

	<b>REPORT TO PLANNING &amp; DEVELOPMENT COMMITTEE</b>  <b>TO BE HELD ON THURSDAY, 13 August 2015</b>	
<b>APPLICATION REFERENCE NO:</b>  <b>14/00563/FL</b>	<b>TARGET DATE:</b>  <b>21 May 2014</b>  <b>Extended date:</b> <b>15 August 2014</b>	<b>GRID REF:</b>  <b>504268 - 488496</b>

## REPORT OF THE PLANNING SERVICES MANAGER – PSM/15/222

**SUBJECT: Change of use from A1 (retail) to A3 (restaurant/cafe) and A5 (takeaway), alterations to shopfront and installation of extraction equipment on flat roof to rear for Marsdens Caterers Ltd 28 Huntriss Row Scarborough NORTH YORKSHIRE YO11 2EF**

### 1.0 PROPOSAL

1.1 This application was considered by Planning and Development Committee on 14 August 2014, when Members resolved to grant planning permission for a mixed restaurant (A3) and takeaway (A5) use, subject to various conditions and to Environmental Services Officers confirming that the report regarding noise and odour control (in respect of the roof-mounted kitchen extraction equipment) was satisfactory. The was due to the fact that the noise and odour report submitted with the application referred to being produced in support of a drive-thru style restaurant and therefore needed to be reviewed and amended to ensure it was applicable to the locational characteristics of the site.

1.2 Following the Committee resolution works commenced on fitting out the property as a KFC Restaurant, whilst further documents were submitted in relation to the kitchen extraction equipment. However, Environmental Services Officers were not given sufficient comfort on the extraction equipment prior to the restaurant opening, and therefore the planning permission decision notice was not issued.

1.3 The KFC Restaurant opened on 24 November 2014 and complaints were received regarding odour and noise arising from the roof-mounted extraction equipment in late November and early December. Officers sought to work with the applicant to resolve these, but having seen little improvement in terms of odour and noise by the works the applicant had undertaken, the Council served a Temporary Stop Notice (TSN) on 9 December 2014. This required the cessation of the cooking of food on the premises requiring the operation of the extraction system. The applicant closed the restaurant as a result of this and continued to liaise with your Officers regarding further alterations to the extraction system.

1.4 The TSN required the cessation of cooking on the premises until 6<sup>th</sup> January, and in the interim the applicant undertook works of alteration to the system, including the

addition of sound reduction measures and ensuring the odour control system was fully operational. As a consequence of this the Council agreed that the applicant could re-open the restaurant just before Christmas for a trial period. This was subject to a 9.00pm closing time, rather than 12.00am originally sought through the planning application, as the extraction equipment was still noisier than originally proposed and therefore in the interests of amenity could not operate later in the evening as background noise levels reduced. The trial period was agreed on the basis that noise and odour would continue to be monitored by Environmental Services Officers.

1.5 Due to ongoing concerns about intermittent odour nuisance, especially within Bar Street, the applicant installed a taller flue in early January, following dialogue with your Officers, in order to seek to address this issue as an interim measure. This was undertaken with a view to reviewing the entire system in order that a revised proposal could be put forward for consideration as a long-term solution, which is the amendment that forms the subject of this committee report.

1.6 Officers of the Council have continued to monitor the situation and have undertaken additional testing in response to concerns raised by neighbours in respect of a number of issues. Officers have kept an open mind as to whether further enforcement action should be taken.

1.7 It is acknowledged by the applicant that the revised proposals have taken longer to draw up than they had hoped, but this has been due to ensuring the right design team has been brought to the project, including a specialist firm of acoustic engineers that manufacture acoustic enclosures. Various options have been considered in dialogue between the applicant's consultant team and Officers.

1.8 The revised proposals involve a complete reconfiguration of the roof mounted extraction equipment that includes:

- Fitting alternative silencers
- Isolating the centrifugal fan from the adjacent ductwork
- Using alternative anti-vibration mountings
- Installing an acoustic enclosure around the centrifugal fan and part of the inlet and outlet silencers
- Replacing the timber enclosure to the wall-mounted refrigeration units with acoustic louvres and roof panel
- Provision of an 8.8m high flue to the rear wall of 28 Huntriss Row.

1.9 The applicant seeks a restaurant closing time of 11.00pm once the proposals are fully implemented and are demonstrated to operate at the proposed noise level of 35 dB. In the interim the applicant has agreed to continue to operate the premises until 9.00pm each night, when the extraction equipment is switched off. The applicant anticipates that the proposed revised extraction equipment will be ready for installation some 5 – 6 weeks after an order is placed, which would be subject to the decision made by Committee.

1.10 The application property is situated in the town centre, within a terrace of traditional properties, with a mix of commercial uses at ground floor. Some properties in the locality have residential accommodation at upper floor levels, including the neighbouring property No.30 Huntriss Row, as well as properties on Bar Street, where the staff entrance to the KFC premises is located. The application sites lies within the

designated Scarborough Conservation Area.

## 2.0 SCREENING OPINION REQUIRED

2.1 No.

## 3.0 PRE-APPLICATION COMMUNITY ENGAGEMENT

3.1 None.

## 4.0 CONSULTATIONS AND COMMENTS

The following is a summary of the key and relevant comments received from consultees and interested parties in respect of the amended elements of the proposals. Their full comments and any accompanying documentation are available to view on the Council's website.

4.1 Environmental Health (SBC) – I would comment on the different aspects of this scheme as follows:

### Odour

The proposed height of the chimney should be sufficient to allow most of the smells from cooking to disperse. The height is compliant with the recommended height of chimneys contained in the current version of the Building Regulations which are specified to ensure proper dispersal of smells and fumes. The height and flue exhaust velocity is also compliant with the recommendations contained in Heating and Ventilating Contractors Association Specifications for Kitchen Ventilation Systems DW/172.

The proposals also appear to be compliant with Defra Guidance on the Control of Odours and Noise from Commercial Kitchen Exhaust Systems with very high level odour control arrangements in place.

I should point out that the proposals will not eliminate all the smells from cooking but should limit them to an acceptable level to prevent harm to amenity.

### Noise – roof terrace at 30 Huntriss Row

The predicted level of noise from the exhaust system outside the windows of the flats at 30 Huntriss Row is specified as 35dB. I note that a query has been raised by the immediate neighbour as to noise level that would be experienced on the roof terrace area. I would advise that this should be approximately the same (35 dB) given the similar distances from the exhaust system.

Determining what is an appropriate level for the roof terrace is more difficult as there is no specific recommended level for such a use in any of the guidance available. The World Health Organisation (WHO) recommends in its document Guidelines for Community Noise that an average of 50dB or more in an outside living area will result in

moderate annoyance. As the likely level of noise from the exhaust system is predicted to be much less than this the recommended level will be complied with.

In British Standard 4142, which is designed to assess the impact of industrial noise, it advises that an acceptable level is less than 5dB above the background level. From the original acoustic report the average daytime background level is indicated as being 44dB, which accords with measurements we have undertaken, and so an acceptable level based on this would be 49dB and the predicted noise level is much lower than this so this indicates it is acceptable.

There is also a draft guideline on noise impact assessments issued by the Institute of Acoustics which show that based on a background of 44dB that the noise from the exhaust system would have no impact. Even in the worst case scenario where the background is indicated to be 34dB the predicted impact is slight (34dB was measured at 22:45, at a time when the roof terrace is unlikely to be in use).

#### Noise – flats at 30 Huntriss Row

The predicted noise level of the exhaust system outside the windows of the flats at 30 Huntriss Row is 35dB which is only 1dB above the lowest background noise level in the original acoustic report up to 23:00. This is below the external recommended level in the WHO guide, and is at a level where the impact is judged as slight in the IOA draft guide and is compliant with BS4142. Provided the business doesn't operate any time later than this and that all the works proposed are undertaken there should be little impact.

Given the above, and subject to appropriate conditions to ensure the system is installed and maintained in compliance with DEFRA guidance, and operates at the 35dB noise level set out in the submitted documentation, I raise no objection to the proposals.

Publicity - Consultation period expired on 13 July 2015.

#### 4.2 Objections have been received from the following:

Mr and Mrs Mort - Emma's Coffee Lounge, 30 Huntriss Row, Scarborough

1. Both Emma's Coffee Lounge and the flats (30A and 30B) above it have suffered numerous issues as a result of noise and unpleasant odours arising from the KFC Restaurant since the unauthorized development began. These continue to date and materially impact on the operation of Emma's Coffee Lounge and on the residential use of the flats at 30A and 30B Huntriss Row.
2. Throughout the operation of the unauthorised development readings of noise levels and sensory recordings of odours have been taken and provided to officers of the Council.
3. In terms of the revised extraction proposals these are increased in terms of size and dominance in relation to the original application proposals. The flue is proposed to be 9m above the first floor roof terrace of 30A and 30B Huntriss Row, and is increased in diameter and this has a significant affect in terms of its industrial appearance.
4. The proposed acoustic enclosure will measure 2.7m in height and will be 3m in

- width and 2m in depth, whilst the proposed enclosure to the refrigeration units measures 2.575m in height and will be 2.95m in width and 1.02m in depth. These will be clearly visible from the roof terrace of 30A and 30B Huntriss Row.
5. The above proposals would extend well beyond the current unauthorized development, and more significantly, far beyond the extent of the proposals originally considered by Committee in August 2014.
  6. The proposals, if permitted, would result in equipment that would be visible from 30A and 30B Huntriss Row and would dominate the surrounding area both in height and overall size.
  7. The proposals are at odds with the guidance at paragraph 58 of the NPPF, which requires that the Council must “create attractive and comfortable places to live, work and visit”.
  8. The proposals are not normally the sort of thing that would be seen in any town centre location, especially within a conservation area. The proposals are considered to be overbearing and impact on the appearance of the area contrary to Policy H10 of the Local Plan.
  9. The committee resolved to impose a condition on the grant of planning permission requiring the equipment to operate at a noise level of 31dB in order that the premises could open until midnight. The applicant now suggests a noise level of 35 dB (when measured 1m from the nearest residential window). This fails to meet the requirements of the committee in August 2014.
  10. The proposed noise level demonstrates a lack of regard to paragraph 123 of the NPPF, which states “planning policies should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new developments”.
  11. The application fails to give consideration to the roof terrace of 30A and 30B Huntriss Row and the Council cannot therefore consider it until due consideration is given to the roof terrace. Failure to do this would be contrary to Policy H10 of the Local Plan and guidance in the NPPF (paras. 109 and 123).
  12. No consideration is given to the impact of varying fan speeds on noise output. Evidence needs to be provided to demonstrate that all fan speeds and associated noise levels are adequately attenuated before the application can be properly considered.
  13. Concern was raised during consideration of the original application that the noise levels proposed could not be met, which has proved to be the case, and therefore detailed calculations are required to put beyond doubt that the revised equipment can meet the noise levels that the applicant says are possible. Failure to be clear about this would mean the Council would fail in its duty to protect residential amenity as required by Policy H10 of the Local Plan.
  14. The proposals seek to deal with odour by increasing the height of the flue, by repositioning it to the rear wall of 28 Huntriss Row, and by increasing the velocity at which odours are expelled. However, the applicant provides no conclusive or reasoned explanations as to why and how the alterations will so significantly improve the odour and other emissions experienced by neighbours in order to make the situation acceptable. It is considered that if the Council were to approve this application without the appropriate evidence then this would conflict with paragraph 109 of the NPPF, which requires that new development should not put existing development at unacceptable risk from, or to be adversely affected by unacceptable levels of noise pollution.
  15. A full Environmental Impact Assessment (EIA) should be carried out to address the issue of malodour being removed from the surrounding area.
  16. The flue will not reach the ridge of the property, and given it is sited within what is

- effectively a courtyard, the applicant needs to provide evidence as to why the proposal will be effective in dealing with malodour.
17. No evidence is provided as to why the increased velocity at which odours are expelled from the flue will improve the situation. The proposals appear to be based on guesswork and an EIA should be carried out in which the issue can be properly considered.
  18. Both DEFRA and the HSE state that air borne contaminants must escape the boundary air layer of a property – this will not be achieved by the proposed flue, which is to terminate below the ridge of the property. DEFRA guidance also advises that a flue discharging into a semi-enclosed area such as a courtyard should be avoided. Therefore approving this proposal would be to ignore DEFRA's carefully considered guidance.
  19. The proposals will place the flue alongside the windows of two residential flats (30A and 30B Huntriss Row) and as a result they will be impacted on by odours carried in down draughts or eddying air, due to the flue not terminating above the boundary air layer. Permitting such a proposal would result in a nuisance to occur contrary to Policy H10 of the Local Plan.
  20. Concern remains regarding the impact on public health of harmful emissions arising from the KFC premises, including Polycyclic Aromatic Hydrocarbons (PAHs), Ozone and other toxic emissions (as a result of cooking chicken under pressure at very high temperatures) if they are not properly dispersed above the boundary air layer.
  21. The requirement for this industrial equipment is indicative that the development is sited in the wrong location. Planning cannot allow one business to adversely affect another business or residential property, and therefore the Council should reject the amended application in its current form.

Mr and Mrs Milne - 30B Huntriss Row, Scarborough

1. We live in the flat adjacent to KFC and objected to what has been placed on the roof. As they don't have planning permission the whole development is unauthorised.
2. We live in a Conservation Area and have a right to residential amenity.
3. The noise from the extractor fans starts at around 9.30am to around 12 midnight. We can't sit quietly in our room and have to have the TV on at loud volume. Also we like to have the window open in winter and summer.
4. It was lovely and quiet and relaxing before the extractor equipment was put in. It's noisy, smelly and ugly and we can't enjoy our roof terrace. It's a real eyesore when looking out of the window and ruins the skyline.
5. The smell from the premises is terrible – we can smell it in our rooms as it comes through the windows, on the terrace and it gets into our clothes.
6. The proposed flue, at 9m high, would be obtrusive and overlooks our roof terrace. The acoustic metal enclosures that are proposed are large and unsightly and with the other equipment the whole set up is unsightly and has changed the outlook from our flat and roof terrace.
7. We are not clear on the hours that KFC now seek and also are concerned that the noise level now proposed from the equipment is higher than previously proposed, but not achieved.
8. No evidence is given to show the proposal will protect our residential amenity so the Council should refuse it. We consider that moving the flue to the back wall of the property is wholly unsuitable. Placing the flue on the rear elevation of the building could lead to more odours entering our flat.

9. The flue needs to exceed the ridge height of the roof if it is to get odours away – raising it by the 2m proposed and increasing the velocity by some 4.5mph will not allow emissions to clear the roof in normal weather conditions.
10. The Council completely failed to consider our residential amenity in allowing the KFC proposals last year, and as a result we have suffered from odour and noise nuisance and the overbearing effect of the industrial structure that has been erected.

Mrs D Bell - Shipton & Co., 29 Huntriss Row, Scarborough

1. We object to the proposals on the basis that the proposed stack will not be high enough to get rid of the fumes and smells KFC produce. These fumes need to be omitted at a higher level according to DEFRA.

A standard letter of objection has been received from:

S Boddy – Boddy's, 19-25 Bar Street, Scarborough (with additional points included)  
J Spinks – Rafferty's, 27 Bar Street, Scarborough  
D Parry – The Wonder Emporio, 24 Bar Street, Scarborough  
A Knipe – Angela & Rosie, 18 Bar Street, Scarborough  
L Traill – Blueberry, Bar Street, Scarborough  
S Crowther – Bijoux Box, Bar Street, Scarborough  
H Baker – The Wedding Room, Bar Street, Scarborough  
K Middleton – Paul's Hairdressers, Bar Street, Scarborough  
M Dunn – Guitar Galleries, Bar Street, Scarborough  
It's In Your Jeans, 22 Bar Street, Scarborough  
John Moore

The points made can be summarised as follows:

1. We object strongly to the smells and odours on Bar Street since KFC opened on Huntriss Row. No odour issues were experienced on Bar Street from McDonalds and Pizza Hut so something must be seriously wrong.
2. The new plans that have been submitted have the extended flue still positioned below the ridge of the roof so smells will still enter Bar Street. The flue needs to be higher so that it expels fumes into the air above the roof ridge in order to take fumes and smells away, otherwise the disgusting smells that now affect our property and customers will continue to be a problem.
3. The proposal to increase the velocity at which kitchen fumes are expelled, from 33 mph to 37.5 mph, will make no difference whatsoever.
4. We are losing customers because of a multi-national company branch opening and clearly not following planning guidelines and blatantly disregarding everything the Council has asked them to do.
5. Please help us to keep Bar Street a street of independent family run businesses – this will be lost if action is not taken quickly.
6. Customers using the outside seating at Boddy's Café are affected by the disgusting smells. Boddy's has traded since 1984 and has not previously had complaints about smells until KFC started to trade.

## 5.0 RELEVANT SITE HISTORY

5.1 None.

## 6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of The Town and Country Planning Act 1990 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. Attention is drawn to the following Development Plan and other planning policies and guidance which are considered to be particularly relevant to the consideration of this application:-

### **Scarborough Borough Local Plan (Saved Policies)**

**E14** - Extensions and Alterations to Existing Buildings

**H10** - Protection of Residential Amenity

### **National Planning Policy Framework**

**NPPF2** - Ensuring the vitality of town centres

**NPPF11** – Conserving and enhancing the natural environment

**NPPF12** – Conserving and enhancing the historic environment

### **Scarborough Borough Supplementary Planning Documents**

None relevant

### **Local Planning Policy Guidance**

None relevant

## 7.0 ASSESSMENT

7.1 The key areas of assessment relating the original scheme considered by Committee in August 2014 included the loss of the retail unit within Huntriss Row and highway issues and in principle the mixed restaurant/takeaway use was found to be acceptable. These issues are not revisited in this report.

7.2 The other relevant matters, considered by Committee in August last year remain relevant to the amended kitchen extraction system proposals, namely:

- Visual Impact of the Revised Extraction Proposals; and
- Impact on Amenity

7.3 Before addressing these matters your Officers consider it helpful to briefly set out the background to the situation that has arisen, and the actions undertaken to seek to enable the KFC Restaurant to operate in the interim, whilst being mindful of neighbour amenity issues. Your Officers have relied on the expertise of Environmental Services Officers who have undertaken a considerable amount of monitoring, which remains

ongoing, in order to keep matters under review, and regular internal meetings have been held. Both Planning and Environmental Services Officers have met with both the applicant and the immediate neighbours on a number of occasions to discuss a range of matters since the premises first opened for trade in late November 2014.

7.4 The applicant has continued to cooperate with your Officers with a view to bringing forward these revised proposed, although they have been advised that until an appropriate resolution is found they remain liable to enforcement action. In the interim both your Officers and the applicant have acted in good faith in seeking to reduce the impact of the extraction equipment on amenity to ensure an acceptable interim solution is in operation. In doing so, your Officers have been particularly focused on the concerns of neighbours and local businesses and monitoring has been undertaken and testing carried out.

7.5 Based on the background noise recordings undertaken in advance of the original application proposals coming forward, the interim solution of the extraction equipment operating at a noise level of 47 decibels (dB) at the façade of the nearest neighbouring residential property (30A Huntriss Row) against a fluctuating daytime background level of between 34 dB and 44 dB (8.00am to 11.00pm), has not been considered to result in an unacceptable impact on residential amenity, although it is accepted that the situation is not ideal and has been of concern to the neighbours. Taking into account the reduction in noise experienced inside the nearest residential property, due to the noise reducing properties of a window, the noise level experienced by residents is not considered to have been harmful to amenity against the fluctuating background noise levels.

7.6 It is accepted that anyone wishing to sit out on the flat roof of 30 Huntriss Row would find the noise output from the extraction equipment to be intrusive. Officers of the Council have recorded 51 dB on the roof, and this is well above background levels (which fluctuate between 34 dB and 44 dB). As an interim situation, your Officers have taken the view that it is important to ensure amenity is safeguarded within the flats as during winter/spring the external area did not appear to be put to use. However, it is acknowledged that amenity levels on the roof terrace have been affected, especially since the warmer weather has arrived and the area has been put to use.

7.7 Officers consider that the problem that has arisen results from a number of different consultants/suppliers working on the design of the extraction equipment in order to attempt to achieve the DEFRA 'Very High' specification in terms of odour extraction, which resulted from the consideration of the scheme at committee. In seeking to achieve the 'Very High' specification, the system altered as the design work progressed and as a result noise levels were not as originally predicted as the system installed differed from that considered by the acoustic consultant.

7.8 Once in operation (from late November 2014) it was quickly determined that the equipment was too noisy and was not reducing odour to any great degree. It was later found that the system had been operating without the odour treatment elements of the system being fully functional. The original fan had also not operated properly and the replacement fan was found to be very noisy. Despite the applicant seeking to make further alterations, your Officers considered that a Temporary Stop Notice needed to be issued in order to allow further discussion about the measures that were needed to improve the system's effectiveness in terms of odour extraction, whilst also ensuring its noise output was reduced.

7.9 In terms of the noise issue the fan was surrounded by a temporary acoustic enclosure and a screen fence erected close to 30 Huntriss Row to further reduce the noise level at the property's facade. The system was carefully checked to make sure all the components of the odour extraction system were fully operational. Whilst on re-opening the KFC Restaurant in late December the system was found to have improved the odour situation, it was still considered to be far from ideal and the applicant raised the height of the flue in early January, which whilst not entirely effective has improved the situation again with monitoring indicating that odour issues have been more intermittent. This pattern has continued to date.

7.10 With hindsight, your Officers would advise that the extraction system should have been re-designed before works commenced to convert the premises to a KFC Restaurant. Developing the system with input from different consultants/suppliers (as works progressed) has resulted in a system that has had to be altered and that ultimately needs to be completely reconfigured to achieve what is envisaged to be an acceptable solution. The revisions proposed are set out earlier in the report, but in short they would result in the re-siting of the different components of the system in a revised order, a simplification of the system so that it is a straight run rather than U-shaped, and the addition of a taller flue at the rear of the four-storey 28 Huntriss Row property, to replace the smaller flue currently at the rear of the two-storey Bar Street property that forms part of the premises.

7.11 The key considerations regarding the revised proposals are set out below under separate subheadings.

### **The Visual Impact of the Revised Extraction Proposals**

7.12 Whilst the proposed revised system is more substantial than that considered by Committee it is largely hidden from wider view by the surrounding buildings. The system would be placed, like the existing equipment, at first floor level on the flat roof that sits between the Huntriss Row and Bar Street property that form the KFC premises. As a result of this the system (including a taller flue) would not be easily viewed by the public as it would be screened from view by Huntriss Row and Bar Street buildings. Whilst the system, and in particular the flue, would be viewable by the Huntriss Row neighbours and residents in the upper floor of Bar Street properties, this would be seen against the backdrop of 28 Huntriss Row itself, and its neighbours. In this context the flue, despite having a sizeable diameter of 650mm, is not considered to be visually incongruous within its surroundings and therefore would preserve the character and appearance of the wider Conservation Area. The fact that the flue can be finished in a colour is considered to further mitigate the visual impact of the flue when viewed from surrounding properties. The applicant has proposed a dark grey paint colour, but has confirmed that they will take Officer advice on this. At this stage your Officers consider that a mid-grey tone would be most appropriate. The matter can be covered by a condition of planning permission.

7.13 In terms of the visual amenity of the immediate neighbours, the simplified form of the revised system is considered to be helpful in relation to the existing system. In addition, placing a larger flue to the rear of the taller Huntriss Row building to deal with the odour issue, reduces its visual impact. The current flue, whilst shorter, sits more centrally within the flat roof area and as a result is considered to be more visually intrusive on the immediate neighbour. At present the flue is clearly visible when viewed

from the windows of the flats above 30 Huntriss Row, and placing it where proposed would result in it being further from the neighbour and out of direct view from windows. The proposed position is considered to make the flue less dominant when viewed from the roof terrace area as well, and again would place it further away from this area than the current arrangement, with the backdrop of the Huntriss Row building behind it.

7.14 Your Officers consider that the acoustic enclosures, subject to colour finish, should not be visually intrusive and will simplify the visual appearance of the system, and would improve substantially on the current set up. Your Officers consider that further visual screening measures could be put in place to reduce the visual impact of the equipment when viewed from the adjacent flat roof area of 30 Huntriss Row. This would most likely be in the form of a screen fence, and a condition is proposed to require details of screening measures to be approved and implemented. Screened behind a fence the visual impact of the extraction equipment (other than the flue) would be similar to buildings and structures that could be erected in the garden of a residential property without the need for planning permission, when viewed from the adjoining flat roof area. The choice of grey colour finishes for the acoustic enclosures is likely to be most appropriate in seeking to reduce the prominence of the equipment in the context of its 'roof scape' surroundings. The final tone being important and a mid-grey shade is recommended as mentioned earlier in relation to the flue.

7.15 Whilst any system placed on the flat roof will be viewable from the nearest upper floor flat (30B Huntriss Row), this would necessitate a viewer to be at the window and looking down onto the roof. It is considered that views from the window would normally be from further back within the room and would generally be of the buildings on Bar Street.

7.16 Mindful of the above matters, the impact of the roof-mounted system on visual amenity from the windows of the neighbouring flats and the flat roof area used for sitting out purposes, is not considered to be sufficient to warrant refusal of planning permission given the context. As the original committee report of August 2014 commented, "whilst it is appreciated that the equipment will be seen from the upper floor windows of properties along Huntriss Row and that there may also be limited views down onto the roof from the upper floors of properties situated on the north east side of Bar Street, it is considered due to the commercial nature of the area, that it is reasonable to expect the installation of this type to be present in the vicinity". The revised proposals are considered to accord with Policies E14 and H10 of the Local Plan in terms of visual amenity of the wider area and nearby residents.

### **Impact on Amenity**

7.17 There are a number of issues to consider in terms of amenity, including noise, odour and other emissions as referred to by the immediate neighbours. The issue of visual amenity has been considered above.

### **Noise**

7.18 The site has been visited by acoustic engineers from Emtec Products Limited, who have undertaken readings of the noise emissions from the existing extraction equipment on the roof. Emtec has advised on the acoustic treatment of the proposed reconfigured system in order to achieve a noise level for the fan of below 35 dBA at 1m from the adjacent residential windows. This is proposed to be achieved by a number of

amendments to the system including the use of Emtec's own acoustic enclosure around the centrifugal fan (to include part coverage of both the inlet and outlet silencers), together with an Emtec inlet silencer and anti-vibration mountings. In addition they advise that the fan should be isolated from the adjacent ductwork by Revertex sound barrier mat flexibles. The proposals seek to reduce both air borne and structure borne noise arising from the operation of the system. They do caution that the proposals do not take account of the noise breakout from the inlet and discharge ductwork, or noise emanating from the exhaust outlet at the top of the flue. They comment that these noise sources are secondary in nature to the direct noise from the fan and motor and so will not be assessable until the suggested revisions to the system have been carried out.

7.19 The Council's Environmental Services Officer has considered the proposals and has commented that as the noise level at which the system would operate is well below the recorded background levels that it would be acceptable and would safeguard amenity.

7.20 The neighbouring property owners have expressed concern that the applicant has not put forward evidence in the form of detailed calculations etc that demonstrate that the suggested reduction in noise levels can be achieved. However, it should be noted that Emtec's own engineers have taken measurements of the existing system, including the fan motor, where they recorded a near field noise level of 71 dBA. Their proposals seeks to reduce the noise output by 50% and given that they specialise in acoustic enclosures and products that reduce the noise arising from structure borne vibration, your Officers are confident that the noise reductions proposed are realistic. Whilst a full set of calculations of how the predicted noise reduction has been arrived at has not been supplied, these can only be predictions and the proof will be in the operation of the system once reconfigured.

7.21 Once the system has been reconfigured it will need to be tested and further noise reducing measures put in place if noise breakout from the inlet and discharge ductwork, or the noise emanating from the top of the flue are found to be above 35 dBA.

7.22 Clearly your Officers anticipate a substantial improvement in terms of noise levels over the existing system due to the use of properly specified and configured components, which the existing system currently lacks, although the noise levels are already reduced from 71 dBA at the motor to 47 dBA at 1m from the nearest residential window. In addition simplifying the system so that it is in a straight run rather than U-shaped is considered to be beneficial in terms of reducing the noise emissions from the system as a whole, as the extracted air is not forced around a 180 degree bend mid-way through the extraction process.

7.23 The neighbouring property owner is concerned that the predicted noise levels are higher than that put forward originally in the application. At that stage the noise level of the system was stated to be 31 dB to match that of the lowest background level at pre-application stage, recorded after midnight. The current proposal seeks to achieve a noise level of 35 dBA at a distance of 1m from the nearest residential window to enable the system to operate until 11.00pm. The original proposal was for the restaurant to be open until midnight and therefore the lower noise level was targeted.

7.24 The noise survey undertaken to established background noise levels recorded 34 dBA as the lowest level before 11.00pm. The proposal to configure the system to

achieve a noise level of 35 dBA outside the nearest window should therefore mean that the noise from the system would be 1 dBA above background, which would be imperceptible to residents. The system's noise level of 1 dBA above background is well within the 'less than 5dB above background' that is specified in BS4142 as an acceptable noise level.

7.25 In response to a query raised about the noise levels likely to be experienced on the roof terrace, serving 30A and 30B Huntriss Row, Environmental Services Officers have confirmed that given the similar distances involved the noise level should be similar at 35 dB. Given that this would be similar to the average background noise level then the amenity of the users of the roof terrace should be protected.

7.26 The immediate neighbours have raised concern regarding the potential for higher fan speeds to cause nuisance as the system is noisier at high settings. This issue has been discussed with the applicant who has confirmed that the air inlet fan, which is currently able to operate on a range of settings from 1 to 5, will be reconfigured so that it can only operate at a highest setting of 3. The applicant has confirmed that this is the maximum regular operating speed for an air inlet fan.

### Odour

7.27 The proposed reconfigured system seeks to deal with the odour arising from the cooking of foods in the KFC kitchen in a number of ways. Firstly, by treating the odour more effectively through the re-ordering of the components in the system and secondly, by expelling the odours in a different position and at a higher level.

7.28 The present system includes the use of ozone and electrostatic precipitators to reduce the level of odours from the extracted kitchen air before it is expelled from the flue. A unit producing ozone and hydroxyl free radicals to oxidise cooking odours through a process of ozonolysis is positioned early in the system. This injects ozone into the air and cooking fumes being extracted from the kitchen before the extracted air passes through the electrostatic precipitators, which is a filtration device that removes fine particles, like dust and smoke. The proposed reconfigured system switches these around so that the extracted air and cooking fumes pass through the electrostatic precipitators before the ozone is injected. This should ensure that the ozone is more effective in terms of odour reduction as the electrostatic precipitators should remove dust and smoke particles in advance so that the ozone concentrates on oxidizing the remaining odours, rather than seeking to treat everything extracted from the kitchen. Environmental Services Officers consider this should help increase the odour reducing qualities of the system, although some odour will inevitably remain and therefore needs to be expelled at a higher level.

7.29 In order to expel the extracted kitchen air and fumes at higher level, a larger and taller flue is proposed in relation to the existing and this is proposed to be positioned so that it expels extracted air and fumes some 2.0m above the eaves of 28 Huntriss Row, at a velocity of some 37.5 mph (60.5 kph). Neighbours and local businesses are concerned that this will still not result in the expelled air and fumes escaping the boundary air layer of the building and therefore the remaining odours will be dragged down into Bar Street and towards windows and the roof terrace serving 30A and 30B Huntriss Row. They consider that the flue should be taller so that it is at least the same height as the ridge of the roof of 28 Huntriss Row. They are also concerned that the modest increase in velocity of the expelled air will not have any impact over the existing

situation.

7.30 However, Environmental Services Officers consider that the repositioning of the flue to the rear elevation of 28 Huntriss Row and the proposed increase in height over the existing should have a positive effect in terms of increasing the discharge of air and fumes to free air, which should reduce the incidence of odour in Bar Street and to the rear of the Huntriss Row properties which combined with the revised system should extract a greater proportion of odour from the cooking fumes than is currently the case. The repositioned and taller flue should result in a marked improvement over the existing situation.

7.31 Placing the terminus of the flue at 2m above the eaves of the premises is considered to be sufficient to expel extracted air and fumes above the boundary air layer of the building, so as to stop odours from being pulled down into the rear yard areas and Bar Street. The existing flue sits centrally within the rear area, roughly equidistant between the rear elevation of 28 Huntriss Row and the front elevations of the properties on Bar Street. This position, combined with its lower height is considered to be the main reason for odours being intermittently dragged down into Bar Street.

#### Other emissions

7.32 The immediate neighbours have raised concern regarding the impact of residual ozone and other potentially harmful emissions including polycyclic aromatic hydrocarbons. As they point out in their objection, ozone is found naturally in air, but if found in greater quantities than those which appear naturally it is harmful to human health, being an irritant to eyes, skin and the respiratory tract. This has been concern to the objector since the KFC Restaurant first opened and Environmental Services Officers have monitored for ozone and to date have not detected any. Whilst the reconfigured system could expel more residual ozone, it is proposed to inject this later in the process, and this can be monitored. Ozone should be expelled to a higher level and taken away. Very low concentrations of ozone are perceptible and as such should be picked up well below a level where they would be harmful to health. Officers have also carried out testing in response to the concerns raised by the neighbours but have not detected any substances that would be deemed harmful to health. This would indicate that to date the system is dispersing ozone etc. effectively.

7.33 In their objection, the immediate neighbours point to concerns over other emissions that may be harmful to public health. Environmental Services Officers would point to the advice received by the objector from the Food Standards Agency, which states that “we are aware that the frying of foods at high temperatures does result in the formation of polycyclic aromatic hydrocarbons (PAHs) and other substances. Most of these will be kept within the food, but some may be released into the chimney stack”. In response to this Environmental Services Officers have confirmed that they do not consider it likely that any such emissions would be of such a concentration to cause harm to health.

7.34 Concerns have also been raised regarding the impact of odours escaping from front door of the KFC premises on the immediate neighbour, in particular the café seating area within the street. Whilst Environmental Services Officers have not recorded much odour arising from KFC in Huntriss Row itself, it has to be accepted that some leakage of general cooking odours will be inevitable from the front door of any such premises, and indeed these can be witnessed at other restaurant/takeaway

establishments in the town. This issue is not considered to raise serious harm to amenity.

7.35 Environmental Services have considered the submissions made in respect of the proposed reconfigured extraction system and are satisfied that the details are acceptable and that the problems that have been experienced locally, both in terms of noise and odour, should be addressed. However, they point out that any such system will not deal with all odours and some residual odour will be detectable from time to time, but that these should be at an acceptable level that will prevent harm to amenity. In monitoring for odours from KFC, Officers have become aware of the different odours arising from more established food outlets in the town, which on occasion are detectable in Huntriss Row and Bar Street. Ensuring odours are kept to an acceptable level, so as not to impact unacceptably on the amenity of businesses and residents must be the aim, as an odour free environment, especially within a town centre location is unlikely to be achievable.

7.36 Taking account of the above matters, your Officers consider that the amended proposals should ensure the odours are more effectively treated by the system and expelled into free air, with the system operating at a lower noise level that should safeguard the amenities of the residents of neighbouring flats and businesses. It is recommended that conditions be imposed on the grant of any planning permission in order to protect the amenity of existing residents in accordance with Policy H10 of the Scarborough Borough Local Plan and guidance in the NPPF.

## 8.0 CONCLUSION

8.1 Having assessed this proposal against the relevant development plan policies and guidance in the NPPF, and having assessed the concerns of local businesses and neighbours, it is considered that subject to the use of conditions to protect amenity that the restaurant/takeaway use can operate with an appropriately revised extraction system. Whilst the situation that has arisen has been very unfortunate and has impacted on local businesses and residents, the proposals put forward are considered to deal with the issues of noise and odour effectively. Officers can confirm to Members that should they be minded to grant planning permission the revised system will be monitored once completed to ensure compliance with the recommended conditions. Should further issues arise, particularly in regard to noise, Officers will require further alterations to ensure amenity is safeguarded.

## POSITIVE AND PRO-ACTIVE STATEMENT

The proposed development as submitted was not entirely acceptable, so the Local Planning Authority acted positively and proactively by securing the submission of revised plans and/or additional information, which addressed the original concerns.

## RECOMMENDATION

**PERMISSION BE GRANTED**, subject to the following condition(s)

- 1 The development hereby granted shall be carried out in strict accordance with Drwg. No. 0000/2015/ED Rev.A and the details submitted for the front and rear

elevations on Drwg. No. 0000/2013/G100 Rev.A unless any amendment is first approved by the Local Planning Authority.

Reason: For the avoidance of doubt.

- 2 The mechanical ventilation and environmental control equipment shall be installed and maintained in strict accordance with the details provided in the Barton Willmore letter and attachments dated 22 May 2015 (ref 23586/A3/VR/LD) in order to operate at a maximum noise level of 35dB measure at 1m from the nearest residential window and shall comply at all times with DEFRA Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of the protection of existing levels of residential amenity in accordance with Policy H10 of the Scarborough Borough Local Plan.

- 3 Details of the colour finish of the flue and acoustic enclosure(s) shall be submitted to and be agreed in writing by the Local Planning Authority before their installation and the flue and acoustic enclosure(s) shall be installed in accordance with the approved details and thereafter so maintained.

Reason: In the interests of the protection of existing levels of residential amenity in accordance with Policy H10 of the Scarborough Borough Local Plan.

- 4 Notwithstanding the information provided with the application a management plan shall be submitted in advance of the commencement of the use and be approved by the Local Planning Authority. The management plan shall provide full details in relation to deliveries; the storage and removal of refuse from the building; litter picking and the staff smoking policy. Once approved the use shall operate in accordance with the details submitted unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of existing residential amenity and the wider amenity of the area in accordance with Policy H10 of the Scarborough Borough Local Plan.

- 5 The use hereby permitted shall not be open to customers except between the hours of 10:00 and 23:00 each day and the mechanical ventilation and environmental control equipment shall be switched off by 23:00 each day.

Reason: In the interests of residential amenity in accordance with Policy H10 of the Scarborough Borough Local Plan.

- 6 Access onto the flat roof of the premises shall be restricted to maintenance purposes only. Staff shall not use the roof for rest breaks or as a smoking area.

Reason: In the interests of the amenities of nearby residents in accordance with Policy H10 of the Scarborough Borough Local Plan.

*David Walker*

**Background Papers:**

Those documents referred to in this report.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT MR M P WHITMORE ON 01723 232475 email [marcus.whitmore@scarborough.gov.uk](mailto:marcus.whitmore@scarborough.gov.uk)

