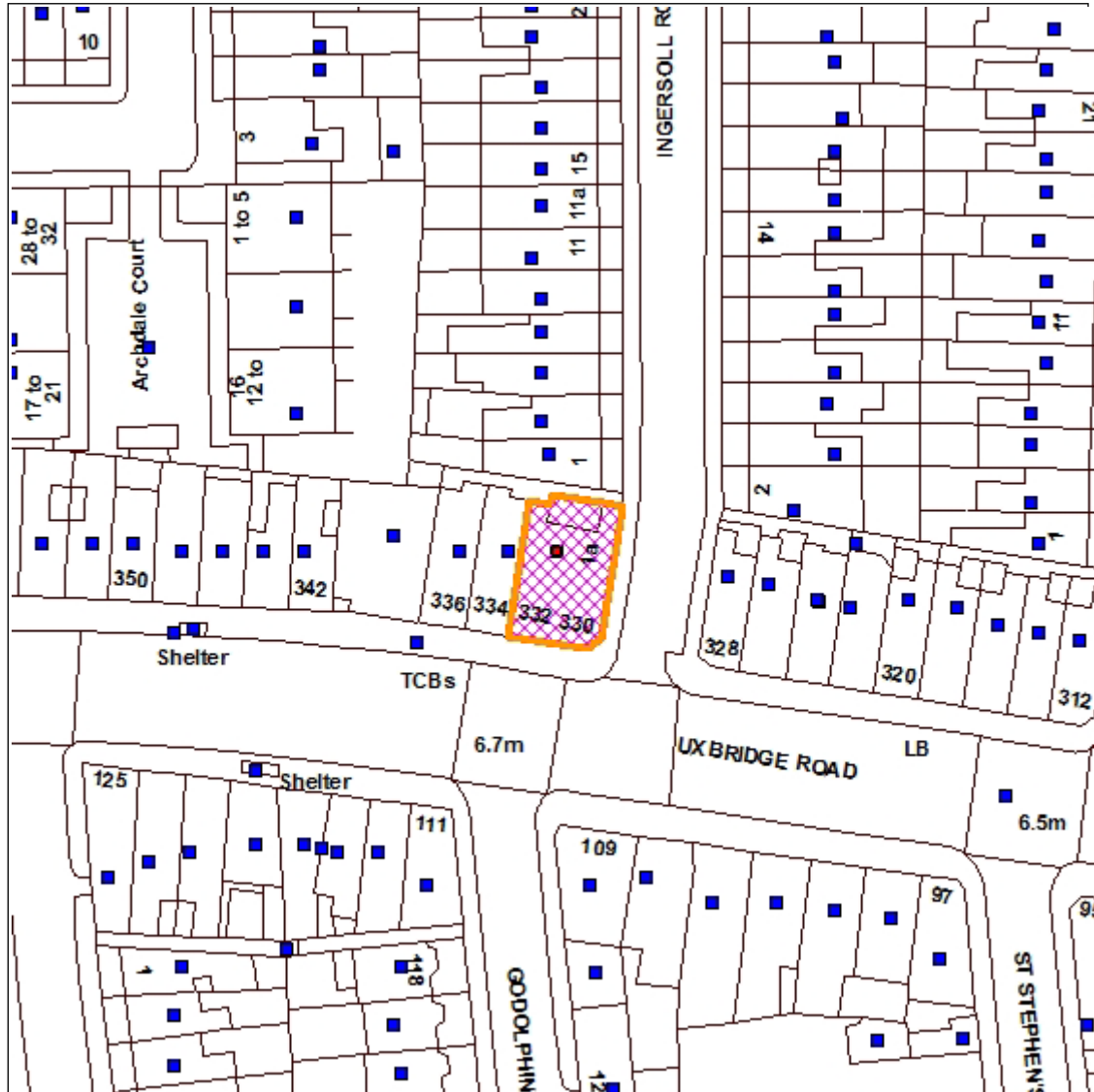

Ward: White City

Site Address:

330 - 332 Uxbridge Road London W12 7LL



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For identification purposes only - do not scale.

Reg. No:

2022/01598/VAR

Case Officer:

Gloria Dixon

Date Valid:

10.06.2022

Conservation Area:

Constraint Name: Ingersoll And Armingier
Conservation Area - Number 32

Committee Date:

18.04.2023

Applicant:

Mr Ahmad Sultan
330 - 332 Uxbridge Road Shamland Shop Hammersmith And Fulham London
W12 7LL
Greater London

Description:

Removal of condition 1 (There shall be no primary cooking taking place on the premises) of planning permission ref: 2011/02814/FUL granted 25th October 2011 for the 'Continued use of the ground floor and basement as a part cafe (Class A3) and part retail shop (Class A1)' and the continued use of the ventilation flue system (Retrospective) (Revised Description).

Drg Nos: P50AB100AB110 REV 2

Application Type:

Vary or Delete Conditions Full/Outline

Officer Recommendation:

That the Committee resolve that the Chief Planning Officer be authorised to grant permission subject to the condition(s) listed below:

That the Committee resolve that the Chief Planning Officer, after consultation with the Head of Law and the Chair of the Planning and Development Control Committee be authorised to make any minor changes to the proposed Heads of Terms of the legal agreement or conditions, which may include the variation, addition or deletion of conditions, any such changes shall be within their discretion.

Conditions:

- 1) The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed in this decision notice, other than where those details are altered pursuant to the conditions of this planning permission.

To ensure full compliance with the planning application hereby approved and to prevent harm arising through deviations from the approved plans.

- 2) Any alterations to the elevations of the existing building shall be carried out in the same materials as the existing elevation to which the alteration relates.

To ensure a satisfactory external appearance, in accordance with Policies DC1, DC4 and DC8 of the Local Plan (2018).

- 3) No removal of refuse nor bottles/ cans to external bins or areas of the development hereby approved shall be carried out other than between the hours of 09:00hrs and 21:00hrs on Monday to Friday and 09:00hrs and 22:00 on Saturdays and at no time on Sundays and Public/Bank Holidays.

To ensure that the amenity of occupiers of surrounding premises is not adversely affected by noise, in accordance with Policies CC11 and CC13 of the Local Plan 2018.

- 4) Neither music nor amplified loud voices emitted from the use hereby approved shall be audible at any residential or noise sensitive premises.

To ensure that the amenity of occupiers of surrounding premises are not adversely affected by noise, in accordance with Policies CC11 and CC13 of the Local Plan 2018.

- 5) No deliveries, collections or loading/unloading shall occur at the premises, hereby approved, other than between the hours of 08:00 till 20:00 on Monday to Saturdays and 10:00 till 16:00 on Sundays and Public/Bank Holidays.

To ensure that the amenity of occupiers of surrounding premises are not adversely affected by noise, in accordance with Policies CC11 and CC13 of the Local Plan 2018.

- 6) The ventilation flue system approved within planning permission ref 2022/02934/DET, shall be permanently retained.

To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by cooking odour, in accordance with Policy CC13 of the Development Management Local Plan.

- 7) The external sound level emitted from plant, machinery or equipment at the development hereby approved shall be lower than the lowest existing background sound level by at least 10dBA in order to prevent any adverse impact. The assessment shall be made in accordance with BS4142:2014+A1:2019 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity.

To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by noise from plant/mechanical installations/ equipment, in accordance with Policies CC11 and CC13 of the Local Plan 2018.

- 8) Within 2 months of the decision, the machinery, plant or equipment, extract/ventilation system and ducting at the development shall be mounted with proprietary anti-vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced and maintained as such.

To ensure that the amenity of occupiers of the development site/surrounding premises is not adversely affected by vibration, in accordance with Policies CC11 and CC13 of the Local Plan 2018.

- 9) Within 2 months, the extract duct on the rear elevation of the building shall be painted black, and permanently retained in this form thereafter.

To ensure a satisfactory external appearance, in accordance with Policies DC1, DC4 and DC8 of the Local Plan (2018).

- 1) The removal of condition 1 of planning permission ref 2011/02814/FUL and the continued use of the ventilation flue system is considered to have an acceptable visual impact on the property, street scene or conservation area and does not cause any undue harm to the residential amenity of neighbouring occupiers in terms of noise and exposure to fumes and odours. The proposal is therefore acceptable and in accordance with Policies, DC1, DC4, DC8, CC11 and CC13 of the Local Plan (2018) and Key Principles CAG2, CAG3, CAG5, NN1 and NN4 of the LBHF SPD (2018).

Justification for Approving the Application:

**LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS**

All Background Papers held by Andrew Marshall (Ext: 4841):

Application form received: 6th June 2022

Drawing Nos: see above

Policy documents: National Planning Policy Framework (NPPF) 2021
The London Plan 2021
LBHF - Local Plan 2018
LBHF – Planning Guidance Supplementary Planning Document
2018

Consultation Comments:

Comments from:

Crime Prevention Design Advisor - Hammersmith
Thames Water - Development Control
Crime Prevention Design Advisor - Hammersmith
Thames Water - Development Control

Dated:

28.06.22
15.06.22
21.07.22
19.07.22

Neighbour Comments:

Letters from:

38 Ingersoll Road London W12 7BD

Dated:

15.06.22

31 Ingersoll Road London W12 7BE	30.06.22
39 Ingersoll Road London W12 7BE	16.06.22
32 Ethelden Road London W12 7BG	01.07.22
42 Ethelden Road London W12 7BG	30.06.22
11 Ingersoll Road London W12 7BE	11.07.22
5 ETHELDEN ROAD LONDON W12 7BG	30.06.22
1 Ingersoll Road London W12 7BE	09.08.22
1 Ingersoll Road London W12 7BE	08.07.22
28 Ingersoll Road Shepherds Bush London W127BD	16.06.22
28 Ingersoll Road Shepherds Bush London W127BD	16.06.22
40 Ingersoll Road London W12 7BD	30.06.22
22 Ingersoll Rd London W12 7BD	28.02.23
Garden flat, 31 Ingersoll Road London W12 7BE	25.02.23
38 Ingersoll Rd London W12 7BD	27.02.23
28 Ingersoll Road London W12 7BD	26.02.23
36 Ingersoll Road London W12 7BD	02.03.23
28 Ingersoll Road Shepherds Bush London W12 7BD	26.02.23
23 Arminger Road London W12 7BA	28.02.23
4 ingersoll Rd London W12 7BD	26.02.23
30, Ethelden Rd Ethelden Rd London W12 7BG	28.02.23
21 INGERSOLL ROAD LONDON W12 7BE	26.02.23
28 Ingersoll Road Shepherds Bush London W12 7BD	26.02.23
40 Ingersoll Road London W12 7BD	27.02.23
8 Ethelden Road London W12 7BG	05.03.23
23 ingersoll road London W12 7BE	26.02.23
38 Ethelden Road London W12 7BG	26.02.23
11 Ingersoll Road London W127BE	26.02.23
38 Ingersoll Road London W12 7BD	27.02.23
24, Ingersoll Road LONDON w12 7bD	26.02.23
42 Ethelden road London W127bg	26.02.23
27 Ethelden Road London W12 7BG	26.02.23
9 ingersoll road london w12 7be	03.03.23

1.0 SITE DESCRIPTION:

- 1.1 The application site comprises a retail unit on the corner of Uxbridge Road and Ingersoll Road, currently occupied by Shamland supermarket. The premises cover the ground and basement levels. Residential flats are located on the upper floors. The upper floors of the building are accessed via entrances from the side and rear of the building.
- 1.2 The surrounding area comprises a mix of retail and restaurant uses, with residential flats on the upper floors.
- 1.3 The site does not comprise a listed building, but it is located within the Ingersoll and Armingier Conservation Area. The area is situated within Flood Zone 1.

2.0 RELEVANT PLANNING and ENFORCEMENT HISTORY:

- 2.1 Planning permission granted (2018/02103/FUL) on 17.08.2018 for : Change of use of the basement and ground floor level from a mixed use (Class A1/A3) into a restaurant (Class A3); installation of a vent duct riser at the rear of the building. (Not implemented)
- 2.2 In September 2020 it was brought to the attention of the Council that several air conditioning units were being installed to the rear of the property. A letter was sent in September 2020 advising the owner to remove the air conditioning units as they were considered unacceptable.
- 2.3 An application (ref 2020/02888/FUL) was submitted on 5th November 2020 for the 'Retention of 4no wall mounted and 4no floor mounted air conditioning units at the rear of the property.' This was refused on 16th February 2011 for the following reasons:
 - a) Retention of 4no wall mounted and 4no floor mounted air conditioning units is considered to cause an unacceptable impact upon the amenity of neighbouring occupiers. More particularly, by virtue of the failure to submit a Noise Impact Assessment, the proposal has failed to demonstrate the A/C units do not cause an unacceptable noise impact to neighbouring occupiers. Given the close proximity of the A/C units to neighbouring residential properties and the objections received concerning noise arising from this equipment, it is considered likely the A/C units causes an unacceptable noise disturbance to neighbouring occupiers. This is contrary to CC11 of the Local Plan 2018 and key principles NN1 and NN4 of the Planning Guidance 2018.
 - b) Retention of 4no wall mounted and 4no floor mounted air conditioning units is considered unacceptable with regards to visual amenity and its impact upon the Ingersoll and Armingier Conservation Area. More particularly the air conditioning units, by virtue of the number of units, design, appearance and position, are considered to be visually obtrusive, creating visual clutter to the rear of elevation to the detriment of the character and appearance of this building and the Conservation Area. This would be contrary to DC1, DC4 and DC8 of the Local Plan 2018 and key principles CAG2, CAG3, and CAG5 of the Planning Guidance 2018.

- 2.4 The council were also informed that the property was undertaking primary cooking, involving cooking food to sell in the supermarket, which was causing a nuisance to neighbouring properties from the odours and fumes, as there was no proper ventilation flue system installed.
- 2.5 Planning permission ref 2011/02814/FUL was approved in October 2011 for the 'Continued use of the ground floor and basement as a part cafe (Class A3) and part retail shop (Class A1).' This permission was retrospective and therefore was implemented at the time. The property is now solely a retail shop and the part cafe (Class A3) use has ceased. However, as this permission was implemented Condition 1 is considered relevant as follows;

'There shall be no primary cooking taking place on the premises.

To ensure that the amenity of occupiers of surrounding premises is not adversely affected, in accordance with Policies EN20A, EN20B and EN21 of the Unitary Development Plan, as amended 2007 . '

- 2.6 It was confirmed through a site visit in November 2020 that primary cooking was taking place on site. This was also confirmed by their planning agent who stated food is cooked within the basement and this precooked food is sold as part of the shop's products. The planning agent was told that the owners were in breach of condition 1 of 2011/02814/FUL and was advised to stop all primary cooking on site.
- 2.7 As the primary cooking was still taking place and the 4no wall mounted and 4no floor mounted air conditioning units at the rear of the property remained in situ, an enforcement notice was served on the premises (ref: 2020/00784/COMPWK) for: 'Without planning permission, the installation of 4no wall mounted and 4no floor mounted air conditioning units at the rear of the property and primary cooking on site.' With the following reasons:
- a) The retention of 4no wall mounted and 4no floor mounted air conditioning units is considered unacceptable with regards to visual amenity and its impact upon the Ingersoll and Arminger Conservation Area. More particularly the air conditioning units, by virtue of the number of units, design, appearance and position, are considered to be visually obtrusive, creating visual clutter to the rear of elevation to the detriment of the character and appearance of this building and the Conservation Area. This is contrary to DC1, DC4 and DC8 of the Local Plan 2018 and key principles CAG2, CAG3, and CAG5 of the Planning Guidance 2018.
 - b) The retention of 4no wall mounted and 4no floor mounted air conditioning units is considered to cause an unacceptable impact upon the amenity of neighbouring occupiers. Given the close proximity of the A/C units to neighbouring residential properties and the objections received concerning noise arising from this equipment, it is considered likely the A/C units causes an unacceptable noise disturbance to neighbouring occupiers. This is contrary to CC11 of the Local Plan 2018 and key principles NN1 and NN4 of the Planning Guidance 2018

- c) Primary cooking on the premise without an adequately assessed ventilation system has the potential to cause unacceptable levels of odours, and fumes. Due to the lack of a proper ventilation system, the proximity of the vents to residential windows and the frequency of cooking, it is considered that the primary cooking taking place on the premise has a detrimental impact on the residential amenity of neighbouring occupants, specifically properties 1A and 1B Ingersoll Road, in terms of noise and exposure to fumes and odours. This is contrary to CC11 and CC13 of the Local Plan 2018 and key principles NN1 and NN4 of the Planning Guidance 2018.

2.8 The owner was given 4 months to comply with the enforcement notice. The steps to comply were:

- a) Remove from the land the 4no wall mounted and 4no floor mounted air conditioning units located to the rear of the property.
- b) Cease primary cooking within the premises.
- c) Remove from the land, the cooking facilities, located within the rear section of the basement including oven, gas hob and deep fat fryer.

2.9 In August 2021, an application (ref 2021/02822/FUL) was submitted for 'Retention of 4no wall mounted and 4no floor mounted air conditioning units at the rear of the property; installation of acoustic screening around the air conditioning units at the rear of the property (Amended description).' This was approved on 22nd March 2023 and the acoustic enclosure was installed. The council were satisfied that this part of the enforcement notice had been complied with.

2.10 The applicant's agent was informed that if they wanted to apply to undertake primary cooking on the premises, they would need to submit an application to remove condition 1 of PP ref 2011/02814/FUL.

2.11 In March 2022, an application (ref: 2022/00664/FUL) was submitted for 'Alterations to the existing ventilation system above the roof of ground floor back addition.'. This was approved 31st August 2022 subject to conditions. As primary cooking was still taking place on the premises, condition 6 was attached which read:

'Within 2 months of the decision, details shall be submitted to the Council, of the installation, operation, and maintenance of the odour abatement equipment and extract system, including the height of the extract duct and vertical discharge outlet, in accordance with Appendix 4G of the LBHF Planning Guidance Supplementary Planning Document - February 2018. Once approved, the development shall be implemented within 3 months and thereafter be permanently retained.

Reason: To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by cooking odour, in accordance with Policy CC13 of the Development Management Local Plan.'

2.12 In June 2022, an application (ref: 2022/01598/VAR) was submitted for 'Removal of condition 1 (There shall be no primary cooking taking place on the premises) of planning permission ref: 2011/02814/FUL granted 25th October 2011 for the 'Continued use of the ground floor and basement as a part cafe (Class A3) and part retail shop (Class A1)' and the continued use of the ventilation flue system (Retrospective) (Revised Description).' This application is the subject of this report.

2.13 In October 2022, an application (ref: 2022/02934/DET) was submitted for 'Submission of details of the installation, operation, and maintenance of the odour abatement equipment and extract system, including the height of the extract duct and vertical discharge outlet pursuant to condition 6 of planning permission ref: 2022/00664/FUL granted 31st August 2022.' This was approved in December 2022.

2.14 A site visit was undertaken on 12th January 2023 which confirmed a flue had been erected. The council are aware that a small top part of the flue had not been installed strictly in accordance with the plans. However, as it is minimal alteration, and has no significant impact on visual amenity, the change was considered to be acceptable and it was not considered expedient to take enforcement action. . The existing and proposed plans of pending application ref 2022/01598/VAR were revised to show the flue in its current state.

3.0 PROPOSAL

3.1 Removal of condition 1 (There shall be no primary cooking taking place on the premises) of planning permission ref: 2011/02814/FUL granted 25th October 2011 for the 'Continued use of the ground floor and basement as a part cafe (Class A3) and part retail shop (Class A1)' and the continued use of the ventilation flue system (Retrospective) (Revised Description).

3.2 This application follows on from the 2011 application ref 2011/02814/FUL for 'Continued use of the ground floor and basement as a part cafe (Class A3) and part retail shop (Class A1). This application seeks to remove condition 1 which reads:

'There shall be no primary cooking taking place on the premises.

To ensure that the amenity of occupiers of surrounding premises is not adversely affected, in accordance with Policies EN20A, EN20B and EN21 of the Unitary Development Plan, as amended 2007.'

4.0 CONSULTATION RESPONSES (INTERNAL AND EXTERNAL):

+ Public Consultation

4.1 The planning application has been advertised by means of Site Notice and Press Advert and 85 individual notification letters have been sent to the occupiers of neighbouring properties. 23 objections have been received. Grounds of objection can be summarised as follows:

- The parking for visitors and deliveries is already not sufficient, introducing a café would exacerbate these issues.
- There are many obstructions to the highway from waste, trolleys and food boxes.
- The shops waste management is currently not acceptable and introducing a café would exacerbate these issues.
- There are already enough cafes/restaurants in the area
- If we allow another café, there will be increased traffic and visitors to an area which is already struggling to cope
- Large awnings on front and side elevation
- Concerns with noise and odours from the previous ventilation system (July 2022)
- Flue to the rear has not been built in accordance with planning permission.

Officers' response:

- This application is not proposing to change the use to a café. The application is proposing to continue the current use by implementing primary cooking (retrospectively) to allow the applicant to prepare food to sell in the shop.
- Littering, waste disposal, parking, traffic and obstruction to the highway are not material considerations in relation to this application. These concerns have been passed on to the relevant teams.
- The awnings erected on the front and side elevation are subject to a separate enforcement investigation. An enforcement notice ref 2021/00481/COMPWK was served, and an appeal is in progress.
- The flue to the rear has not been built in accordance with planning permission ref 2022/02934/DET. However, the alteration is considered minimal, and it would not be considered expedient to take enforcement action at this time.
- The impact on residential amenity will be discussed in the report below.

+ Consultee Consultation

Internal

Policy And Spatial Planning Group - No comments received.

Highways and Engineering Division - No comments on the proposal

The Waste Management Team - No comments received.

Air Quality - No comments received.

Public Protection and Safety - No objections to the proposal subject to conditions

External

Crime Prevention Design Advisors - No comments on the proposal

Thames Water - No comments on the proposal

5.0 POLICY FRAMEWORK

5.1. The statutory development plan comprises the London Plan (2021), the Local Plan (2018) and the Planning Guidance Supplementary Planning Document - 2018 (hereafter referred to as Planning Guidance SPD). A number of strategic and local supplementary planning guidance and other documents are also material to the determination of the application.

National Planning Policy Framework (NPPF)

5.2. The NPPF came into effect on 27 March 2012 and was subsequently revised in 2019 and more recently in 2021 and is a material consideration in planning decisions. The NPPF, as supported by the Planning Practice Guidance (PPG), sets out national planning policies and how these are expected to be applied.

5.3. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up to date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise

The London Plan

- 5.4. The London Plan was published in March 2021 and is the Spatial Development Strategy for Greater London. It sets out a framework for how London will develop over the next 20-25 years.

The Local Plan

- 5.5. The Council adopted the new Local Plan on 28 February 2018. The policies in the Local Plan together with the London Plan make up the statutory development plan for the borough. The Planning Guidance Supplementary Planning Document (SPD) (February 2018) is also a material consideration in determining planning applications. It provides supplementary detail to the policies and is organised around key principles.

6. PLANNING CONSIDERATIONS

- 6.1. The main planning considerations in the assessment of this application include the following:-
- Impact on the character and appearance of the host building and the Ingersoll and Armingers Conservation Area
 - Residential amenity of neighbouring occupiers

CONSERVATION AND DESIGN

- 6.2 Local Plan Policies DC1 and DC4 are particularly relevant to the assessment of design. Policy DC1 (Built Environment) states that all development within the borough should create a high-quality urban environment that respects and enhances its townscape context and heritage assets. There should be an approach to accessible and inclusive urban design that considers how good design, quality public realm, landscaping and land use can be integrated to help regenerate places. Policy DC4 (Alterations and Extensions, Including Outbuildings) sets out to ensure that a high standard of design will be achieved in all alterations and extensions to existing buildings. Policy DC8 seeks to protect the character and appearance of heritage assets. Key Principle CAG2 and CAG3 of Planning Guidance SPD (2018) provide guidance on urban design and new development in conservation areas.
- 6.3 The proposal seeks to retain the flue ducting installed to the rear of the property. This flue was approved within planning permission ref 2022/02934/DET for 'Submission of details of the installation, operation, and maintenance of the odour abatement equipment and extract system, including the height of the extract duct and vertical discharge outlet pursuant to condition 6 of planning permission ref: 2022/00664/FUL granted 31st August 2022.'
- 6.4 Officers note that the flue was not built exactly in accordance with the approved drawings. However, as the alteration is considered minimal, it was not considered expedient to take enforcement action. Therefore, the drawings for this application were revised to show exactly what has been built on site.
- 6.5 Due to the size, design and location of the ventilation flue system, it is considered to have an acceptable visual impact on the property, street scene and The Ingersoll and Armingers conservation area.

RESIDENTIAL AMENITY

- 6.6 Local Plan policy CC11, supported by Key Principles NN1 and NN4, states that any noise (including vibration) impacts of development will be controlled by implemented mitigation measures. It is required for developments that have the potential to increase existing noise or vibration levels either due to location, use, activity or installation must be submitted with a noise and/or vibration survey and report prepared by a competent professional acoustician who is a member of the Institute of Acoustics to support the proposal. Policy CC13 states that the Council will, where appropriate, require mitigation measures if a nuisance (such as smoke, smell, or noise) would be likely to occur.
- 6.7 This application proposes to remove condition 1 from planning permission ref 2011/02814/FUL, to continue primary cooking on the premises. The premises have been in breach of this condition since at least November 2020, when the council were made aware that the tenants were cooking food to sell in the shop. It was found that due to the lack of a proper ventilation system, the proximity of the vents to residential windows and the frequency of cooking, it was considered that the primary cooking taking place on the premise had a detrimental impact on the residential amenity of neighbouring occupants.
- 6.8 The applicant has now installed a proper ventilation system. This system was assessed by the Council's Environmental Protection Officer and based on the details set out in 2022/02934/DET, they had no concerns regarding the impact on neighbouring properties in terms of noise and exposure to fumes and odours. Therefore, the council raise no objections regarding the removal of condition 1 of planning permission ref 2011/02814/FUL which includes the continued use of the kitchen facilities for primary cooking on the premises.

7. CONCLUSION

- 7.1. The removal of condition 1 of planning permission ref 2011/02814/FUL and the continued use of the ventilation flue system is considered to have an acceptable visual impact on the property, street scene or conservation area and does not cause any undue harm to the residential amenity of neighbouring occupiers in terms of noise and exposure to fumes and odours. The proposal is therefore acceptable and in accordance with Policies, DC1, DC4, DC8, CC11 and CC13 of the Local Plan (2018) and Key Principles CAG2, CAG3, CAG5, NN1 and NN4 of the LBHF SPD (2018).

8. RECOMMENDATION

- 8.1. Grant planning permission