determines the application.

3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 3.1 The building is situated next to Eton Bridge, and benefits from a mixed A3 (cafe and restaurant) and residential use. The site is within the Eton Conservation Area.

4. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY

Ref.	Description	Decision and Date
14/03715/FULL	Retention of safety handrail on steps on public highway	Approved on the 30 th January 2015
14/02632/CON DIT	Details required by condition 5 (new equipment) of planning permission 11/02245 for the change of use and re-modelling of existing building to provide 10 dwelling units to include, replacement roof to High Street and Riverside elevations with a third floor, plus roof terraces to town houses and	Approved on the 7 th November 2014

	retention of cafe unit, and pontoon on the river.	
12/02896/FULL	Installation of a roof mounted television aerial and a satellite dish (retrospective)	Approved on the 26 th November 2012
12/02799/CON DIT	Details required by condition 1-11 of planning permission 11/02245 for a change of use and re-modelling of existing building to provide 10 dwelling units to include, replacement roof to High Street and Riverside elevations with a third floor, plus roof terraces to town houses and retention of cafe unit, and pontoon on the river.	Partial Approval and Refusal of conditions on the 17 th October 2012
11/02245/FULL	Change of use and re-modelling of existing building to provide 10 dwelling units to include, replacement roof to High Street and Riverside elevations with a third floor, plus roof terraces to town houses and retention of cafe unit, and pontoon on the river.	Approved on the 21 st November 2011

- 4.1 The application proposes alterations to the fenestration of the building to include ventilation grilles on the elevations within the existing window openings facing the High Street and onto Brocas Street. This is proposed so that the air conditioning units which are to be installed within the restaurant operate more efficiently, so that doors and windows do not need to be opened when the restaurant is in operation. An amended plan was received (and consulted on with neighbours and consultees) showing the windows to be fixed shut, which again will help reduce the odours escaping the restaurant.
- 4.2 The applicant has provided the following information about why the proposed external alterations are required, and how this works with the internal air conditioning unit. This is set out below:

'The louvres / grills above the windows will directly funnel fresh air in to a condenser unit. In turn, the fresh air will be cooled or heated depending on the desired temperature wanted inside the restaurant.'

The mechanical process of cooling or heating air itself generates heat. This heat from the condenser unit will be extracted through the opposite end of the louvres. Air exchange from the louvres to the machine will take place with ductwork to avoid dissipation.

There is no air being taken from inside the restaurant in this process. Therefore, there is no increased risk of odour emanating from the restaurant as a result.'

5. MAIN RELEVANT STRATEGIES AND POLICIES RELEVANT TO THE DECISION

Royal Borough Local Plan

- 5.1 The main strategic planning considerations applying to the site and the associated policies are:

	Within settlement area	High risk of flooding	Conservation Area	Setting of Listed Building	Pollution
Local Plan	DG1	F1	CA2	LB2	NAP3

- 5.2 Supplementary planning documents adopted by the Council relevant to the proposal are:

- Interpretation of Policy F1 – Area Liable to Flood

More information on these documents can be found at:

http://www.rbwm.gov.uk/web/pp_supplementary_planning.htm

Other Local Strategies or Publications

5.3 Other Strategies or publications relevant to the proposal are:

- RBWM Landscape Character Assessment - view at: http://www.rbwm.gov.uk/web_pp_supplementary_planning.htm
- RBWM Townscape Assessment - view at: http://www.rbwm.gov.uk/web_pp_supplementary_planning.htm
- RBWM Strategic Flood Risk Assessment - view at: http://www.rbwm.gov.uk/web_pp_supplementary_planning.htm
- Conservation Area appraisal - view at: http://www.rbwm.gov.uk/web/pp_conservation_consultation_appraisals.htm

<ul style="list-style-type: none"> • 	<p>National Planning Policy Framework</p> <p>Core Planning Principles</p> <p>Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision taking. These twelve principles are that planning should:</p>
	<ul style="list-style-type: none"> • be genuinely plan-led, empowering local people to shape their surroundings with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;
	<ul style="list-style-type: none"> • not simply be about scrutiny but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;
	<ul style="list-style-type: none"> • proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;
	<ul style="list-style-type: none"> • always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
	<ul style="list-style-type: none"> • take account of the different roles and character of different areas promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;
	<ul style="list-style-type: none"> • support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change and encourage the reuse of existing resources including conversion of existing buildings and encourage the use of renewable resources (for example, by the development of renewable energy);
	<ul style="list-style-type: none"> • contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land or development should prefer land of lesser environmental value, where consistent with other policies in this Framework;
	<ul style="list-style-type: none"> • encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;
	<ul style="list-style-type: none"> • promote mixed use developments and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage or food production);

	<ul style="list-style-type: none"> • conserve heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations;
	<ul style="list-style-type: none"> • actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are or can be made sustainable; and
	<ul style="list-style-type: none"> • take account of and support local strategies to improve health, social and cultural wellbeing for all and deliver sufficient community and cultural facilities and services to meet local needs.

6. EXPLANATION OF RECOMMENDATION

6.1 The key issues for consideration are:

- i Impact on the character and appearance of the Conservation Area, and Setting of the Listed Building
- ii Impact on residential amenity;

Impact on the character and appearance of the Conservation Area, and Setting of the Listed Building

- 6.2 The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The NPPF at paragraph 129 explains that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Both Listed Buildings and Conservation Areas are heritage assets.
- 6.3 Paragraph 134 of the NPPF sets out where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 6.4 The site is situated within the Conservation Area, and opposite to the site is The George Inn which is a Grade II Listed Building.
- 6.5 The proposed alterations include the introduction of ventilation grilles within the top half of the existing window openings to the restaurant facing the High Street and Brocas Street. The size of the window opening will be unaltered, but the area for the window panes will be smaller, as the ventilation grilles will be put in. There is an existing ventilation grille on the window facing Brocas street (which is to be enlarged), and the agent has advised the grilles on the other windows would have the same appearance as this.
- 6.6 It is not considered that the changes to the fenestration would cause harm to the setting of the Listed Building on the opposite side of the road (the George Inn), as the alterations are not considered to be so significant to result in harm to the setting of the Listed building. In respect of the character and appearance of the Conservation Area, from longer views of the site from the opposite side of Windsor Eton Bridge, and from further down Eton High Street, the ventilation grilles will not appear prominent. However, in closer views within the Conservation Area, it is considered that the proposed changes to the fenestration collectively would cause some harm to the appearance of the Conservation Area, although it is considered to be limited and so it is considered that the appearance of the Conservation Area will be preserved, in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990. However, judged against the NPPF, it is considered that the proposed changes would cause less than substantial harm to the appearance of the Conservation Area. As such, the harm must be weighed against the public benefits of the proposal.

- 6.7 The reason for making the application for the proposed external alterations is to improve the efficiency of the air conditioning units within the restaurant in order to moderate the temperature of the restaurant, which in turn will mean that windows and doors from the restaurant do not need to be opened, which will help prevent odours escaping from the restaurant which are causing the current odour problems.
- 6.8 The Council's Environmental Protection officer has been consulted on the application, and agrees the system proposed would significantly improve the odour issues in the area. This is not to say that there will be no odour from the restaurant; it is quite common for smells from café and restaurant uses to be present in the street. However, it is considered that this system would help control odour to an acceptable level.
- 6.9 Given the number of comments from local residents over the odour that is emitted from the restaurant at present, it is considered that this solution would help overcome the problems, and as such the public benefit is considered to outweigh the less than substantial harm to the appearance of the Conservation Area. The proposal is therefore considered to comply with paragraph 134 of the NPPF.
- 6.10 Policy CA2 of the adopted Local Plan states that:
- 'In respect of Conservation Areas, the Borough Council will require that any development will enhance or preserve the character or appearance of the Conservation Area.'*
- 6.11 As explained in section 6.6 of the report, it is considered the changes to the fenestration are fairly limited, and as such the proposed development would preserve the appearance of the Conservation Area in accordance with Policy CA2 of the Local Plan.

Impact on residential amenity

- 6.12 Given that the proposed alterations are to improve the odours being released from restaurant, it is considered this will improve the impact on residential amenity to neighbouring occupiers. Environmental Protection has recommended a number of conditions to ensure odour and noise are controlled. These conditions are set out in section 7 of the report. However, they have been amended (set out in section 9) so that they meet the 6 tests for imposing planning conditions as set out in the National Planning Practice Guidance (NPPG), which are that they are:
- necessary;*
 - relevant to planning and;*
 - to the development to be permitted;*
 - enforceable;*
 - precise and;*
 - reasonable in all other respects*

Other Material Considerations

- 6.13 Objectors state the premises are unsuitable for an A3 use, but are one the Council insisted on. It should be noted however, that before this development there was a larger A3 use at ground floor level.
- 6.14 Objectors invite officers to visit the site when the restaurant is in operation to experience the odour problems. The Environmental Protection Officer is aware of the odour issues at present, and this is why this application has been submitted in attempt to overcome these issues.
- 6.15 It is raised that the landlord has not given their permission for the works, and as such this exercise in applying for planning permission seems premature. It should be noted that the agent has confirmed that notice has been served on the landlord (Certificate B) and all freeholders and leaseholders with an interest in the site have been served notice of the application; this is all that

is required for the planning application. Whether or not the landlord agrees to the changes is a private matter that the applicant will need to resolve, it is not a planning consideration.

- 6.16 It is raised that the alterations would not comply with Policy SF1 of the Local Plan. It is not considered that this policy is particularly relevant to this proposal, as this policy relates to shop fronts and this is and has been a restaurant use. However the design considerations, and impact on the character and appearance of the Conservation Area have been considered.
- 6.17 It is stated that there is a higher risk of fire with an A3 use; however, this is not relevant to the planning consideration as fire risks are dealt with by separate legislation.
- 6.18 Concern is raised that the alterations will further depreciate the value of the neighbouring residential properties; however the value of properties is not a planning consideration.
- 6.19 The condition on the original planning permission stated that:

'No extraction equipment shall be installed without the prior approval of a scheme, which sets out the noise levels produced and the manufacturer's maintenance specifications, to limit the noise from the equipment has been submitted to and approved in writing by the Local Planning Authority. Thereafter the equipment shall be maintained in accordance with the manufacturer's specifications.

Reason: To protect the amenities of the area. Relevant Policy Local Plan NAP3.'

- 6.20 As such the Local Planning Authority could consider odour control under this condition discharge.
- 6.21 It should be noted that this application does not give the Council the opportunity to reconsider the wording of condition 5 of the original permission.
- 6.22 It is stated by an objector that a flue would be more appropriate to deal with odour. However, it is not for the Local Planning Authority to consider this, and it must be considered whether this application is acceptable in planning terms.

7. CONSULTATIONS CARRIED OUT

Comments from interested parties

2 occupiers were notified directly of the application.

The application was advertised in the Maidenhead & Windsor Advertiser on the 20th August 2015.

The planning officer posted a statutory notice advertising the application at the site on 13th August 2015.

14 letters were received objecting to the application, summarised as:

Comment		Where in the report this is considered
1.	The changes will do nothing to reduce the emission of cooking smells in the area. The root cause of the problem is that the extraction system discharges at street level.	See 6.2-6.12
2.	Additional louvres and windows that fully open will detrimentally affect the external appearance of the building thus impacting on the character and appearance of the Conservation Area.	See 6.2-6.11
3.	No attempt has been made by the applicant to address the concerns of local residents.	Noted, however this application seeks to address the odour issues.

4.	Premises are unsuitable for an A3 use, but is one the Council insisted upon. The need for this application confirms this fact, and they hope the Council will reconsider its position on the matter.	6.13
5.	Refers to the fact that Environmental Protection recommended planning conditions on the planning application, but the Local Planning Authority ignored this in granting permission.	Noted.
6.	Invite officers to visit the area on a Monday, when the restaurant is closed, and mid-week; they say there is a noticeable difference in odour.	6.14
7.	The increased vents will not prevent odour going into the surrounding streets.	See paragraphs 6.2-6.12
8.	It is their understanding that the landlord needs to agree alterations to the building, and this has not been sought, as such applying for planning permission seems premature.	6.15
9.	Major concerns that changes to the building would have a detrimental impact on the appearance of the building.	6.2-6.11
10.	The landlord (Windsor Bridge Court Management Company) have not granted the leaseholder permission to do the works. This whole exercise therefore seems pointless.	6.15
11.	The application should be made null and void, as the applicant has not served notice on the overall landlord of the property. At no point were the landlord and freeholders notified of the application, and so planning permission cannot be applied for.	6.15
12.	The proposed alteration to the ventilation continues to be in direct conflict with DEFRA guidelines on Restaurant extraction. Allowing a larger louvre will not solve the odour problems.	See 6.2-6.11 of the report.
13.	The proposed alterations to the fenestration will add to the disturbance to the quiet living of the adjacent residents.	See 6.2-6.12 of the report.
14.	Would remind the Council of their duties under the Human Rights Act, in particular Protocol 1, Article, which states that a person has the right to a peaceful enjoyment of all their possessions which includes their home and land. At present residents of Windsor Bridge Court have had these rights violated by the activities of the Flaming Cow, as they cannot open their windows to enjoy fresh air.	Noted, this application aims to mitigate the odour issues at the site.
15.	Proposed changes are totally inappropriate in the Conservation Area.	See 6.2-6.11 of the report.
16.	Proposal conflicts with policy SF1 and CA2 of the Local Plan.	6.16
17.	Additional louvres and windows that fully open will adversely impact on the Conservation Area.	4.1, 6.2-6.11
18.	Concern that freeholders and leaseholders of the site have not been notified of the application, as required by the planning act.	6.15
19.	The restaurant leaves its windows open during the summer months, which make the odour problems worse. The option of having windows that open fully will make the situation worse.	4.1
20.	Having windows that open fully will increase noise.	4.1
21.	Don't believe full consideration was given to Environmental Health issues when the permission was originally granted.	Noted.
22.	There is noise from the restaurant which causes disturbance to the flats above, even with the windows closed.	Noted, see recommended

		conditions by EP.
23.	Flat above can no longer open their windows, owing to the odour that emanates from it.	Noted.
24.	There is a higher risk of fire from the A3 use.	6.17
25.	The value of the property has already fallen since the opening of the Flaming Cow, and the installation of the ventilation grilles will further depreciate the value of the property.	6.18
26.	Windsor Bridge Court Management Co Ltd. holds the freehold of the site for 75 High Street, Eton and we have to advise you that no such Notice has been served on the Company in respect of the above planning application. As this is an offence under S65 (5) of the 1990 Act we request that the Local Planning Authority declare the application not valid.	6.15
27.	The expectation of residents, owners and planners that the unit would be a coffee shop; there was no provision for cooking installed within the building.	Noted.
28.	There is wide knowledge that the building has a covenant on it with strict provisions about noise, hours of work etc....	Noted.
29.	There was strong opposition for the local community, and this was expressed at a licencing panel. The business operator is consistently breaching the licencing conditions	Noted.
30.	When the extraction equipment was assessed under the previous discharge of conditions application, the Panel were told that odour could not be taken into account.	6.19,6.20
31.	The noise from the restaurant is already high, as the door to the restaurant is left open. Having windows that open will add to the problem.	4.1
32.	Health and hygiene concerns; the orange pipe belches out warm fat and grease, and this is a concern to many people who walk this route who ingest the fumes. There are also toilet fumes. Allowing windows to open would heighten this problem.	See 4.1
33.	They trust RBWM will now revisit the wording of condition 5 and its correct wording and intent, now that this application has created the opportunity. In the meantime there should be a thorough independent investigation.	6.21
34.	Consider a flue would be more appropriate to control odour.	6.22
35.	If the extraction is not sufficient as it is, it should relocate to a more suitable location and not put the properties in the vicinity in such a degrading position.	Noted.
36.	Planning Department failed to take into account the conditions recommended by Environmental Protection for controlling odour in the original permission. This is why the current situation exists.	Noted.

Other consultees and organisations

Consultee	Comment	Where in the report this is considered
Eton Town Council	The Council would point out that there is no technical data in the application and so it is not possible to make any informed comment.	Noted. The Environmental Protection Officer has been consulted on the application.
Environmental	Raise no objection to the alterations subject to the following	See

Protection	<p>conditions being imposed:</p> <p>1)The proposed ventilation grille above the fixed shut windows on the High Street will only be open when they are funnelling fresh air into an internal condenser unit; which is to be used to cool or heat air to the desired temperature within the restaurant:</p> <p>a) No air should be taken from inside the restaurant during this process.</p> <p>b) No cooking smells from within the premises will have passage through the louvres.</p> <p>c) The main door of the restaurant (with the exception of access and egress) must remain closed when the internal condenser unit is in operation.</p> <p>d) When the internal condenser unit is not in operation the Louvres must remain closed.</p> <p>2) The increased ventilation grille which is to be installed at the extraction point on Brocas Street must be connected to the Kitchen Extraction System and will only allow improved airflow through the filtration system which is used for odour control devised under the control of odour and noise from commercial kitchen exhaust systems as detailed in the DEFRA guidance.</p> <p>3) The following noise level assessment condition should be applied to assess the new noise levels due to the louvres:</p> <p>The rating level of the noise emitted from the site shall be lower than the existing background level (to be measured over the period of operation of the proposed plant and equipment and over a minimum reference time interval of 1 hour in the daytime and 5 minutes at night) by at least 10dB(A). The noise levels shall be determined 1m from the nearest noise-sensitive premises The measurement and assessment shall be made in accordance with BS 4142: 2014 'Method for rating industrial noise affecting mixed residential and industrial area'.</p>	recommended conditions in section 9.
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8. APPENDICES TO THIS REPORT

- Appendix A - Site location plan
- Appendix B - Proposed elevations and floor plans
- Appendix C - Previously approved elevations

This recommendation is made following careful consideration of all the issues raised through the application process and thorough discussion with the applicants. The Case Officer has sought solutions to these issues where possible to secure a development that improves the economic, social and environmental conditions of the area, in accordance with NPFF.

In this case the issues have been successfully resolved.

9. CONDITIONS RECOMMENDED FOR INCLUSION IF PERMISSION IS GRANTED

- 1 The development hereby permitted shall be commenced within three years from the date of this permission.
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The materials to be used on the window frames and louvres shall be PPC Aluminium, and shall match the materials of the existing window frames. Development shall be carried out in accordance with the approved details.
Reason: In the interests of the visual amenities of the area. Relevant Policies - Local Plan DG1, CA2.
- 3 The proposed ventilation grille above the fixed shut windows on the High Street will only be open when they are funnelling fresh air into an internal condenser unit; which is to be used to cool or heat air to the desired temperature within the restaurant: The following measures shall be adhered to for the lifetime of the development:
 - a) No air should be taken from inside the restaurant during this process.
 - b) When the internal condenser unit is not in operation, the Louvres must remain closed.Reason: To protect the residential amenities of the area. Relevant Policy Local Plan NAP3.
- 4 The increased ventilation grille which is to be installed at the extraction point on Brocas Street must be connected to the Kitchen Extraction System and will only allow improved airflow through the filtration system which is used for odour control devised under the control of odour and noise from commercial kitchen exhaust systems as detailed in the DEFRA guidance.
Reason: To protect the residential amenities of the area. Relevant Policy Local Plan NAP3.
- 5 The rating level of the noise emitted from the site shall be lower than the existing background level (to be measured over the period of operation of the proposed plant and equipment and over a minimum reference time interval of 1 hour in the daytime and 5 minutes at night) by at least 10dB(A). The noise levels shall be determined 1m from the nearest noise sensitive premises. The measurement and assessment shall be made in accordance with BS 4142: 2014 Method for rating industrial noise affecting mixed residential and industrial area.
Reason: To protect the residential amenities of the area. Relevant Policy Local Plan NAP3.
- 6 The development hereby permitted shall be carried out in accordance with the approved plans listed below.
Reason: To ensure that the development is carried out in accordance with the approved particulars and plans.