

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 21 November 2017	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	28 Brewer Street, London W1F 0SR		
<b>Proposal</b>	Installation of kitchen extractor duct at rear second floor level (retrospective application).		
<b>Agent</b>	Hunter Page Planning		
<b>On behalf of</b>	Mr Pawat Ruengathitskun		
<b>Registered Number</b>	17/06144/FULL	<b>Date amended/ completed</b>	17 July 2017
<b>Date Application Received</b>	11 July 2017		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Soho		

## 1. RECOMMENDATION

Grant conditional permission.

## 2. SUMMARY

The application site comprises an unlisted building located within the Soho Conservation Area and the West End Stress Area. The ground and basement floors are in lawful use as a restaurant (Class A3), whilst the first and second floors are in use as offices (Class B1).

Retrospective permission is sought to install a full-height kitchen extract unit to the rear of the building for use in association with the lawful restaurant. The flue is proposed to operate between 11.00 and 00.00 daily. The current flue replaces a lawful flue sited in a similar location.

The main issues for consideration are:

- Whether the flue safeguards the amenity of neighbouring residents in terms of noise and odour.
- Whether the flue would preserve or enhance the character and appearance of Soho Conservation Area.

The flue's location to the rear of the building and in an area where there are other items of plant means that it would not be visually intrusive and therefore preserve the character and appearance of the Soho

Conservation Area.

Whilst the concerns of local residents in terms of noise and vibration are understood given the long history of complaints from the operation of a flue in this location, the applicant has demonstrated that the replacement flue does not result in a noise nuisance through complying with the relevant criterion within UDP Policy ENV 7.

Despite the termination point of the flue being lower than some neighbouring residential properties, the flue is also considered to be acceptable from an odour dispersal perspective as: (i) It runs to the full height of the host building; (ii) It replaces a flue of similar height; and (iii) The affected neighbouring residential properties are a reasonable distance from the flue.

For these reasons the proposal is considered to comply with the policies contained within Westminster's City Plan (2016) and the Unitary Development Plan (UDP) (2007). It is accordingly recommended that permission be granted.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS

Front elevation:



Rear elevation and extract flue:

2 Sep 2016, 08:49:16



## 5. CONSULTATIONS

### SOHO SOCIETY:

- No objection provided the City Council's Environmental Health Officer is satisfied.

### ENVIRONMENTAL HEALTH:

- No objection on environmental noise or nuisance grounds.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 38

Total No. of replies: 4

No. of objections: 4

No. in support: 0

### Amenity:

- Noise.
- Particulates and odour from the flue.
- The submitted acoustic report relies on background noise data from 2015 rather than immediately before the application was submitted.
- Requests that conditions are imposed securing automatic timers to ensure that the duct is switched off at the correct time and that odour attenuation measures are conditioned.
- The duct should be far higher in order to avoid noise echoing around the buildings to the rear and harming the amenity of neighbouring properties.

### Other:

- Welcomes that this duct, erected in 2015 to deal with the previous extract duct and equipment which was which was causing an environmental hazard due to noise and odours, is now the subject of the planning process.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application site comprises an unlisted building comprised of basement, ground and two upper floors. The site is located within the Soho Conservation Area, the Core Central Activities Zone and the West End Stress Area.

The building is lawfully in use as a restaurant (Class A3) at ground and basement levels, with separate access to the upper floors which are in use as offices (Class B1).

The rear of the application site backs onto a courtyard made of the eastern flank of the Soho car park, the southern elevation of Salvo House, 20 Peter Street and the buildings on the western side of Green's Court (Nos. 6-10). Records indicate that the nearest residential properties are:

- 8 flats within Salvo House, 20 Peter Street.

- 11 x flats within Power Mill House, 6 Green's Court.
- 8 x flats within 8, 9 and 10 Green's Court.
- 2 x flats within 22 Brewer Street.

## 6.2 Recent Relevant History

A review of the planning history of this site reveals that permission was granted on 14 August 1985 for the installation of a new shopfront (Ref: 85/00780/FULL). The only condition imposed required, '*All external parts of the flues if not stainless steel shall be painted gloss black*'. This condition was imposed for design and conservation reasons.

Despite the application being advertised as, 'New shopfront and new duct', correspondence on the file from the agent indicates that the works did not involve external alterations to the external ventilation duct (apparently *in situ* for approximately 20 years prior to the application) but solely related to new internal connections to this existing duct. It is not known why the City Council imposed a condition securing the finish of external flues when no flues were proposed.

The drawings approved in August 1985 supports the contention that there was a long-standing flue in this location, with an annotation on the approved basement plan stating, '*350 x 500mm extract duct to above shown dotted*' in the location of the current extract flue and the ground floor plan showing a '*riser duct*' in the correct location.

The City Council also has photographic records of part of a galvanised steel flue in this location taken on 28 July 2011. It is therefore concluded that an extract flue has been located to the rear of the site for many years before being replaced by the current flue. The previous flue is therefore the lawful 'fall back' position.

## 7. THE PROPOSAL

The application seeks retrospective permission for the installation of a replacement full-height extract flue rising up the rear of the host building. The applicant states that the unauthorised flue was installed in November 2015 but the City Council has photographs taken from 19 March 2014 showing the existing flue *in situ* (albeit without the black lagging that is currently wrapped around the flue).

The application follows complaints made to the City Council's Planning Enforcement Team on 2 May 2017 by one of the objectors to the current application.

A number of complaints from local residents were also made to the City Council between 3 June 2009 and 13 October 2015 in respect to noise and odours from the flue to the rear of this building, although no statutory nuisance was identified by the City Council. Since October 2015, there have been no complaints.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

The application raises no land use issues. The planning unit at ground and basement floors that the flue serves has long been a restaurant (Class A3) and is the lawful use of this part of the building.

### **8.2 Townscape and Design**

The extract flue is not visible from the street and is in an area that already contains a large amount of plant. Furthermore, it is no more visually intrusive than the flue it replaced and therefore would preserve the character and appearance of the Soho Conservation Area, in accordance with City Plan Policies S25 and S28, and UDP Policies DES 1, DES 5 and DES 9.

### **8.3 Residential Amenity**

The application has generated four objections from residents living within three of the flats within Salvo House, 20 Peter Street. The same residents have made complaints to the City Council in respect to noise and odour from the premises between 3 June 2009 and 13 October 2015 in respect to the current flue and the flue that it replaced. Objections centre on noise and odour from the flue and concerns that the submitted acoustic report relies on background noise data that is out-of-date. The rear of Salvo House is approximately 15m to the north of the flue.

It is correct that the background noise assessment was undertaken in 2015 rather than immediately prior to the submission of the application. However, Environmental Health has recently carried out its own background noise measurements in respect to an alleged breach of planning control in a neighbouring building. Environmental Health found that, with the flue at No. 28 Brewer Street turned off, its background readings were similar to those taken in 2015. Environmental Health therefore has no concern over the robustness of the background noise measurements.

Environmental Health has examined the acoustic report submitted by the applicant and the objections received and raises no objection to the retention of the unauthorised flue from a noise perspective. Environmental Health concludes that the noise from the flue is likely to meet the relevant criterion within UDP Policy ENV 7 over the period of the flue's operation (11.00 to 00.00 daily).

Given the history of noise from the former flue on this site, it is understandable that local residents are concerned about its replacement. It is understood that when the flue was initially installed no noise mitigation was included. Since then an in-line attenuator has been installed to mitigate the noise emitted from the flue. The technical analysis undertaken by Environmental Health that the flue would not cause a material loss of amenity to neighbouring residents was evident when officers visited the site and found that the flue was barely audible when switched on. This was at a distance of less than half of that to the rear of Salvo House.

In respect to odour dispersion, the host building is only three storeys above ground compared to the five storey building making up the Soho Car Park, the four storey terrace on the west side of Green's Court and the five storey buildings in the form of Salvo House and Power Mill House. There are therefore residential properties which are higher than the termination point of the extract flue. This raises concern that the flue may result in odour impacts. Environmental Health, however, raise no objection to the height of the proposed flue, noting that it rises above the eaves of the host building. Furthermore, Environmental Health considers that the distance between the flue and the objectors' flats will mean that the flue will operate without causing an unacceptable loss of residential amenity as a result of odours.

Finally, the installation of the replacement flue affords the City Council with an opportunity to impose conditions in respect to maximum noise emissions and hours of operation. The 'fall back' position of reinstating the previous flue would result in a flue that could operate without any control from a planning perspective. Whilst it is recognised that the previous flue resulted in a number of neighbour complaints, the applicant has demonstrated that the replacement flue includes measures to ensure that the amenity of neighbouring residents will not be harmed by its operation. This is reflected in the lack of complaints regarding the flue's operation in the last two years.

#### **8.4 Transportation/Parking**

The proposal raises no transportation or parking issues.

#### **8.5 Economic Considerations**

The flue will allow the continued operation of the restaurant which is economically beneficial.

#### **8.6 Access**

The proposal does not affect the access arrangements to the restaurant.

#### **8.7 Other UDP/Westminster Policy Considerations**

The submitted drawings show the reconfiguration of some of the condensing units on the first floor flat roof of No. 26a Brewer Street. These works are unconnected to the restaurant at the application site and are not assessed in the submitted acoustic report. A condition is proposed stating that, notwithstanding what is shown on the proposed drawings, this permission does not authorise new or replacement condensing units in this location.

#### **8.8 London Plan**

This application raises no strategic issues.

#### **8.9 National Policy/Guidance Considerations**

The City Plan and UDP policies referred to in the consideration of this application are considered to be consistent with the NPPF unless stated otherwise.

### 8.10 Planning Obligations

The proposal does not generate any requirement for planning obligations.

### 8.11 Environmental Impact Assessment

The proposal is of insufficient scale to be assessed under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

### 8.12 Other Issues

None.

## 9. BACKGROUND PAPERS

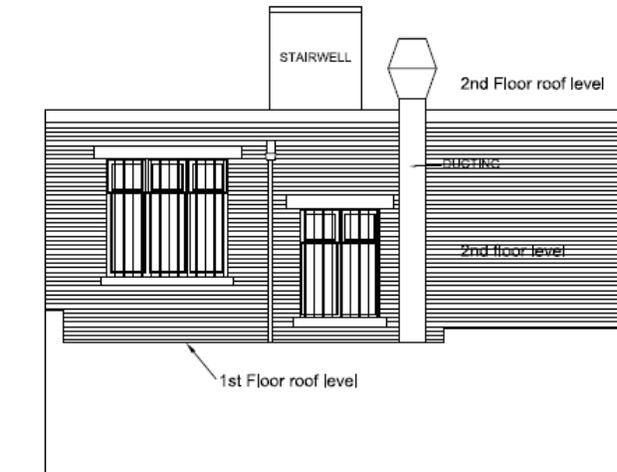
1. Application form
2. Letter from the Soho Society, dated 10 August 2017
3. Response from Environmental Health, dated 18 July 2017
4. Response from Environmental Health, dated 18 August 2017
5. Letter from occupier of Flat 8, 20 Peter street, dated 6 August 2017
6. Letter from occupier of 3 Salvo House, 20 Peter Street, dated 7 August 2017
7. Letter from occupier of 2 Salvo House, 20 Peter Street, dated 13 August 2017
8. Letter from occupier of Flat 2, Salvo House, 20 Peter Street, dated 13 August 2017

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: MARK HOLLINGTON BY EMAIL AT [mhollington2@westminster.gov.uk](mailto:mhollington2@westminster.gov.uk)

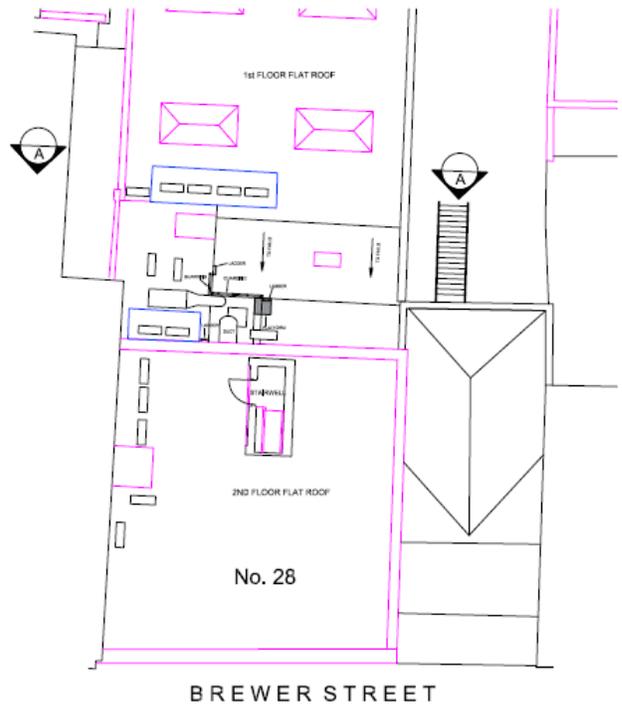
10. KEY DRAWINGS

Proposed rear elevation and roof plan:



Proposed Elevation A-A

Rear Elevation of 28 Brewer Street  
scale 1:50 @ A3



BREWER STREET

**DRAFT DECISION LETTER**

**Address:** 28 Brewer Street, London, W1F 0SR

**Proposal:** Installation of kitchen extractor duct at rear second floor level (retrospective application).

**Reference:** 17/06144/FULL

**Plan Nos:** 4734/002.

**Case Officer:** Mark Hollington

**Direct Tel. No.** 020 7641 2523

**Recommended Condition(s) and Reason(s)**

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

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

- 2 (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant,

including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:

- (a) A schedule of all plant and equipment that formed part of this application;
- (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
- (c) Manufacturer specifications of sound emissions in octave or third octave detail;
- (d) The location of most affected noise sensitive receptor location and the most affected window of it;
- (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;
- (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
- (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission.

- 3 The plant/machinery hereby permitted shall not be operated except between 11.00 hours and 00.00 hours daily. Automatic timers shall be installed within two months of the date of this permission that ensure compliance with these hours and these shall be maintained for as long as the flue is in situ.

Reason:

To safeguard the amenity of occupiers of noise sensitive properties and the area generally by ensuring that the plant/machinery hereby permitted is not operated at hours when external background noise levels are quietest thereby preventing noise and vibration nuisance as set out in S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007.

- 4 No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.

Reason:

As set out in ENV6 (2) and (6) of our Unitary Development Plan that we adopted in January 2007, to ensure that the development is designed to prevent structural transmission of noise or vibration.

- 5 Notwithstanding what is shown on approved drawings 4734/002, this permission does not authorise the installation of new or replacement condensing units on top of the first floor flat roof of No. 26a Brewer Street to the rear of the site.

Reason:

These works have not been assessed in submitted acoustic report and therefore the City Council has been unable to assess whether the noise environment of people in noise sensitive properties is protected, in accordance with Policies ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007 and as set out in S32 of Westminster's City Plan (November 2016).

**Informative(s):**

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (November 2016), Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.
- 2 Conditions 2 and 3 control noise from the approved machinery. It is very important that you meet the conditions and we may take legal action if you do not. You should make sure that the machinery is properly maintained and serviced regularly. (I82AA)

Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.