

**REPORT TO CITY CENTRE SOUTH AND
EAST PLANNING AND HIGHWAYS AREA
COMMITTEE**

DATE 23 JULY 2012

REPORT OF DIRECTOR OF DEVELOPMENT SERVICES

ITEM

SUBJECT UNAUTHORISED ERECTION OF AN EXTERNAL FUME EXTRACTION FLUE AND EXTERNALLY MOUNTED PLANT, 255 GLOSSOP ROAD

SUMMARY

THE PURPOSE OF THIS REPORT IS TO INFORM BOARD MEMBERS OF BREACHES OF PLANNING CONTROL AND TO MAKE RECOMMENDATIONS ON ANY FURTHER ACTION REQUIRED

RECOMMENDATIONS

THAT THE DIRECTOR OF DEVELOPMENT SERVICES OR HEAD OF PLANNING BE AUTHORISED TO TAKE ANY APPROPRIATE ACTION INCLUDING IF NECESSARY, ENFORCEMENT ACTION AND THE INSTIGATION OF LEGAL PROCEEDINGS TO SECURE THE REMOVAL OF THE UNAUTHORISED FUME EXTRACTION APPARATUS AND OTHER UNAUTHORISED EXTERNALLY MOUNTED PLANT AT 255 GLOSSOP ROAD

FINANCIAL IMPLICATIONS

~~YES~~ NO

PARAGRAPHS

CLEARED BY

CATHERINE RODGERS

BACKGROUND PAPERS

CONTACT POINT FOR ACCESS

LEE BROOK

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AREA(S) AFFECTED

**CATEGORY OF
REPORT**

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ENFORCEMENT REPORT

UNAUTHORISED ERECTION OF AN EXTERNAL FUME EXTRACTION FLUE AND EXTERNALLY MOUNTED PLANT, 255 GLOSSOP ROAD.

1. PURPOSE OF THE REPORT

The purpose of this report is to inform committee Members of breaches of planning control and to make recommendations on any further action required.

2. LOCATION

2.1 The property stands at the corner of Wilkinson Lane, just 20m on the city centre side of the inner ring road, at Upper Hanover Street, which is at the edge of the busy West Street / Glossop Road area. The Somme Barracks is directly opposite and either side are shops, with a mix of food and drink establishments further east along Glossop Road towards West Street.

2.2 Approximately 22m to the southeast there are terraced houses at 66-84 Gell Street and 30m to the south there are two further houses at 8 and 10 Wilkinson Street.

3. BACKGROUND

3.1 Complaints have been received from residents of neighbouring houses about constant noise from a new externally mounted metal flue / fume extraction equipment, which serves the kitchen at 'Three Corners of China' restaurant at no.255, (for the purpose of this report referred to as flue 1).

3.2 Officers visited the property and advised the occupier, (owner of the business), that the flue was unacceptable on planning grounds due to its impact on the grade II listed building and because of its impact on the street scene. The Council's environmental protection advice also highlighted a noise and odour problem.

3.3 In spite of advice given by officers that no further works should be undertaken without first seeking planning and listed building consent flue 1 was removed and replaced by a completely new fume extraction system, again without planning or listed building consent, (flue 2). Flue

2 is the subject of this report, the scale and design of the equipment can be seen in the attached photograph.

- 3.4 The use of the premises as a restaurant is established. However, the restaurant has recently changed hands and has altered from an Italian restaurant to a Chinese restaurant. As a result of this change, the type of cooking that is being carried out on the premises has altered significantly to one that involves high volumes of fried food, prepared at very hot temperatures. This type of cooking requires completely different extraction equipment to the previous enterprise in order to ensure that the health and safety conditions for kitchen workers are acceptable.
- 3.5 Letters have been sent to the business owner stating the flue 2 is unacceptable. The latest correspondence, dated 17 July 2012, includes a Planning Contravention Notice, which has also been sent to the owner of the building. The purpose of this being to establish all persons with an interest in the property as well as establishing details about the breaches of planning control in order that enforcement notices proposed in the recommendation can be accurately served.

4. ASSESSMENT

- 4.1 The relevant policies of the Unitary Development Plan are S10, BE15 and BE19.
- 4.2 Policy S10 'Conditions on development in Shopping Areas' states that new development should, amongst other things:
- Not cause residents to suffer from unacceptable living conditions, including air pollution, noise or other risk to health or safety.
 - Provide, where appropriate, an environmental buffer to shield sensitive land uses.
 - Be well designed and of a scale and nature appropriate to the site.
- 4.3 Policy BE15 'Areas and Buildings of Special Architectural or Historic Interest' states that development which would harm the character or appearance of Listed Buildings will not be permitted.
- 4.4 Policy BE19 'Development Affecting Listed Buildings' states that external alterations to Listed Buildings will be expected to preserve the character and appearance of the building.
- 4.5 As a result of the significant number of complaints that have been received in connection with the new system, officers have visited the site with colleagues from the Environmental Protection Service to make an assessment of the noise that is being generated by the fume extraction equipment and the nuisance that is being caused to neighbouring residents.

- 4.6 It is clear that the noise that is generated by the new system is audible in neighbouring gardens as well as inside nearby residential properties. Whilst the background traffic noise is also audible, the noise generated by the fume extraction equipment is distinct from other background noise and is the type of noise that causes nuisance. Officers accept that the equipment as currently installed is harming the living conditions of people living nearby and that action needs to be taken to rectify the problem.
- 4.7 The Environmental Protection Service are to arrange further visits to local residents' houses, in the near future, to assess the problem and establish if there is a sufficient level of noise nuisance to serve a 'noise abatement notice' under separate environmental legislation. A further verbal report might be available by the time this report is heard by Members.
- 4.8 In addition to the identified noise problem, the system has been installed on the gable end of a listed building, adjacent to a public highway. It is a large stainless steel system which is visually prominent and out of character with the host building. The ideal solution would be to run the system internally, to emerge through the roof, or to route a new, more discrete system up the rear elevation to reduce its prominence. This would need to be combined with a re-design of the system to one of slimmer proportions and ideally to one that is finished in black, rather than the stark stainless steel structure that is currently in place.
- 4.9 The other external mounted plant, (possibly for an air conditioning system), on the side elevation is also overhanging Wilkinson Lane, (see photos). It is positioned more towards the front of the building and it is considered to be visually prominent and out of character with the host building. An alternative solution should be looked into.
- 4.10 Officers are willing to work with the restaurant operators to try and establish an acceptable solution, although this could be difficult because the restaurant operators do not control the rest of the building. This being the case a final solution is likely to require the cooperation of the building owners and could take some time to achieve.
- 4.11 If enforcement action is approved and an Enforcement Notice served, this should not hamper ongoing discussions with the owners about finding a solution that satisfactorily overcomes local residents' concerns, planning and environmental protection amenity issues. The aim is to help the business to be successful but this should be balanced with wider environmental issues.

5. REPRESENTATIONS

- 5.1 Written complaints have been made to both the Environmental Protection and Planning Services from residents of nearby houses on Gell Street. The complaints consistently refer to noise, emanating from

the fume extract flue, throughout the day and into night, which spoils the peaceful enjoyment of their homes and garden areas.

6. ASSESSMENT OF ENFORCEMENT OPTIONS

- 6.1 Section 171C of the Town and Country Planning Act 1990 provides for the service of a Planning Contravention Notice. The notice requires information about the suspected breaches of planning control and about property ownership. It also gives an opportunity for the recipient to meet with officers to make representations. Such a meeting is being encouraged to allow discussion about an application for an alternative fume extraction system and the removal of the system and the other external plant. A notice, dated 17/7/12 has been served on the building owner and the business owner.
- 6.2 Section 172 of the Act provides for the service of an Enforcement Notice (EN). In this case such a notice would require the remedial measures to make good the harm caused by the unauthorised development. This would mean the removal of the unauthorised apparatus / flue. This is the recommended course in this case. In Planning Law an enforcement notice takes 28 days from the date of issue, (commonly referred to as service), to come into effect, (this initial 28 day period allows for an appeal to be lodged). After this, the notice must give a minimum of 28 days to the recipient to comply with its requirements. If the Notice is appealed it will not come into effect at all, until the appeal is determined. If the appeal fails the notice will come back into effect immediately on the day of the Inspectors decision. The compliance period will then start from that point.
- 6.3 Section 183 of the Act provides for the service of a Stop Notice in conjunction with an enforcement notice (S172). In this case the stop notice could prohibit the use of the fume extraction equipment but this isn't recommended in this case. The fume extract isn't running through the night and an Environmental Protection Service investigation is ongoing to establish if the level of nuisance is at a level that requires action under statutory nuisance powers
- 6.4 A Stop Notice would probably lead to the business having to change its cooking methods at least, until a replacement fume extract can be approved. It might even mean the restaurant use would need to stop altogether for Chinese style cooking.
- 6.5 Section 9 of the Listed Buildings Act 1990 makes it a criminal offence to carry out works to a listed building without the necessary consent. A prosecution could be brought against the person that caused the unauthorised works to be carried out. Legal proceedings at this point are not recommended. It is considered that time would be better spent remedying the harm and finding a resolution as quickly as possible.

7 EQUAL OPPORTUNITIES

7.1 There are no equal opportunity implications arising from the recommendation in this report.

8. FINANCIAL IMPLICATIONS

8.1 There are no financial implications arising from the recommendation in this report.

9. RECOMMENDATION

9.1 That the Director of Development Services or Head of Planning be authorised to take any appropriate action including if necessary, enforcement action and the institution of legal proceedings to secure the removal of the unauthorised fume extraction apparatus and other unauthorised externally mounted plant at 255 Glossop Road.

PLAN & PHOTO

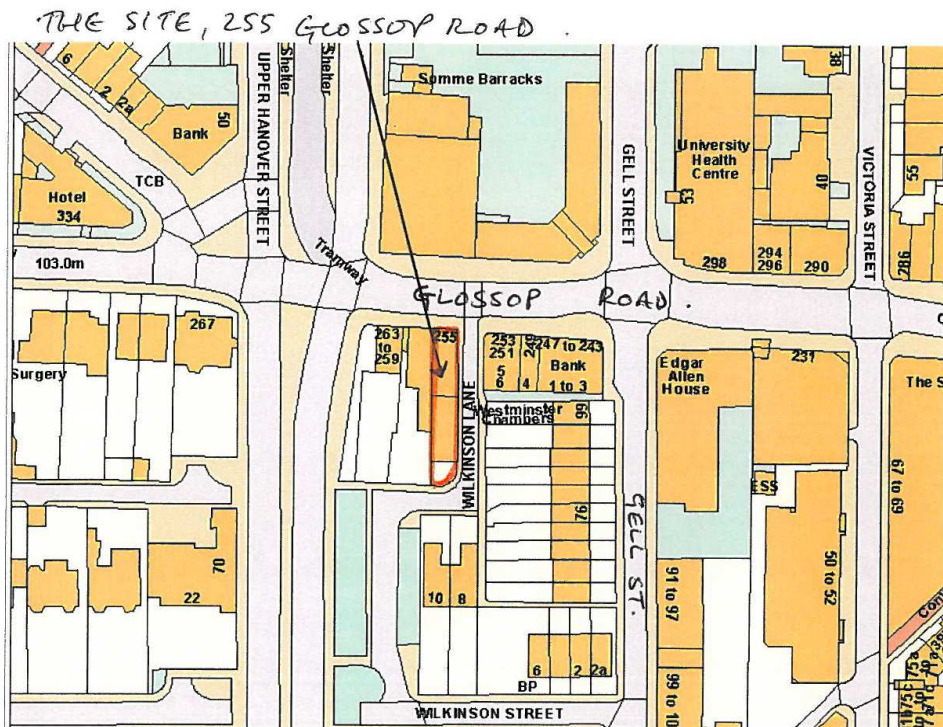


Photo A shows the rear of no.255 looking up Wilkinson Lane towards Glossop Rd



Photo B shows the side elevation of no.255. The red in the bottom corner is the front window to the restaurant.



David Caulfield
Head of Planning

17 July 2012