

## **Maldens and Coombe Neighbourhood Committee**

20 March 2019

### **Enforcement: 106 Burlington Road, New Malden KT3 4NS**

Report by the Director of Growth

#### **Purpose**

This report concerns the unauthorised installation of an extractor flue to the rear of the restaurant.

#### **Recommendations**

**To resolve** that the Director of Growth and the London Borough of Merton (for Shared Legal Service) are authorised to:

1. Issue an Enforcement Notice (s) under S. 172 of the Town and Country Planning Act 1990 (as amended), subject to any necessary legal amendments being made for which authority is delegated to the Head of Planning and Regeneration in consultation with officers from the London Borough of Merton (for Shared Legal Service SLLP),
2. withdraw and to vary such notice (s) under S. 173A, and
3. In the event of non-compliance, take action (s) by way of prosecution under S. 179, S.187A and/or direct action under S. 178 of the Act in respect of the breach of planning control/or for injunctive relief under S.187B.

#### **Site and surroundings**

1. The subject site concerns a two storey end terraced building located on the southern side of Burlington Road, on the corner with George Road. The ground floor is in use as a restaurant. The site is not located in a conservation area and the building is not listed.

#### **Breach of planning control**

2. In May 2018 an investigation was opened by the planning enforcement team in regards to the extraction flue located on top of the flat roof. A letter was sent to the premises and in response, the restaurant manager phoned the Council to inform that a planning application will be submitted for the structure. After three months, as no planning application had been received,

on 22 August 2018, a planning enforcement officer visited the site to discuss the matter with the occupier. On 18 September 2018 a letter was hand delivered to the premises recommending removal of the structure within 21 days.

3. At the time of writing this report, the owner/occupier has failed to apply for planning permission for the structure or remove it. It is possible that a previous occupier may have installed the structure, however, in planning law, it falls to the current land owner to remedy or regularise the breach.

### **Planning considerations**

4. The development is assessed against policies of the current development plan which consists of the 2018 National Planning Policy Framework, London Plan July 2016 (consolidated with alterations since 2011) and the Council's adopted LDF Core strategy April 2012. The main considerations of the development is the impact on the character and appearance of the area and residential amenity.

#### **Impact on character and appearance**

5. The National Planning Policy Framework (NPPF) attaches great importance to the design of the built environment. Paragraph 130 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area. Policies CS8 and DM10 of the Council's LDF Core Strategy (2012) advise that proposals should relate well to their surroundings and be of a high standard of design to achieve a more attractive, sustainable and accessible environment.
6. The extraction flue is prominently located on top of the flat roof of the rear extension and highly visible from George Road. The structure has an industrial appearance which is not unacceptable in principle, however, it is not discreetly sited nor of an appropriate scale for its function. The structure appears incongruous and results in a cluttered appearance to the rear and side of the building. The development fails to take advantage of the opportunity to respect, maintain or enhance the character and appearance of the host building and surrounding area.
7. The extraction flue results in an incongruous feature that detracts from the character and appearance of the host building. The development fails to take advantage of the opportunity to respect, maintain or enhance the character and appearance of the host building and surrounding area. The development is therefore contrary to pg. 130 of the NPPF, 2018 and

Policies CS8 and DM10 of the Royal Borough of Kingston upon Thames LDF Core Strategy, 2012.

#### Impact on residential amenity

8. Policy DM10 of the LDF Core Strategy seeks to safeguard residential amenities in terms of privacy, outlook, and sunlight/daylight, avoidance of visual intrusion and noise and disturbance. There are a number of residential dwellings located in close proximity to the site including above the restaurant as well on the upper floor of 108 Burlington Road and a row of terraced houses, located to the south.
9. The Council's Environmental Health Officer advises 'the extraction system is poorly designed with low level horizontal discharge that creates poor odour dispersal.' It is considered that the equipment is substandard and fails to achieve adequate odour control and dispersal. This could be achieved via a high level vertical discharge and with installation of appropriate acoustic silencers to reduce noise, however, as it currently stands the equipment is substandard and gives rise to noise and odour nuisance for neighbouring residential dwellings.
10. In conclusion, the extraction system results in poor odour dispersal and inadequate sound insulation leading to odour and noise nuisance for neighbouring residential units. The development fails to conform to the aims and objectives of Policy DM10 of the RBK LDF Core Strategy, April 2012.

#### **Requirements of the enforcement notice(s)**

11. (a) Remove the roof mounted extractor flue in its entirety  
  
(b) Remove all resultant debris from compliance with the above, from the site

#### **Timescale for compliance**

12. Section 173(9) of the 1990 Town and Country Planning Act (as amended) requires that an enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased. Ground (g), as set out in section 174(2) of the aforementioned Act, provides that an appeal may be made if it is considered that any period specified "falls short of what should reasonably be allowed".
13. A compliance period of 3 months is recommended.

#### **Reasons for issuing the notice**

14. (a) The operational development has occurred within the last 4 years.

(b) Planning conditions would not overcome planning objections and render the development acceptable.

(c) The extraction system results in poor odour dispersal and inadequate sound insulation leading to odour and noise nuisance for neighbouring residential units. The development fails to conform to the aims and objectives of Policy DM10 of the RBK LDF Core Strategy, April 2012.

(d) The extraction flue results in an incongruous feature that detracts from the character and appearance of the host building. The development fails to take advantage of the opportunity to respect, maintain or enhance the character and appearance of the host building and surrounding area. The development is therefore contrary to pg. 130 of the NPPF, 2018 and Policies CS8 and DM10 of the Royal Borough of Kingston upon Thames LDF Core Strategy, 2012.

**Background papers held by Harsha Bhundia**

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Annex 1 Photo of the breach:

