

Committee(s):	Date:
Planning & Transportation Committee Port Health and Environmental Services Committee	20 th November 2018 15 th January 2019
Subject: Ventilation & Extraction requirements for restaurants/cafes	Public
Report of: Chief Planning Officer	For Information
<p>Summary Members requested a report setting out the controls and standards for the provision of ventilation and extraction systems for restaurants and cafes. The means of extraction for premises are controlled both by the Planning system in dealing with planning applications for new hot food premises and also Environmental Health legislation. Planning applications are considered against the relevant policies of the City of London Local Plan 2015 and Environmental Health assess the impact of extraction equipment against Guidance entitled 'Control of Odour & Noise from Commercial Kitchen Extract Systems.'</p>	
<p>Recommendation For noting</p>	

Main Report

Background

1. Members have raised concerns about the odours being extracted at ground floor level from restaurant and café premises. This report seeks to set out the statutory context for controlling such emissions and explains the approach of the City from a Planning and Environmental Health perspective in dealing with this matter.

Policy, Guidance and Standards

Planning

2. The impact of the extraction of fumes from a proposed hot food premises is a material planning consideration and the relevant Planning Policies are set out in the City of London Local Plan 2015.
3. Policy DM 21.3 of the Local Plan seeks to prevent nuisance from odours and states:

The amenity of existing residents within identified residential areas will be protected by:

- resisting other uses which would cause undue noise disturbance, fumes and smells and vehicle or pedestrian movements likely to cause disturbance;**

□ **requiring new development near existing dwellings to demonstrate adequate mitigation measures to address detrimental impact.**

4. Policy DM10.1 relates to the quality of new development and the supporting text states that ventilation or extraction systems should be routed internally and extensive or unsightly external ducting will be resisted. In new development, provision must be made within the building for services and ducting to and from all uses, including retailing and that ventilation louvres should not be sited adjoining footways.

Environmental Health

5. Environmental Health investigate statutory nuisance arising from odour and noise using Environmental Protection legislation. The threshold for statutory nuisance is high.
6. DEFRA guidance is clear that where appropriate control of noise and odour from commercial kitchens is better done through the planning process (that is, by 'planning out' potential problems) than through the statutory nuisance process (that is, by responding to reports of problems).
7. Environmental Health therefore advises on the impact of extraction equipment via the planning application process in order to protect the amenity of neighbouring premises.

The City's approach

8. For any planning application proposing a hot food premises, details of the means of extraction will need to be approved. At the outset the presumption will be that the proposal should incorporate high level discharge and that anything extracting at lower levels would be an exception and would need to be fully justified. In most cases the final details are secured by way of a condition on any planning permission where the following standard condition is used:

Before any works thereby affected are begun, a scheme shall be submitted to and approved in writing by the Local Planning Authority which specifies the fume extract arrangements, materials and construction methods to be used to avoid noise and/or odour penetration to the upper floors from the Class A use. Flues must terminate at roof level or an agreed high level location which will not give rise to nuisance to other occupiers of the building or adjacent buildings. The details approved must be implemented before the Class A use takes place.

9. The Pollution Control Team will assess the details. Until September 2017 odour control was assessed using national guidance commissioned by DEFRA; The NETCEN "Control of Odour and Noise from Commercial Kitchen Exhaust Systems". At which point DEFRA withdrew the guidance deeming it 'outdated'.
10. DEFRA have not replaced it but following their decision it has been revised and updated by EMAQ+, an organisation providing professional development training and technical guidance to local authorities (Appendix 1).
11. The design of an odour control system needs to address two phases of contamination in any 'kitchen' exhaust; particulate (grease, smoke, hydrocarbons/VOCs [Volatile Organic Compound]) and gaseous (odour). The design requires an adequate level of particulate and odour control but also

stack dispersion. Overall performance will be based on the arrestment plant and where the system discharges. As a rule, the more complicated the arrestment plant the more onerous the future maintenance (required to ensure it continues to work effectively).

12. Dispersion through stacks increases initial atmospheric mixing and spread. Stacks are inherently simple and in effect this simplicity provides a reliable and lower input method of mitigating odour with less maintenance and management. Well-designed stack dispersion can even allow for some short-term reduction in the performance of any odour abatement plant.
13. For these reasons high-level dispersion is always advocated where practicable. Optimising stack height and dispersion arrangements should be one of the first design decisions.
14. Where suitable high-level dispersion is not possible a much higher level of odour abatement plant will be required; this is likely to be expensive and require a significant commitment to ongoing maintenance.

Enforcement

Planning

15. The only circumstances where an enforcement investigation under planning legislation would occur would be as a result of the installation of plant and extraction equipment without the benefit of planning permission or where the equipment installed is not in accordance with the details approved under the relevant planning permission. The remedy could be a range of options, including:
 - Removal of the unauthorised equipment
 - the submission and approval of a retrospective planning application, or
 - the serving of a Breach of Condition Notice or an Enforcement Notice

Environmental Health

16. Odour can constitute a statutory nuisance. Section 79 Environmental Protection Act 1990 lists matters that may constitute a Statutory Nuisance which includes
“any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance”
17. This legislation would therefore control odour from restaurants and commercial kitchens. Environmental Health will investigate any complaint and in the event of a nuisance or prejudicial to health being substantiated, have the power to serve notice under Section 80 of the above Act to require works to be undertaken to abate the nuisance. Importantly Environmental Health must consider a range of issues when considering action. To substantiate a nuisance, it must be established that the effect of the odour is significant, this will be a balance of matters such as strength of odour, duration and frequency. In addition, the operator has a statutory defence that they are operating to “Best Practicable Means” this will require the operator to show that they have taken reasonable steps to minimise the odour from the premises. This includes having regard among other things to local conditions and circumstances, the current

state of technical knowledge and to the financial implications. The means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures.

18. In reality nuisance action in these cases is a method of last resort, it is much more efficient and provides a much more effective result in ensuring the correct mitigation measures are installed at the outset. Installing the correct plant at the outset also mitigates against future nuisance when further development takes place adjacent to such premises.

Appendix – Pages 1-9 of the Control of Odour and Noise from Commercial Kitchen Exhaust Systems, a full document can be found in hard copy in the Members Room.

Annie Hampson
Chief Planning Officer and Development Director

T: 020 7332 1700

E: annie.hampson@cityoflondon.gov.uk