

**Case Officer:** Gemma Magnuson

**Recommendation:** Approve

**Applicant:** WH Brakspear and Sons Ltd

**Proposal:** Replacement kitchen extraction system including new intake grille

**Expiry Date:** 20 January 2021

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## **1. APPLICATION SITE AND LOCALITY**

1.1. The Lion is a Grade II listed Public House situated central to the village of Wendlebury. Other Grade II listed buildings are in close proximity to the site to the south-west and north-west. The site is partially within Flood Zones 2 and 3 and in close proximity to a watercourse (site of development over 20 metres from the watercourse) although the development would take place outside of the Flood Zones. The site is of archaeological interest. The Wendlebury Meads and Mansmoor Closes SSSI is within 2km of the site. Protected and notable species the swift has been identified in the vicinity.

## **2. DESCRIPTION OF PROPOSED DEVELOPMENT**

2.1. The proposed development would involve the replacement of an existing kitchen extraction system serving the public house. The existing system consists of an exhaust and intake upon the slate roof of a single storey projection to the rear of the public house. The proposed development would involve the replacement of these with an exhaust at a lower level, and a louvred vent intake within the gable end.

## **3. RELEVANT PLANNING HISTORY**

3.1. There is no planning history directly relevant to the proposal:

**Application: 14/01026/F Permitted 3 November 2014**

Single storey rear extensions, internal alterations and extension to parking area

**Application: 14/01027/LB Permitted 3 November 2014**

Single storey rear extensions, internal alterations and extension to parking area

**Application: 15/00172/F Permitted 16 April 2015**

Amendments to application 14/01026/F

**Application: 15/00072/LB Permitted 16 April 2015**

Amendments to application 14/01027/LB

**Application: 16/01876/F Permitted 27 January 2017**

Retrospective - various amendments to planning permission 15/00172/F including alterations to extended barn, alterations to kitchen extension, repositioning of external flues, changes to signage, reinstatement of southern boundary wall and external lighting

**Application: 16/01877/LB Permitted 27 January 2017**

Retrospective - various amendments to listed building consent 15/00072/LB including alterations to extended barn, alterations to kitchen extension, repositioning

of external flues, changes to signage, reinstatement of southern boundary wall and external lighting

**Application: 16/02579/F      Refused      12 April 2017**

Installation of 2no. extractor units on the roof of the kitchen extension (retrospective)

**Application: 16/02580/LB      Refused      12 April 2017**

Installation of 2no. extractor units on the roof of the kitchen extension (retrospective)

**Application: 20/02816/LB      Undetermined at  
time of writing**

Replacement kitchen extraction system including new intake grille

3.2. The existing extraction system is understood to be unauthorised.

#### **4. PRE-APPLICATION DISCUSSIONS**

4.1. The following pre-application discussions have taken place with regard to this proposal:

<b>Application: 19/02303/PREAPP</b>	Detailed Pre- App response sent	20 2019	December
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Visual improvements to currently installed catering kitchen ventilation system

<b>Application: 20/00060/PREAPP</b>	Detailed Pre- App response sent	28 2020	February
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Follow-up to 19/02303/PREAPP - Visual improvements to currently installed catering kitchen ventilation system

4.2. The latest pre-application advice concluded as follows:

*Overall, the proposed amendments are considered an improvement on the existing situation but still cause harm to the listed building, whilst other less intrusive options should be considered if an application were to be submitted based on the current proposal a compelling justification would be required.*

#### **5. RESPONSE TO PUBLICITY**

5.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **24 February 2021**, although comments received after this date and before finalising this report have also been taken into account. Three responses were received, all making comments on the application (as opposed to objection/no objection). The comments raised by third parties are summarised as follows:

- Key issue is to significantly reduce smell, smoke and noise from current system

- Ensure that not only visual appearance reduced but reduction in nuisance
- Pleased that an application has finally been made – issues experienced for several years
- Noise, odour, visual impact
- Please check technical details carefully
- Application is flawed as surrounding neighbours have not been officially consulted as per Town and Country Planning Act 1990 (as amended) – despite previous communications with the Council over a number of years
- Unable to make full use of property/gardens
- Query noise report and whether it can be made quieter

5.2. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## **6. RESPONSE TO CONSULTATION**

6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

6.2. Wendlebury Parish Council - *The Parish Council considered this application on 28 January 2021, received representation from the residents ( You already have their concerns on file) but were unable to respond as consultees due to the conflicting assessment on the ability of the new ventilation system to remove the noise and odour nuisance currently causing residents concern. This issue has a long history and the Parish council were pleased to see this application, and no doubt the applicant and residents would also like to see the matter finally resolved. To help with our understanding of the technical issues associated with this application the Parish Council have made contact with the supplier and Cherwell Environmental Health seeking clarification. The last thing any of the parties want is for money to be spent to find the solution does not work. The Parish council are minded to support this application if we can be satisfied the long standing problems will be resolved.*

### STATUTORY CONSULTEES

6.3. None.

### NON-STATUTORY CONSULTEES

6.4. CDC Building Control – no comments received.

6.5. CDC Ecology – no comments received.

6.6. CDC Environmental Health – commented on accompanying application for listed building consent (20/02816/LB) and makes no further comments for this application for planning permission. The comments were as follows:

*Noise: Having studied the noise report presented I am satisfied that the proposed extraction system will not cause a nuisance to the nearest residential property as*

*long as it is built to the specification proposed. This will be an improvement to those residents living in the locality who have previously complained about the noise from the existing system.*

*Contaminated Land: No comments*

*Air Quality: No comments*

*Odour: There have been complaints made to this department regarding odour from the current system, not helped by the positioning of the extract fan pointing down the roof towards the nearby residential properties.*

*Notwithstanding these complaints, odour is an area that we need to comment on and as the extraction system proposed is extracting at a lower level due to the listed building status and to help improve the visual impact of the scheme, the level of odour control for this scheme should be "Very High" based on the guidance provided in the EMAQ Control of Odour and Noise from Commercial Kitchen Exhaust Systems (5/9/2018).*

*Unfortunately I have been unable to find any information on the odour control. Ideally this would be easy to assess and hopefully approve prior to determination, however if this is not possible then I would recommend that the following condition be placed and on any permission granted:*

*Details of the odour control for the extraction system shall be submitted to and approved by the LPA prior to the installation of the system. The system shall then be installed as per agreed scheme and maintained and cleaned as per the manufacturers instructions with a log kept of such cleaning and maintenance available for inspection by request of council officers.*

*Light: No comments*

- 6.7. Given the previous history at the site I wanted to ensure that the odour control details were going to be acceptable prior to determination of the application. I therefore sought these details from the Agent and they were received on 16 December 2020.
- 6.8. The Environmental Health Officer considered that the details assuaged his concerns and made no further comment.
- 6.9. CDC Conservation (commenting on accompanying application for listed building consent 20/02816/LB) - *The kitchen extraction system at The Lion has been an ongoing issue for a number of years since planning and listed building consent was granted for the conversion of the rear wing of the pub into a kitchen (14/01026/F and 14/01027/LB).*

*The existing extractor system was the subject of Enforcement action and the refusal of retrospective consent. The building is now in new ownership and the owners have engaged with the council to try to find a more appropriate form of extraction.*

*A recent pre-app on the issue concluded:*

*'The proposed development has not overcome the reasons for refusal as the extraction units are still prominently sited and of industrial design which is at odds with the traditional character and simple detailing of the building. The proposed design, is however, an improvement on the existing extraction units with only one large extraction unit on the roof and the intake unit replaced by a louvred intake on*

*the gable end. The design is as a result of a detailed site meeting at which all options were considered with an extraction engineer.*

- 6.10. *A full detailed explanation / justification has not been provided as part of the pre-application, but would need to be in any forthcoming application. Unfortunately the system used on another building elsewhere will not be possible in this instance due to the pitch of the roof. Consideration was given to moving the extraction system to the other roof slope, which would be further away from neighbouring properties and would have less impact on the streetscene, but this would have a greater detrimental impact on the setting of the listed building as it would be close to and more visible from the principal building itself'*
- 6.11. *Since that pre-app an alternative scheme has been worked up which involves an intake extract as a grill on the gable end of the building and a separate extraction unit adjacent to the building. This is considered to be a suitable compromise and although still visible reduces the impact on the listed building considerably.*
- 6.12. *As the kitchen has been given consent in this location (a number of years ago) there are no objections to the extraction system as proposed, which will significantly reduce the impact on the setting of the listed building.*

## **7. RELEVANT PLANNING POLICY AND GUIDANCE**

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- ESD 10 - Protection and Enhancement of Biodiversity and the Natural Environment
- BSC12 – Indoor sport, recreation and community facilities
- ESD 15 - The Character of the Built and Historic Environment

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- ENV1 – Pollution control
- S29 – Loss of existing village services

- 7.3. Other Material Planning Considerations
- National Planning Policy Framework (NPPF)
  - Planning Practice Guidance (PPG)

## **8. APPRAISAL**

- 8.1. The key issues for consideration in this case are:
- Design, and impact on the character of the area
  - Residential amenity and environmental pollution
  - Protected species

## Design, and impact on the character of the area

- 8.2. Government guidance contained within the NPPF requires development to function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development. Development should be visually attractive, sympathetic to local character and history, and establish or maintain a strong sense of place. Permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions.
- 8.3. Policy ESD 15 of The Cherwell Local Plan 2011-2031 Part 1 requires development to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards.
- 8.4. Further, development proposals will be required to conserve, sustain and enhance designated and non-designated heritage assets including buildings, features, archaeology, conservation areas and their settings. Where less than substantial harm would be caused, this should be weighed against the public benefits arising from the development.
- 8.5. Saved Policy C28 of the Cherwell Local Plan 1996 seeks a standard of layout, design and external appearance, including the choice of external finish materials, that are sympathetic to the character of the context of the development.
- 8.6. The current application follows two requests for pre-application advice, the final one of which included a similar proposal to that currently being considered, and the conclusion was that harm would be caused to the listed building.
- 8.7. It is regrettable that an extract system has been installed here without the required consents. The original application proposed a commercial kitchen within the single storey projection and again, it is regrettable that the requirement for an extract system to serve that kitchen was not agreed at the time of the application. I consider that it is now reasonable to seek to find a solution to the situation that the applicant finds themselves in, given that the principle of a kitchen in this location has already been accepted. I have also borne in mind the requirement to protect and enhance community facilities, such as Public Houses throughout the District, as detailed in Policy BSC 12 of the Cherwell Local Plan 2011-2031 Part 1.
- 8.8. Justification for the proposed extract has been supplied as part of the current application, explaining that alternatives have been considered, and that the scheme has been further amended to result in a more sympathetic appearance. An acoustic report and details regarding odour control have also been received for assessment. The Conservation Officer has advised that the proposal is an improvement on that existing, and I am in agreement with this assessment.
- 8.9. The proposed extract system would be discreet when viewing from the public domain, being mostly hidden behind an existing stone wall.
- 8.10. I am of the opinion that the less than substantial harm that would be caused to the setting of the listed building is outweighed by the public benefits that would arise from the scheme. These public benefits being the support and protection of this community facility in order to enable hot food to continue to be cooked on the premises without the requirement for further extension/alteration, to safeguard the long-term occupation and maintenance of this Grade II listed building as a Public House, and to improve the living amenities for nearby residents (explained further in

the report). I therefore consider the proposal to accord with the above Policies in terms of visual impact.

#### Residential amenity and environmental pollution

- 8.11. Government guidance contained within the NPPF requires development to create places that are safe, inclusive and accessible, promoting health and well-being, and with a high standard of amenity for existing and future users. Policy ESD 15 of the Cherwell Local Plan 2011-2031 requires all development to consider the amenity of both existing and future development. Saved Policy C30 of the Cherwell Local Plan 1996 seeks standards of amenity and privacy acceptable to the Local Planning Authority.
- 8.12. Saved Policy ENV1 of the Cherwell Local Plan 1996 seeks to ensure that the amenities of the environment, and in particular the amenities of residential properties, are not unduly affected by development proposals which may cause environmental pollution, including that caused by traffic generation.
- 8.13. The proposed extract system would be positioned a sufficient distance from all neighbours in order to avoid any harm in terms of a loss of outlook, privacy or dominating appearance. I do not consider that there would be any impact in terms of a loss of privacy.
- 8.14. However, I am aware of the issues regarding environmental pollution, more specifically the odour and noise emitted through use of the existing extract system. The Environmental Health Officer has assessed the proposal and considers that the new system will be sufficient to avoid significant harm arising. This is subject to the system being maintained correctly, and I have therefore recommended a condition to secure this.
- 8.15. Based on the above, I consider that the new system will alleviate existing issues relating to odour and noise, thereby improving the living amenities of nearby residents, in accordance with the above Policies.

#### Protected species

- 8.16. Government guidance contained within the NPPF requires the protection and enhancement of biodiversity. If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
- 8.17. Policy ESD10 echoes Government guidance, requiring relevant habitat and species surveys to accompany applications which may affect a site, habitat or species of known or potential ecological value, seeking net gains in biodiversity, the protection of existing trees and the protection, management, enhancement and extension of existing resources along with the creation of new ones.
- 8.18. The works would take place within a newer element of the public house, and the roof is in a good state of repair. I did not consider it necessary to request an ecology survey. The Ecology Officer has not commented on the scheme and I therefore must assume that no objections are raised. I do not consider that the development would result in harm to protected species or their habitat, in accordance with the above Policies.

## 9. PLANNING BALANCE AND CONCLUSION

- 9.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 9.2. The proposed development would alleviate current issues regarding noise and odour whilst enabling the commercial kitchen to continue the preparation of hot food. The ability to prepare and serve hot food will safeguard the future viability of this important community facility, which in turn should secure the long-term future occupation and maintenance of this designated heritage asset. These are all public benefits that are considered to outweigh the less than substantial harm to the setting of the designated heritage asset that would arise as a result of the installation of the extract system. The development would not result in harm to the visual amenities of the wider locality, or protected species and their habitat, and is considered to accord with relevant local and national planning Policies.

## 10. RECOMMENDATION

That permission is granted, subject to the following conditions:

1. The kitchen extract system and intake grille hereby approved shall be fully installed and operational within six months of the date of this decision.

Reason - In order to safeguard the amenities of the area and to minimise the risk of a nuisance arising from noise or odour in accordance with saved Policy ENV1 of the Cherwell Local Plan 1996, Policy ESD 15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application forms and the following plans and documents: Site location plan, Block plan, Drg. No. AAN:19.706. 3 Rev. D, AAN.19.706. 5, LIONW-OOC, RT External Noise Assessment ref: MDR/J4417a, 5 Stage Carbon Filtration details received 16 December 2020, LONGAR pleated panel filter details, JANSUN ENVIROCARE LTD Discarb Unit details and Caterquip email dated 17 December 2020

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

3. That prior to the installation of the external elements of the extract flue and intake grille hereby approved, details of the colour/finish shall be submitted to and approved in writing by the Local Planning Authority. The external extract flue and intake grille shall be installed and maintained in accordance with the approved details.

Reason – To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

4. The existing kitchen extraction units shall be removed from the roofslope, and the roofslope made good with materials to match those existing, within six months of the date of this decision.



Reason – To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

5. The extraction system hereby approved shall be maintained and cleaned in accordance with manufacturers instructions, with a log of such cleaning and maintenance to be recorded and made available for inspection by Council Officers at all times.

Reason - In order to safeguard the amenities of the area and to minimise the risk of a nuisance arising from noise or odour in accordance with saved Policy ENV1 of the Cherwell Local Plan 1996, Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Case Officer: Gemma Magnuson

DATE: 25 February 2021

Checked By: Paul Ihringer

DATE: 25/2/21

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