

Parish:	Burnham Market	
Proposal:	VARIATION OF CONDITION 1 OF PLANNING PERMISSION 20/00283/F: Variation of conditions 1 and 6 and removal of condition 5 of planning permission 18/01796/F: VARIATION OF CONDITION 3: of planning permission 17/00984/F - Proposed change of use from ground floor retail (A1) and first floor residential (C3) to two storey restaurant (A3) including extension and alterations	
Location:	No.TWENTY 9 29 Market Place Burnham Market Norfolk PE31 8HF	
Applicant:	Mr T Roberts	
Case No:	23/00507/F (Full Application)	
Case Officer:	Mrs N Osler	Date for Determination: 12 May 2023 Extension of Time Expiry Date: 4 August 2023

Reason for Referral to Planning Committee – Officer recommendation is contrary to Parish Council recommendation and referred by Sifting Panel.

Neighbourhood Plan: No, although we are awaiting the Examiner's report in to the Draft Burnham Market Neighbourhood Plan as to whether the basic conditions have been met.

Case Summary

The application seeks to vary condition 1 of planning permission 20/00283/F to regularise the flue design which differs from that approved and to increase the operating hours of the flue to better align with the operating hours of the business.

The application is made under Section 73A of the Town and Country Planning Act for development that has been carried out without complying with some condition subject to which planning permission was granted, i.e., to retain what they had done.

The site lies within Burnham Market Conservation Area and No.TWENTY 9 is a Grade II Listed Building.

Key Issues

Principle of Development
Neighbour Amenity
Impact on the Historic Environment
Crime and Disorder
Other Material Considerations

Recommendation

APPROVE

THE APPLICATION

The application seeks to vary condition 1 of planning permission 20/00283/F to regularise the flue design which differs from that approved and to increase the operating hours of the flue to better align with the operating hours of the business.

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SUPPORTING CASE

With relation to this application, we understand that we have full support from the Planning Department but that Burnham Market Parish Council object.

The application is to regularize the design of the extraction flue system on the external elevation of the building to satisfy the Conservation team and I am confused why the issue of operating times for this flue is under review considering we are not asking for any different operating times as to those approved back in 2017 under application 17/00984/F.

The flue system is of the same technical design as the original but with improved silencers, more efficient and quieter fans and better odour controls now installed.

The condition for the operation of the extraction between 0830hrs-1100hrs, 1300hrs-1500hrs and 1800hrs-2100hrs is unrealistic as although they are our service times the preparation of food for those service times is done in between and therefore extraction is still required. Commercial kitchen stoves and hobs etc. cannot be operated without extraction in case of a build up of gases of many types which could be fatal to life. In a letter from CSNN it is stated that these restrictions are unreasonable, and no such restrictions featured on any of the earlier applications and approvals.

Also, it has to be understood that all extraction systems with gas interlocks have inbuilt safety systems which rely on the extraction to exhaust at any time in the event of a gas leak, build up of CO₂, build up of CO and other hazardous gases and bi-products of cooking for the safety of guests and staff within the building.

As well as this extraction systems have a 30-minute over-run facility to ensure no noxious gases remain within the building once cooking processes are completed.

This is not an application to vary our opening or service times, they have not changed since 2017, it is merely to seek approval for an aesthetically acceptable flue system which blends in with the building and yet provides suitable access for 6 monthly maintenance and cleaning for the correct and efficient operation of the extraction which in turn provides cleaner emissions and reduction in noise pollution.

PLANNING HISTORY

21/02502/F: Application Permitted: 24/02/22 - Proposed first floor extension to outbuilding store ancillary to bar and restaurant to provide management office

20/00283/F: Application Permitted: 22/10/20 - Variation of conditions 1 and 6 and removal of condition 5 of planning permission 18/01796/F: VARIATION OF CONDITION 3: of

planning permission 17/00984/F - Proposed change of use from ground floor retail (A1) and first floor residential (C3) to two storey restaurant (A3) including extension and alterations

18/01796/F: Application Permitted: 10/12/18 - VARIATION OF CONDITION 3: of planning permission 17/00984/F - Proposed change of use from ground floor retail (A1) and first floor residential (C3) to two storey restaurant (A3) including extension and alterations

17/00984/F: Application Permitted: 18/07/17 - VARIATION OF CONDITION 3 OF PLANNING PERMISSION 16/02002/F: Proposed change of use from ground floor retail (A1) and first floor residential (C3) to two storey restaurant (A3) including extension and alterations

17/00761/LB: Application Permitted: 13/06/17 - Proposed signage and lighting details to principal elevation including service/prep area and internal alterations

16/02003/LB: Application Permitted: 10/02/17 - Listed Building Application: Proposed change of use from ground floor retail (A1) and first floor residential (C3) to two storey restaurant (A3) including extension and alterations

16/02002/F: Application Permitted: 10/02/17 - Proposed change of use from ground floor retail (A1) and first floor residential (C3) to two storey restaurant (A3) including extension and alterations

2/00/0469/F: Application Permitted: 10/05/00 - Insertion of door and window in west elevation and French doors in north elevation with incidental demolition

2/00/0203/LB: Application Permitted: 29/03/00 - Insertion of door and window in west elevation and French doors in north elevation with incidental demolition

2/99/0190/F: Application Permitted: 28/05/99 - Construction of detached garage

2/98/0078/CU: Application Permitted: 23/02/98 - Change of use from residential to residential and retail (class A1)

RESPONSE TO CONSULTATION

Parish Council: OBJECT

21.06.2023 (following additional information and discussions between CSNN and the applicant) The restrictions were put in place to ensure that neighbouring residential properties were not unduly affected by the noise and disruption from the premises. There have been a number of complaints by residents of anti-social and unruly behaviour by patrons of the establishment. The PC believes that any removal of the existing conditions would only seek to exacerbate this situation.

04.05.2023 (original comments) The Parish Council can appreciate the need for amended planning permission to accommodate safety requirements, but there is a risk that this becomes a more casual licence to operate. We propose that an 'hours run' meter be installed on the system, a similar approach is taken by the Environment Agency in the way it licenses some industrial premises. The Parish Council would like to see full risk assessments.

The Parish Council opposes any attempt to extend the hours of use for commercial reasons. A balance must be struck re business advantage/inconvenience to residents. It is felt that the

permitted hours already extant should remain, as the Parish Council feels that the current arrangements are fair to both parties. The Parish Council has received complaints from residents regarding excessive noise and anti-social behaviour.

CSNN: NO OBJECTION the following are our requested conditions and informative:

The kitchen extraction system shall only operate between the hours of 08:30 until 21:00 hours daily, with a maximum additional 30 minute over run time until no later than 21:30 hours when required. It is however acknowledged that there could be 'emergency situations', the system could automatically cut in for example in CO and / CO2 levels reach an unsafe level, where this may be breached – if complaints were received, evidence should be available, should investigations occur, regarding such scenarios)

The kitchen extraction system shall be deep cleaned and serviced at six monthly intervals.

Re-attachment of conditions 2, 3, 4 and 5 of 20/00283/F.

EPA informative

Environmental Protection Act 1990 – Statutory Nuisance

Under the Environmental Protection Act 1990, the Local Authority has a duty to investigate complaints of nuisance and should a complaint be received, irrespective of planning consent, the Local Authority may (on determination of a Statutory Nuisance) serve a legal notice requiring any said nuisance to be abated. Failure to comply may result in prosecution. Further advice may be sought from the Community Safety and Neighbourhood Nuisance Team on this matter where necessary.

Conservation: NO OBJECTION to the amended plans. I do not foresee any issues with the LB application once it is validated.

Local Highway Authority: NO OBJECTION In relation to highways issues only, as this proposal does not affect the current traffic patterns or the free flow of traffic, that Norfolk County Council does not wish to resist the variation of condition 1.

Environmental Quality: NO OBJECTION The Proposed Variation to condition 1 relates to the hours of operation and design of the cooking extraction flue.

We have no further comments regarding Contaminated land.

Licensing Team: NO OBJECTION The flue operation system is not a licensing issue. Therefore, no comments to make.

REPRESENTATIONS: One letter of concern was received. However, the author did not want his comments to be put in the public domain. Notwithstanding this it can be confirmed that the concerns raised did not relate to the proposed variation to the operating hours of the flue.

LDF CORE STRATEGY POLICIES

CS01 - Spatial Strategy

CS02 - The Settlement Hierarchy

CS08 - Sustainable Development

CS10 - The Economy

CS12 - Environmental Assets

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016

DM1 – Presumption in Favour of Sustainable Development

DM2 – Development Boundaries

DM9 - Community Facilities

DM15 – Environment, Design and Amenity

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)
National Design Guide 2021

PLANNING CONSIDERATIONS

The main considerations are:

- Principle of Development
- Neighbour Amenity
- Impact on the Historic Environment
- Crime and Disorder
- Other Material Considerations

Principle of Development

The application relates to development associated with an existing rural enterprise and community facility. The NPPF and Development Plan strongly support such applications.

Paragraph 81 of the NPPF states that *planning decisions should help create the conditions in which businesses can invest, expand and adapt*, and states that *Significant weight should be placed on the need to support economic growth and productivity, taking into account local business needs...* With Paragraph 84 requiring planning decisions *enable d) the retention and development of accessible local services and community facilities such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.*

This is reiterated in Development Plan Policy DM9 which states that *the Council will encourage the retention of exiting community facilities...*

However, such support should not come at the detriment of other considerations such as neighbour amenity and the historic environment.

At the time of writing this report, the Neighbourhood Plan has not passed examination and the Local Planning Authority cannot be certain that the basic conditions have been met. However, it is noted that the Examiner's Draft Report is imminent (anticipated late July),

results from the previous consultations are available and the Plan can therefore be considered to be at a relatively advanced stage having been published and consulted on. The Plan will not have full weight in the determination of planning applications until it is passed at referendum.

As such there is strong support for development that assists existing rural enterprises and community facilities at a national and local level.

Additionally, the principle of development has been established by permission granted under application 20/00283/F which was itself a variation of a number of previous consents that ultimately provided planning permission for the restaurant as well as other extensions and alterations to the property.

The 2020 permission has been implemented, however it has been implemented without complying with condition 1 of that permission.

Condition 1 required *Within three months of the date of this permission the flue shall be altered in full accordance with the following submitted details: drawing numbers 244/16/07H and KLS2159 Rev.A, flanged silencer, Maxfan Compac, jet and shall thereafter only be operated between the times of 8.30am – 11am, 1pm – 3pm, and 6pm – 9pm.*

The applicant states that the flue was not installed in accordance with the approved details in terms of its visual appearance because it was found not to be viable for maintenance. That is to say the flue itself was installed as approved in terms of its technical specification but the aesthetic surround was omitted as it did not enable suitable maintenance.

The current application originally sought permission for the flue as installed i.e. without any aesthetic surround. However, the Conservation Team were not happy with the impact of the flue on the Listed building without an aesthetic surround and amended plans have subsequently been submitted to show a brick clad surround with maintenance flaps on the inward elevation.

Additionally, operating hours of the flue are sought to enable consistency between the kitchen and the business.

The operating hours of the flue were inserted into the 2020 approval following complaints made directly to the Community Safety and Neighbourhood Nuisance Team (CSNN) in relation to noise associated with the previous flue. However, the flue design itself approved under the 2020 application was an improvement on the flue that was installed at the time of the previous complaints. Since the installation of the new flue no complaints have been received by CSNN hence their lack of objection to allowing the change in the operating hours to enable the flue to operate between the hours of 8.30am and 9.00pm with a 30 minute overrun.

During the course of the application detailed discussions have taken place between CSNN and the applicant in relation to the flue as installed, and it has been confirmed that the flue was installed as specified in the 2020 permission in terms of technical specifications including the installed of two silencers. Furthermore it has been confirmed that the flue has undergone cleaning every 6 months, which is actually twice as often as required.

The principle of the changes are acceptable however the main issues resulting from the increase in hours of operation of the flue and the flue design are the impact on residential amenity of neighbouring properties and the impact on the Listed Building.

Neighbour Amenity

The Parish Council state that they have received a number of complaints relating to anti-social and unruly behaviour. However, such complaints do not relate to noise or odour associated with the flue which is the subject of this application.

The LPA has received only one third party representation in relation to the current application and, likewise, it does not relate to the flue. Furthermore, it can be reported that no statutory nuisance complaints have been received in relation to the flue since its installation in October 2020.

The increase in flue operation hours enables the flue to operate continually between the hours of 8.30am and 9.00pm, with an override time of 30 minutes. This enables consistency between the kitchen and the business.

As stated above, extensive discussions have taken place between CSNN and the applicant during the course of the application and CSNN raise no objection to the increase in daytime operation of the flue. It should also be noted that if a statutory nuisance were to occur from this increase in daytime operation of the flue, whilst not expected, CSNN have their own powers to intervene.

It is therefore concluded that the increase in operational hours of the flue to enable continuous daytime operation is unlikely to result in material neighbour amenity issues. Furthermore no objections have been received that specifically relate to the operating hours of the flue.

It is therefore considered that the proposed development accords with the NPPF in general and specifically to paragraph 174e) of the NPPF that requires *prevention of existing development from [producing] unacceptable levels of noise pollution*, and Development Plan Policy DM15 because it is considered that it would not have a detrimental impact on neighbouring uses as a result of noise and / or odour.

Impact on Historic Environment

The site is located within Burnham Market Conservation Area and the building itself is a Grade II Listed Building.

In terms of the impact on the Conservation Area and Listed Building, subject to ensuring the flue is screened as negotiated and shown on the amended plans (red brick surround), given the lack of public views, with views mainly being restricted to those from within the courtyard of No.TWENTY 9 itself, it is concluded that the impact of the development results in less than substantial harm that would be outweighed by the benefits of enabling the better operation of a well-established business. The Conservation Officer has raised no objection. Screening will be conditioned if permission is granted.

It should be noted that a Listed Building application has been submitted for the same but is yet to be validated.

It is therefore considered that the proposed development accords with the NPPF in general and specifically to paragraph 202 of the NPPF and Development Plan Policies CS08 and DM15 that seek to protect the historic environment.

Crime and Disorder

There are no specific crime and disorder issues arising from the proposed development.

Other Material Considerations

An application approved under S73A results in a new permission, and the original permission remains intact. However, it is good practice to ensure that any permission granted under such an application retains all previous conditions, amended as proposed by the amending application. This has also been reiterated by CSNN.

CONCLUSION:

The proposed development is to vary a condition of an implemented application one of the borough's rural businesses and community facilities.

The variation is to enable appropriate screening of a permitted flue and to increase the operational hours of the flue to coincide with the operation of the business as a whole.

Neither the Conservation Officer nor Community Safety and Neighbourhood Nuisance Teams raise an objection in terms of neighbour amenity / impact on the historic environment, and whilst the Parish Council and one third party object, their objections are not specific to the flue and therefore not specific to this application.

It is therefore recommended that this application be approved subject to the following conditions.

RECOMMENDATION:

APPROVE subject to the imposition of the following condition(s):

- 1 Condition Within three months of the date of this permission the flue shall be altered in full accordance with the following submitted plans / details:
 - Drawing no 578/23/01 Rev.O
 - Silencer Information received via email dated 5 May 2023
 - Rural-Multi-Data-Sheet_May23.pdf and Bricks.jpg received via email on 28 June 2023
 - and shall thereafter only be operated between the times of 08.30 and 21:00 hours daily with a maximum additional 30 minute overrun time until no later than 21:30 hours. The kitchen extraction system shall be deep cleaned and serviced at six monthly intervals.
- 1 Reason For the avoidance of doubt and in the interests of the amenity of the locality in accordance with the NPPF and Development Plan.
- 2 Condition No deliveries shall be taken at or dispatched from the site outside the hours of 08:30 - 18:00 on weekdays, and 08:30 - 13:00 on Saturdays, Sundays and Bank or Public Holidays.
- 2 Reason In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF.
- 3 Condition The premises shall only be used between the hours of 08:30 and 23:00 Monday to Saturday and Bank or Public Holidays; 08:30 to 22:00 on Sundays, 08:30 to

00:30 on Christmas Eve, and 08:30 - 01:30 on New Year's Eve unless otherwise agreed in writing by the Local Planning Authority.

- 3 Reason In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF.
- 4 Condition The development shall be operated in accordance with the approved details pursuant to condition discharge C5 (noise, waste and refuse facilities) under reference 16/02002/F.
- 4 Reason To ensure that the amenities of the locality are safeguarded in accordance with the NPPF.
- 5 Condition Use of the external area behind the orangery [the courtyard] for patrons and events shall cease at 9pm other than on up to six specific days in any one calendar year, starting on the day of this consent, when the area can be used by patrons or for events until 11pm. At least one month prior to each of the six specific days the applicant shall inform the LPA that an event is to take place.
- 5 Reason In the interests of neighbour amenity in accordance with the NPPF and Development Plan.