

APPLICATION NO: 22/00530/FUL	OFFICER: Mrs Emma Pickernell
DATE REGISTERED: 19th March 2022	DATE OF EXPIRY: 14th May 2022
DATE VALIDATED: 19th March 2022	DATE OF SITE VISIT:
WARD: Lansdown	PARISH:
APPLICANT:	Pearlbury Properties Ltd
AGENT:	SF Planning Limited
LOCATION:	Thai Emerald Restaurant 60 St Georges Place Cheltenham
PROPOSAL:	Relocation of extraction equipment (Retrospective) and proposed alterations to the extraction equipment

RECOMMENDATION: Permit



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1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site is a Thai restaurant known as Thai Emerald. It is located within a single storey building which is part of Formal House which is on the east side of St Georges Place. The application site is within the Old Town Character Area of the Central Conservation Area. The application site is locally indexed and the adjacent building, St Matthews Church is Grade II* listed.
- 1.2 Planning permission is sought for the relocation of the extraction system associated with the restaurant. The previous location for the extraction system was the rear of Formal House. The application documents explain that for legal reasons there was a requirement to move this. Subsequently a new extraction system was installed, without the benefit of planning permission upon the flat roof the Thai Emerald building. Planning permission for its retention is now sought and as such this element of the scheme is retrospective. However additional elements are proposed in order to improve the impact of the equipment upon neighbouring properties, these have been proposed in consultation with the Council's Environmental Health department.
- 1.3 The additional elements include:
- A cowl upstand at the end of the ducting
 - An additional silencer
 - A new fan in the acoustic enclosure

These elements have not been installed yet. As such the application is part-retrospective and part-proposed.

- 1.4 The application has been referred to planning committee by Councillor Seacombe due to the distress to local residents.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

Airport Safeguarding over 45m
Conservation Area
Core Commercial Area
Principal Urban Area
Residents Associations
Smoke Control Order

Relevant Planning History:

01/00340/FUL 1st May 2001 PER

Erection of further ducting on rear elevation

02/00758/COU 28th June 2002 PER

Change of use of lower ground floor from vacant former retail storage to Class D1 (gymnasium) use

02/01116/FUL 6th September 2002 PER

Change of use of part of basement to A3 use as extension to existing restaurant use on site

3. POLICIES AND GUIDANCE

National Planning Policy Framework

Section 6 Building a strong, competitive economy
Section 7 Ensuring the vitality of town centres
Section 8 Promoting healthy and safe communities
Section 12 Achieving well-designed places
Section 16 Conserving and enhancing the historic environment

Adopted Cheltenham Plan Policies

D1 Design
SL1 Safe and Sustainable Living

Adopted Joint Core Strategy Policies

SD2 Retail and City / Town Centres
SD4 Design Requirements
SD8 Historic Environment
SD14 Health and Environmental Quality

Supplementary Planning Guidance/Documents

Central conservation area: Old Town Character Area and Management Plan (Feb 2007)
Index of buildings of Local Interest SPD (2007)

4. CONSULTATIONS

Building Control

24th March 2022

The application may require Building Regulations approval. Please contact Cheltenham and Tewkesbury Building Control on 01242 264321 for further information.

Environmental Health

25th March 2022

I have just had a look through the planning submission and I will be not raising an objection from an EH perspective. There is an active Abatement Notice in place and so I am hopeful these proposals will resolve the noise issues I have been investigating for some time now. I would like to point out that this is the second attempt at mitigation to resolve the noise issue and so regardless of planning permission being granted, if the noise issue is not resolved on completion of the works I will be requesting further works be undertaken to achieve compliance with the Abatement Notice.

Although I have not specifically been investigating odour, the addition of U/V - ozone filtration is also a welcome addition to the extraction.

5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	92
Total comments received	6
Number of objections	5
Number of supporting	0
General comment	0

5.1 The application was publicised by way of letters to 92 neighbouring properties, a site notice and a notice in the Gloucestershire Echo. 6 representations were received which relate to the following issues:

- Noise levels are unacceptable
- Poor appearance

- Impact of odours

6. OFFICER COMMENTS

6.1 Determining Issues

6.2 The key issues in determining this application are considered to be the (i) appearance of the equipment and its impact upon locally indexed and listed buildings and upon the conservation area, and, (ii) impact upon neighbouring properties.

6.3 The site and its context

6.4 The application site is in the core commercial area and is an established restaurant. The immediate context is very mixed in terms of building type and use. Nearby uses include residential, offices, church, other Food and Beverage uses and retail. In principle officers would look to support equipment which facilitates commercial uses within such areas, especially when required by an established business in the town, provided that they are acceptable in terms of appearance and neighbour amenity.

6.5 Design and impact upon heritage assets

6.6 Section 12 of the NPPF relates to achieving well-designed places. It highlights that the creation of high quality beautiful and sustainable buildings is fundamental to what the planning and development process should achieve. At para 130 the NPPF explains that decisions should ensure that developments (amongst other things) are; (i) visually attractive as a result of good architecture, layout and landscaping, (ii) are sympathetic to local character and history while not preventing or discouraging appropriate innovation or change, (iii) establish a strong sense of place, (iv) optimise the potential of a site to accommodate an appropriate amount and mix of development (v) create places that are safe, inclusive and accessible. Para 134 states that development that is not well designed should be refused.

6.7 Policy SD4 of the JCS sets out design requirements within the following areas; (i) context, character and sense of place, (ii) legibility and identity, (iii) amenity and space, (iv) public realm and landscape, (v) safety and security, (vi) inclusiveness and adaptability, (vii) movement and connectivity.

6.8 Policy D1 of the Cheltenham Plan states that development will only be permitted if it adequately reflects principles of urban and architectural design and complements and respects neighbouring development and the character of the locality.

6.9 The Planning (Listed buildings and Conservation Area) Act 1990, Section 72 (1) requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

6.10 Chapter 16 of National Planning Policy Framework (NPPF) relates to heritage assets. Importantly, it is a requirement of Paragraph 197 of the NPPF to identify and assess the particular significance of any heritage asset... taking into account the desirability of sustaining and enhancing the significance of heritage assets. Paragraph 199 of the NPPF requires great weight be given to a heritage asset's conservation and the more important the asset, the greater the weight should be, irrespective of whether any potential harm amounts to substantial harm or less than substantial harm to its significance.

6.11 Paragraph 207 of the NPPF clarifies the loss of a building which makes a positive contribution to the significance of the Conservation Area should be treated either as

substantial harm under paragraph 200 or less than substantial harm under paragraph 201, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area.

- 6.12** Paragraphs 200 and 202 of the NPPF address harm to heritage assets. Paragraph 200 of the NPPF requires any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Paragraph 202 of the NPPF states, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset this be weighed against the public benefits of the proposal.
- 6.13** Policy SD 8 of the JCS requires that development within the Historic Environment should aim to sustain and enhance the significance of heritage assets.
- 6.14** As mentioned above the application site is locally indexed and adjacent to a grade II* listed building. It is also located within the conservation area.
- 6.15** The restaurant was previously served by an extraction system which included ducting with a cowl fitted, at the rear of Formal House. This is visible from St Georges Place, although it is well set back from public vantage points. The equipment which is the subject of this application is located on the rear section of the building, which is at a higher level than the section which fronts St Georges Place. Drawings have been submitted which demonstrate that the equipment, even with the upstand and cowl fitted will not be visible from the street. In this regard the proposed equipment will be less visible than that which it replaces.
- 6.16** The equipment is attached to the roof of the locally indexed building, however it does not result in significant harm to its fabric or its setting and as such the impact on the Thai Emerald building is considered to be acceptable. It is also considered to have an acceptable impact upon the setting of the adjacent grade II* listed church.
- 6.17** Therefore in terms of design and impact upon the conservation area, and both designated and non-designated heritage assets, the proposal is considered to be acceptable.
- 6.18** A condition is recommended requiring the removal of the existing extraction at the rear of Formal House.
- 6.19 Impact on neighbouring property**
- 6.20** Section 12 of the NPPF highlights that development should promote a high standard of amenity for existing and future users. This is further emphasised in policy SD14 of the JCS and Cheltenham Plan SL1 which set out the requirement for development not to cause unacceptable harm to the amenity of adjoining land users and the locality.
- 6.21** The application has been prompted by the involvement of an Environmental Health Officer (EHO) who has been investigating noise complaints.
- 6.22** The additional equipment proposed i.e. upstand, cowl, silencer and works within the acoustic chamber are welcomed by the EHO who is confident that they will bring noise down to acceptable levels.
- 6.23** He also notes that the scheme should improve odours, although this does not form part of his investigations.
- 6.24** Officers are therefore satisfied that the proposed alterations to the equipment will result in a scheme which has an acceptable impact upon neighbouring properties. It is accepted that there may be some residual impact and that the equipment will be visible from some of the residential units nearby, however it is considered that this will bring any impact to

within tolerable levels, bearing in mind that some disturbance is inevitable when living in the town centre. Nevertheless a condition is attached requiring the submission of a noise survey once the equipment is installed in order to ensure that it is performing correctly and achieving the anticipated improvements upon noise emissions. A condition is also attached requiring the installation of these measures within 2 months of the decision.

6.25 Subject to the above the proposal is considered to have an acceptable impact upon neighbouring properties.

6.26 Other considerations

6.27 Public Sector Equalities Duty (PSED)

As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have “due regard” to this duty. There are three main aims:

- Removing or minimising disadvantages suffered by people due to their protected characteristics;
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people; and
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this application the planning authority has taken into consideration the requirements of the PSED.

In the context of the above PSED duties, this proposal is considered to be acceptable.

7. CONCLUSION AND RECOMMENDATION

7.1 For the reasons outlined above the proposal is considered to comply with the relevant policies and as such is recommended for approval subject to the conditions listed below.

8. CONDITIONS / INFORMATIVES

- 1 The planning permission hereby granted shall be begun not later than the expiration of three years from the date of this decision.

Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The planning permission hereby granted shall be carried out in accordance with the approved plans listed in Schedule 1 of this decision notice.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 The ventilation and extraction systems and noise suppression systems shown on the approved drawings and documentation shall be installed within 2 months of the date of this decision and shall be retained in accordance with these details at all times.

Reason: To safeguard the amenity of adjoining properties and the general locality, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 4 A noise survey shall be submitted to, and approved in writing by the Local Planning Authority within 2 months of the installation of the noise suppression measures shown on the approved plans, along with a programme for the installation of any further suppression measures required. Any such measures shall be installed in full in accordance with the programme and shall be retained as such thereafter.

Reason: To safeguard the amenity of adjacent properties and the general locality, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 5 Within 6 months of the date of this decision the extraction system which previously served the restaurant known as the Thai Emerald shall be removed in its entirety and any disturbed surfaces made good, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To preserve or enhance the character or appearance of the Conservation Area, having regard to adopted policy D1 of the Cheltenham Plan (2020), adopted policies SD4 and SD8 of the Joint Core Strategy (2017), Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and Historic Environment Good Practice Advice Note 2.

INFORMATIVES

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the application constitutes sustainable development and has therefore been approved in a timely manner.