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|  **WEST AREA PLANNING COMMITTEE** | 11 December 2018 |

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| **Application number:** | 18/02431/FUL |
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| **Decision due by** | 26 November 2018 |
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| **Extension of time** | 11 December 2018 |
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| **Proposal** | Installation of extraction flue with external outlet grill to front elevation. (Retrospective). |
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| **Site address** | 9B North Parade Avenue, Oxford, OX2 6LX, – see **Appendix 1** for site plan |
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| **Ward** | North Ward |
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| **Case officer** | James Paterson |

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| **Agent:**  | Mr Graham Soame | **Applicant:**  | Mrs Yoko Fusa |

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| **Reason at Committee** | Called in by Councillors Fry, Upton, Taylor and Pressel because of concerns that the ventilation system at the application property does not accord with DEFRA advice and that the A3 use of the property has not previously included deep fat frying or cooking large quantities of meat. |

1. RECOMMENDATION
	1. West Area Planning Committee is recommended to:
		1. **Approve the application** for the reasons given in the report and subject to the required planning conditions set out in section 12 of this report and grant planning permission.
		2. **Agree to delegate authority** to the Acting Head of Planning Services to:
* finalise the recommended conditions as set out in this report including such refinements, amendments, additions and/or deletions as the Acting Head of Planning Services considers reasonably necessary.
1. EXECUTIVE SUMMARY
	1. This report considers the retrospective alterations to the front elevation of the property to install an external outlet grill for the restaurant’s ventilation system. The proposal would have an acceptable impact in terms of design. Officers have carefully considered the impact of the proposed development on the amenity of the neighbouring properties in terms of odour nuisance. It is considered that the proposal would not have a significant odour impact and would not lead to unacceptable nuisance. The proposal would not cause unacceptable harm to the North Oxford Victorian Suburb Conservation Area, which is a designated heritage asset. Nor would it harm the setting of 16 Winchester Road, a listed building and designated heritage asset.
	2. The key matters for assessment set out in this report include the following:
* Design
* Impact on conservation area
* Impact on listed building
* Nuisance
* Other matters
1. LEGAL AGREEMENT
	1. A legal agreement is not required for this application
2. COMMUNITY INFRASTRUCTURE LEVY (CIL)
	1. The proposal is not CIL liable as the amount of floorspace gained would be below the threshold where CIL would be required.
3. SITE AND SURROUNDINGS
	1. 9B North Parade is a single storey building which has a front façade that faces directly onto the street. It is located opposite The Gardiner’s Arms and near the junction with Winchester Road. The building is distinctive in that its character has the appearance of a building associated with horticulture while the building also features a distinctive roofline with three pitched roofs and three gables forming its front façade. The property is within the ‘North Parade’ character area in the North Oxford Victorian Suburb. The lawful use of the property is as an A3 restaurant, this use was formally recognised as the lawful use of the property when a Certificate of Existing Use was issued in 2016, as the evidence suggested the property had been in use as such since the early 1980s.
	2. The site was subject to an appeal decision for a short, steel chimney flu which was to be used as extraction for the A3 use at the time. The appeal was dismissed. Although the inspector found the impact on the Conservation Area to be acceptable, being as the flue would have been located towards the rear of the roof, he found it to be unacceptable in terms of its impact on the amenity of the neighbouring properties, specifically in terms of cooking smells.
	3. See block plan below:



1. PROPOSAL
	1. The application seeks retrospective planning permission for an external outlet grill on the front elevation of 9b North Parade Avenue, currently in A3 use as the Japanese restaurant ‘Koto’. The grill is grey in appearance with vertical vent louvres; the grill is approximately 60cm in height and width and sits approximately 5cm proud of the façade. The grill is sited in the right-most gable end which also features the main entrance to the building
	2. Following an enforcement investigation, it was found that their was insufficient evidence to show that the outlet vent in question had been in situ for four years, which would have made it immune from enforcement (as set out in Section 171B of the Town and Country Planning Act, 1990, (as amended)). Therefore retrospective planning permission is required in order for the breach of planning control to be regularised.
2. RELEVANT PLANNING HISTORY
	1. The table below sets out the relevant planning history for the application site:

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| 92/00777/NFH - Retention of extract duct. REF 1 September 1993.16/02193/CEU - Application to certify that the existing use as restaurant (Use Class A3) is lawful. PER 11 October 2016. |

1. RELEVANT PLANNING POLICY
	1. The following policies are relevant to the application:

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| **Topic** | **National Planning Policy Framework** | **Local Plan** | **Core Strategy** | **Sites and Housing Plan** | **Other planning documents** |
| **Design** | 8, 11, 127, 128, 130 | CP1, CP6, CP8, CP10 | CS18 |  |  |
| **Conservation/ Heritage** | 189, 192, 196 | HE3, HE7 |  |  |  |
| **Social and community** |  | CP10 |  |  |  |
| **Environmental** |  | CP19 |  |  |  |
| **Miscellaneous** | 47, 48 |   |  | MP1 |  |

1. CONSULTATION RESPONSES
	1. Site notices were displayed around the application site on 15 October 2018 and an advertisement was published in The Oxford Times newspaper on 11 October 2018.

Statutory and non-statutory consultees

None Received

Public representations

* 1. 15 local people commented on this application from addresses in North Parade Avenue, Acer Walk, Winchester Road and Banbury Road.
	2. In summary, the main points of objection (15 residents) were:
* Nuisance caused by the odour exuded by the ventilation which the proposed external grill serves.
* The detrimental visual impact of the proposal on the Conservation Area

Officer response

* 1. Officers have considered carefully all objections to these proposals. Officers have come to the view, for the detailed reasons set out in the officers report, that the objections do not amount, individually or cumulatively, to a reason for refusal and that all the issues that have been raised have been adequately addressed and the relevant bodies consulted. Officers have sought the specific advice of the Council’s environmental health officers when making this recommendation.
1. PLANNING MATERIAL CONSIDERATIONS
	1. Officers consider the determining issues to be:
2. Design
3. Impact on Conservation Area
4. Impact on listed building
5. Nuisance
6. Other matters
7. Design
	1. Policy CP1 of the Oxford Local Plan 2001-2016 states that a development must show a high standard of design, including landscape treatment, that respects the character and appearance of the area; and the materials used must be of a quality appropriate to the nature of the development, the site, and its surroundings. Policy CS18 of the Core Strategy states that planning permission will be granted for development that demonstrates high-quality urban design through responding appropriately to the site and its surroundings; creating a strong sense of place; and contributing to an attractive public realm.
	2. The proposed grill is not an especially high quality feature but has been installed to meet a functional requirement in terms of providing extraction for an existing lawful restaurant unit. Officers consider that the slender nature of the grill in conjunction with the condition requiring the grill to have a painted finish matching the existing façade would on balance mean that the grill is as discrete as it can be. It is considered that the grill would, overall, not give rise to a materially harmful impact on the streetscene.
	3. Therefore, the proposal is considered to be acceptable in terms of design and therefore Policies CP1 and CS18.
8. Impact on Conservation Area
	1. Policy HE7 of the Oxford Local Plan 2001-2016 states that planning permission will only be granted for development that preserves or enhances the special character and appearance of the Conservation Areas its setting. Furthermore, planning permission will not be granted for proposals involving the substantial demolition of a building or structure that contributes to the special interest of a conservation area.
	2. In the assessment of Character Area 7 (North Parade) 9b North Parade is not singled out as being of particular note in its contribution to the significance of the Conservation Area. However, it does contribute to the significance of the Conservation Area as it serves as a reminder of the historic horticultural use of the land, much like the listed building ‘Gees Restaurant.’ Likewise, more generally, the building makes a positive contribution to the conservation area it adds to the eclectic variety of buildings and businesses that make up North Parade Avenue.
	3. While siting the external outlet grill on the front elevation is not ideal, it is accepted that it would be impossible to site the outlet either through a flue on the roof, following an inspector’s decision in 1994 which found this unacceptable, or on the side elevation, as this would extract fumes directly into the amenity space of 9A North Parade Avenue. The front elevation is therefore the only elevation where an external extraction system would be possible in order to continue the lawful use of the building as a restaurant.
	4. It is worthwhile to consider that normally a change of use from a retail premises to a restaurant would often include consideration of extraction equipment; with a scheme either being specified as part of the determination of the application or a condition being included that required the extraction equipment details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the use. This site is unusual in that it operated for many years without planning permission before gaining a certificate of lawful use for the existing use on the basis that it was immune from enforcement action; this has meant that there has not been the normal consideration of the extraction equipment in planning terms. It is important to consider that because the use of the property is lawful these proposals are just relating to the flue but that flue is necessary for the property to function for its established lawful use.
	5. While the grill would not have a large impact in terms of the Conservation Area, it is considered that the external grill would cause less-than-substantial harm, of a low order, to the Conservation Area due to its slight visual intrusion to an otherwise attractive façade.
	6. However, on balance, it is considered that due to the necessity of the grill in terms of being able to viably operate the lawful A3 use of the premises (and there being no other alternative location), the grill would have the public benefit of enabling its continued use as such. This would constitute a public benefit due to the North Parade character area drawing much of its significance from a variety of buildings housing a variety of businesses and eateries. Preserving this use will protect this significance.
	7. The proposal is therefore considered acceptable in terms of its impact on the Conservation Area and therefore Policy HE7.
	8. Regard has been paid to Paragraph 192 of the NPPF in reaching a decision. When applying the test outlined in Paragraph 196 of the NPPF, it is considered that the proposal would cause less-than-substantial harm to the significance of the Conservation Area. However, this would be balanced by the public benefit of the continued use of the premises which contributes to the vibrant character of North Parade Avenue. Therefore, the proposal is acceptable in terms of its impact on this designated heritage asset in terms of the NPPF.
	9. However, in order to minimise conflict with the preservation of the special character of the Conservation Area, a condition will be imposed which will require the grill to have a painted finish which matches the existing front façade. This is in order to minimise the visual intrusiveness of the grill. While a grill which sits flush with the façade would be preferred in order to further minimise its visual impact, it was considered unnecessary to require this as the existing grill only extends approximately 5cm from the front elevation of the premises, which is considered reasonable.
	10. Special attention has been paid to the statutory test of preserving or enhancing the character and appearance of the Conservation Area under Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, which it is accepted is a higher duty. It has been concluded that the development would preserve the character and appearance of the Conservation Area, and so the proposal accords with Section 72 of the Act.
9. **Impact on Listed Building**
	1. Policy HE3 of the Oxford Local Plan 2001-2016 states that planning permission will only be granted for works involving an alteration or extension to a listed building that is sympathetic to and respects its history, character and setting. Policy HE3 notes that planning permission will only be granted for development which is appropriate in terms of its scale and location, and which uses materials and colours that respect the character of the surroundings, and have due regard to the setting of any listed building.
	2. The site is adjacent to 16 Winchester Road which is a Grade II listed building. The site therefore lies within the setting of the listed building. It is considered that the significance of the listed building stems from its relatively unaltered state since its erection circa 1840, with the exception of the various 20th Century additions to the rear such as the two storey rear extension and contemporary conservatory. The proposal would not affect the significance of the building in these terms. 16 Winchester Road is also significant due to its prominent location on the junction between North Parade Avenue and Winchester Road which the proposal would likewise not impact. The significance of the listed building is not particularly linked with its setting; in any case, it is considered that the minor nature of the proposal would mean that the setting of the listed building would not be impacted.
	3. The proposal is therefore considered acceptable in terms of its impact on listed buildings and therefore accords with Policy HE3.
	4. Regard has been paid to paragraph 192 of the NPPF in reaching a decision. When applying the test outlined in paragraph 196, it is considered that the proposal would cause no harm to the significance of the adjacent Listed Buildings and would therefore be acceptable in terms of its impact on these designated heritage assets.
	5. Special attention has been paid to the statutory test of preserving the Listed Building or its setting or any features of special architectural or historic interest which it possesses under section 66 of the Planning (Listed Building and Conservation Areas) Act 1990, which it is accepted is a higher duty. It has been concluded that the development would preserve the listed building, and so the proposal accords with section 66 of the Act.
10. **Nuisance and impact on neighbouring amenity**
	1. Policy CP19 of the Oxford Local Plan 2001-2016 states that planning permission will not be granted for any development unacceptable nuisance. It is also outlined that where such nuisance is controllable, appropriate planning conditions will be imposed. Sources of noise, dust, fumes, vibration, light or proximity to hazardous materials constitute a nuisance.
	2. Oxford City Council’s Environmental Health Team was first contacted in 2016 in respect to an alleged nuisance in relation to the odour emitted through the external grill. A nuisance investigation was opened as a result and pursued by Environmental Health Officers, with An Intention To Serve An Abatement Notice was issued based on odours detected at the premises by officers in 2017. A new ventilation system was subsequently installed by a competent contractor in order to address these concerns. Following continued complaints, further investigation was undertaken with officers noting a general improvement. Indeed, Koto made changes to their operations as advised by the Environmental Health Team and a competent contractor despite being under no obligation to do so. As a result of this investigation, it is now considered by Environmental Health Officers that no statutory nuisance could be substantiated in terms of noise or odour. Given their technical expertise, substantial weight was given to this view. It is considered that this expert opinion outweighs unsubstantiated comments of many of the objecting parties. Indeed, during the case officer’s various unannounced visits to the site, no offensive odour was noted. It is therefore considered that, as there is no statutory nuisance, the proposal is acceptable in terms of any alleged nuisance. The proposal is therefore considered to be in accordance with Policy CP19.
	3. Regard has been paid to DEFRA’s guidance document: *Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems* which was referred to in the councillors’ request to de-delegate this decision. However, this advice was withdrawn in 2017. As a result, the Environmental Health Officers that have assisted with the consideration of the acceptability of the extraction equipment have referred to the most recent guidance when providing their advice. They have concluded that the functioning of the extraction equipment would be acceptable.
11. **Other Matters**
	1. Most of the concerns raised during the consultation period were addressed in the above sections, where they have not been, they are addressed in this section.
	2. It is not within the power of the Local Planning Authority to require a business to change their menu, nor is it the duty of the Council in its capacity as the Local Planning Authority to comment on the restaurant’s method of preparing food.
	3. Planning permission was not granted for the current use of No. 9B, the use is lawful due to the issuing of a Certificate of Existing Use in 2016 due to the premises having been in A3 use for not less than 10 years. Indeed it appears the property has been in use as such since the 1980’s. There were no conditions attached to this that precluded the sale of fried food (the issuing of a lawful development certificate does not allow the Council to add conditions).
	4. While objectors disagreed with elements of the Design and Access Statement submitted by the applicant, it is considered sufficient information was available to make a balanced recommendation.
12. CONCLUSION
	1. The proposed development would be acceptable having had regard to the design, the impact on designated heritage assets and impact as a potential nuisance. The proposal is considered to comply with all relevant local and national planning policy including Policies CP1, CP8, CP10, CP19 HE3 and HE7 of the Oxford Local Plan 2001-2016, Policy CS18 of the Core Strategy (2011), Policy MP1 of the Sites and Housing Plan (2013) and Paragraphs 195-197 of the NPPF. It is recommended that the Committee resolve to grant planning permission for the development proposed subject to the conditions as set out below.
13. CONDITIONS
14. The development permitted shall be constructed in complete accordance with the specifications in the application and approved plans listed below, unless otherwise agreed in writing by the local planning authority.

Reason: To avoid doubt and to ensure an acceptable development as indicated on the submitted drawings in accordance with policy CP1 of the Oxford Local Plan 2001-2016.

1. Notwithstanding the approved plans, the outlet grill shall hereby have a painted finish of a colour to match the existing facade. The work shall be carried within 6 months of a decision being issued.

Reason: To ensure that the development is visually satisfactory as required by policy CP1 of the Oxford Local Plan 2001-2016 and does not cause harm to the significance of the conservation area as required by policy HE7 of the Oxford Local Plan 2001-2016

1. APPENDICES
* **Appendix 1 –** Site location plan
1. HUMAN RIGHTS ACT 1998
	1. Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to approve this application. They consider that the interference with the human rights of the applicant under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.
2. SECTION 17 OF THE CRIME AND DISORDER ACT 1998
	1. Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to grant planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community.