

THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) LAW, 2005

AND SECTION 19 OF THE LAND PLANNING AND DEVELOPMENT (GENERAL PROVISIONS) ORDINANCE, 2007

NOTIFICATION OF REFUSAL OF PLANNING PERMISSION

PROPOSALS: Install mechanical extraction flue to north elevation of courtyard (retrospective). (Protected Building).

LOCATION: The Cock & Bull, 2 Lower Hauteville, St. Peter Port.

APPLICANT: The Corner Group

I refer to the application referred to below received as valid on 06/10/2022 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 31/07/2023

Drawing Nos: DLM Architects: 1215_1 & _2.

Application Ref: FULL/2022/1893

Property Ref: A402840000

The Development & Planning Authority has decided to refuse your application under the provisions of section 16 of the Land Planning and Development (Guernsey) Law, 2005 for the following reasons:-

1. The proposed mechanical extraction flue to the north elevation of the courtyard, located to the rear of the building, is in close proximity to neighbouring residential properties. Without sufficient information being provided to make an accurate assessment, the development has the potential to cause a significant noise nuisance to nearby residents.

Without sufficient evidence being provided to demonstrate that the extraction system will operate at least 5dB below the existing background noise level at the nearest receptor, the proposal cannot be supported in its current form and therefore conflicts with Policies MC6 (Retail in Main Centres), GP8 (Design) and GP9 (Sustainable Development) of the adopted Island Development Plan.

OTHER REMARKS:-**Right of appeal against planning decisions**

Your attention is drawn to the provisions of Section 68(1) of the Land Planning and Development (Guernsey) Law 2005, which provides a right of appeal, against a decision to refuse an application for planning permission or outline planning permission to the Planning Tribunal on the merits. An appeal to the Planning Tribunal under section 68 of the Law against this decision must be made before the expiry of the period of six months beginning with the date on which the Authority made this decision.

Copy of representations made

In reaching this decision the Development & Planning Authority took into account any written consultations made under Section 11(1) of the Land Planning and Development (General Provisions) Ordinance, 2007 ('the Ordinance'). A copy of any consultation responses made to the Authority under section 11 will be included with this decision in accordance with section 19 of the Ordinance.

A J ROWLES

Director of Planning
Planning Service

PLANNING APPLICATION REPORT

Application No: FULL/2022/1893
Property Ref: A402840000
Valid date: 06/10/2022
Location: The Cock & Bull 2 Lower Hauteville St. Peter Port Guernsey
Proposal: Install mechanical extraction flue to north elevation of courtyard (retrospective). (Protected Building).
Applicant: The Corner Group

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The proposed mechanical extraction flue to the north elevation of the courtyard, located to the rear of the building, is in close proximity to neighbouring residential properties. Without sufficient information being provided to make an accurate assessment, the development has the potential to cause a significant noise nuisance to nearby residents.

Without sufficient evidence being provided to demonstrate that the extraction system will operate at least 5dB below the existing background noise level at the nearest receptor, the proposal cannot be supported in its current form and therefore conflicts with Policies MC6 (Retail in Main Centres), GP8 (Design) and GP9 (Sustainable Development) of the adopted Island Development Plan.

OFFICER'S REPORT**Site Description:**

The application site known as the "Cock and Bull" comprises a 3.5 storey building which forms the corner between Lower Hauteville and Cliff Street. The property is recognised as a Protected Building. The building contains a Public House on the ground floor and flats above.

The building is located in a Main Centre Inner Area and Conservation Area as defined in the Island Development Plan.

Relevant History:

HAPP/2005/1518	Alterations.	Granted
PAPP/1995/4909	Change of use of part of restaurant to retail shop	Granted
PAPP/1993/1835	Convert basement to customer seating area	Granted

PAPP/1992/0882	Amendments to plans to refurbish restaurant and flats	Granted
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Existing Use(s):

Food – Public House (Cock and Bull)/ Flats.

Brief Description of Development:

Retrospective permission is sought to install a mechanical extraction flue to the north elevation of the courtyard, located to the rear of the building.

The flue is sited approximately 2m above ground level, is approximately 3m in length, and is approximately 300mm in width (as shown on the drawings submitted).

The application was deferred as insufficient information was submitted to accurately assess the effect of the development on the amenities of neighbouring residents, including the manufacturer's specification, distance to the nearest receptor, and evidence that it will operate at least 5dB below the existing background level at the nearest receptor.

The agent advised the Planning Service that they were waiting for information in respect of the replacement equipment.

The Planning Service reminded the applicant to submit further information and if not received by the 10th July, the application would be determined.

Additional information was sent by the agent on 3rd July 2023 which notes that:

"The kitchen offers pizza and light bar snack food creating only a moderate Odour concentration and grease content, and a medium grease/smoke loading and moisture content. As per table 2.2 of the guidance.

The existing kitchen exhaust system that this system replaced was in the same location, but was an older unit with less advanced filtration and was a noisier unit when running than the replacement unit

The kitchen is only open for limited hours and days of operation. The kitchen itself closes at 9.30pm.

The landlord is not aware of any complaints from the neighbour above or nearby dwellings in relation to the extract unit for odour or noise. Have you received any further complaints since the submission of this application?

It should be noted that any nearby receptor that could potentially be impacted by this extract is in closer vicinity to the courtyard that accommodates customers for much longer hours (than the kitchen is operational) throughout the duration of the bar opening hours and primarily for the use of smoking and drinking. These elements have a far greater impact on noise and odour.

In respect to recording the background noise level, if required should this be recorded during peak hours of use? Currently we are struggling to get background acoustic levels recording by a local consultant and on other developments we are having to procure it to off island specialists with out of hours records proving even harder to arrange. This attracts quite significant cost, particularly for such a small application. We are able to record ambient levels during a range of hours via an app if you are able advise us what times you require and if that is acceptable? We can then record this with the extractor on and off to ascertain the difference.

I'm awaiting the manufacturers specification for the replacement unit, however it was a like for like modern replacement of the existing unit. Given the potential for grease build up in unmaintained flues and the recent example of this with the fires at Red, Tinto and Rosso, the ducting was also renewed.

It is also to be noted that during the recent sale of the premises to Randalls, the deeds state provision for an extract unit at the Cock and Bull. The most important section is contained in the first PDF -Conveyance 22.10.1992 – page 809 section 3 part B – the right to keep an extractor system. It also references the existing system ('as at present').

(b) the right to keep, as at present, the air extractor system (or any replacement thereof) which serves the Restaurant attached to the northern wall of Flat 2 together with a right of access, if necessary, on to Flat 2 for the purpose of repairing, replacing, maintaining or adjusting the same".

Further information was submitted by the agent on 4th July which noted that "the unit is a System 60-35 as per above – operates at 56dB if installed outside but as inside shall be quieter".

Relevant Policies of any Plan, Subject Plan or Local Planning Brief:

MC6 Retail in Main Centres
GP4 Conservation Areas
GP5 Protected Buildings
GP8 Design
GP9 Sustainable Development

Representations:

The Authority has received a letter of representation from one party objecting to the proposal. Grounds for objection principally relate to the following issues:-

- *Size and look.*
- *Noise.*
- *Smell.*
- *New structure.*
- *Previous management's food offering.*
- *Unobtrusive ventilation.*

- *Change of Use.*
- *Impact on Traffic.*
- *Interaction with prior planning permissions.*

Consultations:

Office of Environmental Health and Pollution Regulation's original comments -26th January 2022(2023):

"I have reviewed the proposed plans in regard to the retrospective application for the installation of a mechanical extraction flue to the north elevation of the courtyard at the above-mentioned site.

There is currently insufficient information for me to comment on this application. I would welcome information regarding the extraction system installed, including the manufacturer's specification and evidence that it will operate at least 5dB below the existing background level at the nearest receptor.

I would also welcome information regarding odour attenuation from the extraction system and refer the applicant to the [\[Withdrawn\] Guidance on the control of odour and noise from commercial kitchen exhaust - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/guidance-on-the-control-of-odour-and-noise-from-commercial-kitchen-exhaust). The full web address for the guidance document is: <https://www.gov.uk/government/publications/guidance-on-the-control-of-odour-and-noise-from-commercial-kitchen-exhaust>. Whilst I recognise that this guidance has been withdrawn, it is a useful reference and assessment tool. Within the guidance is an example odour risk assessment (Annex c, page 95-96). Completion and submission of this would be welcomed.

If further information is submitted in relation to the above matters, I would be happy to look at this and provide additional comments.

I would be grateful if these issues are considered during the determination of this application.

Please do not hesitate to contact me at the above address should you require any additional information regarding this matter."

Office of Environmental Health and Pollution Regulation's further comments - 20th July 2023:

"I confirm that there is still insufficient information provided for this application and we continue to be concerned about the noise and odour impact that the new extraction system may have on nearby residents.

The information provided below does not provide any assurance that the extraction system operates at least 5dB below the existing background level at the nearest receptor. I would advise that the applicant provides evidence of this and would urge them to contact an acoustic consultant to assist with this. I have attached a list of consultants who are prepared to operate on the island, but please note that inclusion on

the list does not infer any kind of recommendation by this department. Any measurements and assessment must be made in accordance with British Standard 4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound.

As per my letter dated 26th January 2022, I would also welcome information regarding odour attenuation from the extraction system and refer the applicant to the [\[Withdrawn\] Guidance on the control of odour and noise from commercial kitchen exhaust - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/guidance-on-the-control-of-odour-and-noise-from-commercial-kitchen-exhaust). The full web address for the guidance document is: <https://www.gov.uk/government/publications/guidance-on-the-control-of-odour-and-noise-from-commercial-kitchen-exhaust>.

Whilst I recognise that this guidance has been withdrawn, it is a useful reference and assessment tool. Within the guidance is an example odour risk assessment (Annex c, page 95-96). Completion and submission of this would be welcomed.

I'll be happy to provide additional comment on the application once further information is submitted. Please let me know if you have any queries. Please also let me know if you require the above in a formal letter to yourselves."

Summary of Issues:

- Whether the development would have a significant detrimental impact on the amenities of neighbouring properties
- Whether the proposed development would affect the special interest of the protected building.
- Whether the proposed development would affect the Conservation Area.
- Whether the design of the development is acceptable.

Assessment against:

- 1 - Purposes of the law.**
- 2 - Relevant policies of any Plan, Subject Plan or Local Planning Brief.**
- 3 - General material considerations set out in the General Provisions Ordinance.**
- 4 - Additional considerations (for protected trees, monuments, buildings and/or SSS's).**

All material considerations as set out in the Land Planning and Development (Guernsey) Law, 2005 and the Land Planning and Development (General Provisions) Ordinance, 2007 have been taken into account in the assessment of this application.

Both Policy GP8 and GP9 consider the effects of any new development on the amenities of neighbouring residents. In addition, the preceding text to Policy GP8 refers to the need to consider the material planning considerations as specified in Part IV, Section 13 of the Land Planning and Development (General Provisions) Ordinance, 2007. These include the appropriateness of the development in relation to its surroundings in terms of its design, layout, scale, siting and the materials to be used, as well as its likely effect on the character and amenity of the locality in question and its likely effect on the reasonable enjoyment of neighbouring properties.

Careful consideration has been given to the effect of the development on the amenities of neighbouring residents. However, due to the close proximity between the mechanical extraction flue and neighbouring properties and without sufficient information being provided in order to fully assess its potential impact, the proposed development cannot be supported in its current form. This decision has been reached when taking into account the lack of information submitted together with the potential harm on the amenity of the occupiers of the neighbouring properties.

For the reasons set out within this report, and given the lack of relevant information submitted despite the previous deferral, it is recommended that planning permission be refused.

Other matters:

The proposed flue is large and bulky, although given its secluded position and its appropriateness in principle to serve a public house, the proposed flue would not unduly affect the special interest or setting of the protected building, and would not impact on the character or appearance of the Conservation Area.

Date: 31/07/2023