



window with a solid oak frame has been installed in the rear end wall of the dining area. It is proposed to provide acoustic housing above the bin store to reduce the noise resulting from the plant.

## 2. The Site:

- 2.1 The site is situated within the village confines of West Malling, and within the Conservation Area. The property is a Grade II Listed Building. The rear of the property is accessed from King Street, which is characterised by the rear of commercial properties to the east of the road and residential properties to the west, many of which are Listed Buildings.

## 3. Planning History:

TM/05/02901/LB      Grant With Conditions      6 February 2006

Listed Building Application: Change of use from retail to restaurant; removal and replacement of internal walls; enlargement of basement stair; extension of rear roof; demolition and replacement of rear extension.

TM/05/02905/FL      Grant With Conditions      6 February 2006

Change of use from retail to restaurant; removal and replacement of internal walls; enlargement of basement stair; extension of rear roof; demolition and replacement of rear extension.

TM/06/00404/LRD      Grant      31 March 2006

Details of joinery submitted pursuant to condition 3 of Listed Building Consent ref. TM/05/02901/LB (change of use from retail to restaurant; removal and replacement of internal walls; enlargement of basement stair; extension of rear roof; demolition and replacement of rear extension).

TM/06/00452/LRD      Grant      31 March 2006

Details of materials submitted pursuant to condition 2 of Listed Building Consent ref. TM/05/02901/LB (change of use from retail to restaurant; removal and replacement of internal walls; enlargement of basement stair; extension of rear roof; demolition and replacement of rear extension).

TM/06/00860/LB      Grant With Conditions      8 May 2006

Listed Building Application: Internal alterations.

TM/06/00967/LB      Grant      8 May 2006

Listed Building Application: Paint front elevation magnolia (retrospective).

TM/06/01342/FL      Grant With Conditions      15 June 2006

Variation of conditions 2 and 3 of planning permission TM/05/02905/FL (change of use from retail to restaurant; removal and replacement of internal walls; enlargement of basement stair; extension of rear roof; demolition and replacement of rear extension) to allow food to be sold on a take-away basis and variation of opening hours.

TM/06/03537/LB      Pending Consideration

Listed Building Application: Erection of kitchen extract duct extension to rear of building.

TM/06/03538/FL      Pending Consideration

Erection of kitchen extract duct extension to rear of building.

#### **4. Consultees:**

(A) TM/06/03122/LB:

4.1 PC: No objection.

4.2 Private Reps: 21/0S/0X/2R. Two letters of objection have been received, objecting on the following grounds:

- The construction has breached the damp proof course of the external wall to the adjacent property;
- The plan shows the construction of the new black steel stairs to form a final exit as part of the fire escape. However, the fire escape overlaps the adjacent owners' premises and is fixed to their wall;
- The proposed decking will result in a loss of privacy to adjacent residential properties. Why is the deck raised and not at ground level? If it were at ground level there would be no need for the metal steps to the rear.
- The decking is not in keeping with the Listed Building as it has been built up too high. A natural stone would be more in keeping.
- The plant for the climate control and beer cooling system would be within the courtyard area. At present it is situated for all to see and hear, particularly the residents of King Street. This is a noise nuisance and unsightly;
- The fan units are not in keeping with the adjacent Listed Buildings.

(B) TM/06/03123/FL:

4.3 PC: No objections.

4.4 DHH: The applicant has stated that the plant will be turned off overnight and it is possible that this situation can be resolved by imposing a condition as such (as there is obviously no detriment to their business) and/ or one along the lines of 'Noise from the climate control and drinks systems plant either individually or in combination shall not exceed NR35 at the closest noise sensitive property'. This would place the onus back on Pinch in the event of further complaints about noise and would address DHH concerns about these units.

4.5 Private Reps: 21/0S/0X/3R. Three letters of objection have been received, objecting on the following grounds:

- It is the intention of Pinch to use the decking as part of the restaurant. This will cause disturbance to owners of adjoining property, particularly the adjacent office accommodation;
- The construction has breached the damp proof course of the external wall to the adjacent property;
- The plan shows the construction of the new black steel stairs to form a final exit as part of the fire escape. However, the fire escape overlaps the adjacent owners' premises and is fixed to their wall;
- The decking will provide (underneath it) a safe haven for rodents and other vermin to breed and inhabit.
- The proposed decking will result in a loss of privacy to adjacent residential properties. Why is the deck raised and not at ground level? If it were at ground level there would be no need for the metal steps to the rear.
- The decking is not in keeping with the Listed Building as it has been built up too high. A natural stone would be more in keeping.
- An indoor and outdoor licence has been granted until 2am.
- The plant for the climate control and beer cooling system would be within the courtyard area. At present it is situated for all to see and hear, particularly the residents of King Street. This is a noise nuisance and unsightly;
- Some of the adjacent properties are Listed and do not have the soundproofing benefits of double glazing. The fan units have made rooms in the adjacent residential properties unsuitable for use when the units have been left on all night.
- The fan units are not in keeping with the adjacent Listed Buildings;

- The fan units have resulted in a loss of value to the adjacent properties;
- With no access to the bin store from the courtyard the level of noise caused by taking the rubbish to the bins has increased and is also occurring late at night.

**5. Determining Issues:**

(A) TM/06/03122/LB:

- 5.1 I am of the opinion that the works included in this proposal that have been carried out to the interior of the building are not detrimental to the character and fabric of the Listed Building.
- 5.2 I note the concerns raised in relation to the various plant that has been installed for the climate control and drinks system. In terms of the application for Listed Building Consent, the main issues to be considered are the impact of the proposal on the appearance and character of the building. The proposal has been amended. At present it is possible to see some of the plant above the gates that have been installed to the bin store at the rear of the property. The applicant has submitted plans to show that they propose to erect a close boarded fence above this, which would have a trellis roof covering the bin store above this. This proposed screening would alleviate my concerns relating to the visual impact of the plant on the character, appearance and setting of the listed building.
- 5.3 In terms of the decking that has been installed, I am of the opinion that it will not have a significantly detrimental impact on the character, setting or appearance of the listed building.
- 5.4 In light of the above considerations, I am of the opinion that the proposal will not have a significantly detrimental impact on the character or setting of the Listed Building.

(B) TM/06/03123/FL:

- 5.5 The installation of the decking and fan units to the rear of the property is retrospective.
- 5.6 The decking is within a courtyard area that was shown as an external sitting/ dining area on the original application. I note the concerns that have been raised that the decking will result in disturbance to adjacent residential properties. However, given that the original scheme had a courtyard area I do not consider that the provision of decking would have a significant additional impact on the amenity of the locality in terms of noise disturbance. The decking provides a level surface whereas the courtyard previously had a slight slope to it. The maximum increase in height above the original "ground" level is about 0.6m. I do not consider this has materially affected the privacy of properties at the other side of King Street.

- 5.7 I note the concerns that the decking has breached the damp proof course. However, this is not a material planning consideration. I understand that the decking meets the requirements of the Building Regulations. Issues relating to encroachment are not material planning considerations. Notice has been served on the neighbouring property, thus fully satisfying the requirements under the Planning Acts in this regard. The decision of this Council will not affect any rights that the adjoining land owner has in respect of any fixings made to this building.
- 5.8 I note the concerns raised that the amended location of the access to the bin store is resulting in disturbance to the adjacent properties. The approved scheme had gates opening onto King Street as well as an internal gate, leading from the courtyard to the bin store. Therefore, under the approved scheme it would have not been possible to ensure that the applicant used the internal gate rather than the external gate. As such, I am of the opinion that the removal of this internal access to the bin store cannot be argued to have a significant impact upon the amenity of adjacent properties.
- 5.9 In terms of the air conditioning and cooling plant, the proposal has been amended. At present it is possible to see some of the plant above the gates that have been installed to the bin store at the rear of the property. The applicant has submitted plans to show that they propose to erect a close boarded fence above this, which would have a trellis roof covering the bin store above this. This proposed screening would alleviate my concerns relating to the visual impact of the plant on the character, appearance and setting of the listed building. Whilst trellising has to be used on the roof of this housing to allow ventilation for the fan units, I am of the opinion that the proposed housing will sufficiently address amenity concerns relating to the bin store and fan units.
- 5.10 The applicant has stated that the plant will be turned off overnight and it is possible that this situation can be resolved by imposing a condition as such.
- 5.11 I note the concerns raised with respect to license hours. However, planning permission TM/06/01342/FL is subject to the following condition:
- “The premises shall only be open for the preparation and sale of food between the hours of 0800 to midnight Monday to Saturday and between the hours of 1000 and 2330 on Sundays and Public Holidays.
- Reason: To avoid unreasonable disturbance outside normal working hours to nearby residential properties”.
- The limitation on opening hours imposed by this condition can be used as the basis for a condition to control the use of the plant.

**6. Recommendation:**

(A) TM/06/03122/LB:

**6.1 Grant Listed Building Consent.**

This was approved in accordance with the following submitted details: Certificate B dated 01.12.2006, Letter dated 01.12.2006, Letter dated 26.09.2006, Details COOLER UNITS dated 26.09.2006, Plan 1082.17 dated 01.12.2006, Plan 1082.01 dated 26.09.2006, Plan 1082.14 dated 26.09.2006, Plan 1082.15 dated 26.09.2006, Letter dated 07.02.2007, Plan 1082.18 dated 07.02.2007,

**Conditions / Reasons**

- 1 Within one month of the date of this decision details of the materials and staining of the hereby approved refuse enclosure cover shall be submitted to the Local Planning Authority for approval. The refuse enclosure cover shall be implemented as so approved within one month of the date of the approval of these details by the Local Planning Authority.

Reason: In the interests of amenity.

(B) TM/06/03123/FL:

**6.2 Grant Planning Permission.**

This was approved in accordance with the following submitted details: Letter dated 07.02.2007, Plan 1082.18 dated 07.02.2007, Letter dated 26.09.2006, Details dated 26.09.2006, Letter dated 04.10.2006, Details dated 04.10.2006, Letter dated 01.12.2006, Letter dated 04.12.2006, Site Plan 1082.17 dated 04.12.2006, Existing Plans 1082.01 dated 26.09.2006, Floor Plan 1082.14A dated 04.10.2006, Floor Plan 1082.15 dated 26.09.2006, Plan 1082.16 dated 01.12.2006,

**Conditions / Reasons**

- 1 Within one month of the date of this decision details of the materials and staining of the hereby approved refuse enclosure cover shall be submitted to the Local Planning Authority for approval. The refuse enclosure cover shall be implemented as so approved within one month of the date of the approval of these details by the Local Planning Authority.

Reason: In the interests of amenity.

- 2 None of the hereby approved fan or cooler/air conditioning units shall be used or operated outside the hours of 0800 to midnight Monday to Saturdays and 1000 to 2330 Sundays and Bank Holidays.

Reason: To protect the aural amenity of nearby dwellings.

- 3 Noise from the climate control and drinks systems plant either individually or in combination shall not exceed NR35 at the closest noise sensitive property.

Reason: To protect the amenities of nearby dwellings.

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