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## Appeal Decision

Site visit made on 31 December 2019

**by M Russell BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 February 2020**

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**Appeal Ref: APP/W2465/W/19/3225807**

**268 - 270 Catherine Street, Leicestershire LE4 6GD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Hitesh Pujara against the decision of Leicester City Council.
  - The application Ref 20182577, dated 13 December 2018, was refused by notice dated 5 March 2019.
  - The application sought planning permission for construction of single storey extension at side and rear of ground floor restaurant (Class A3), ventilation flue at side, 1.8m high fence and gates at side and rear, alterations (amended plans received 14/06/2018) without complying with conditions attached to planning permission Ref 20172052, dated 9 August 2018.
  - The conditions in dispute are Nos 2 and 10 which state that:
    - (2) The ground floor window in the rear elevation to the flat closest to the side wall of the approved extension as shown on the approved plans shall be blocked up prior to the commencement of works on the extension unless agreed otherwise with the City Council as the local planning authority.
    - (10) The extension authorised by this permission shall not be used until the ventilation system to control the emission of fumes and smell from the premises has been installed as shown on the approved plans and it shall be maintained and operated thereafter in accordance with the manufacturer's instructions.
  - The reasons given for the conditions are:
    - (2) In the interest of the amenity of the occupiers of the flat at the host property and in accordance with Policy PS10 of the City of Leicester Local Plan.
    - (10) In the interests of the amenities of nearby occupiers, and in accordance with policies PS10 and PS11 of the City of Leicester Local Plan.
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### Decision

1. The appeal is allowed and the planning permission is granted for the construction of single storey extension at side and rear of ground floor restaurant (Class A3); ventilation flue; 1.8m high fence and gates at side and rear; alterations (amended plans received 14/06/2018) at 268 – 270 Catherine Street, Leicestershire LE4 6GD, in accordance with application Ref 20182577 dated 13 December 2018, without compliance with condition number 2 previously imposed on planning permission Ref 20172052 dated 9 August 2018 and subject to the 11 conditions set out in the attached schedule.

## **Procedural Matter**

2. Given the approved drawing shows the flue to be provided through the main roof, I have removed the reference to the flue being 'at side' for the purposes of clarity in my decision.

## **Background and Main Issues**

3. Planning permission was originally granted on 9 August 2018 for development which included amongst other things an extension to the ground floor restaurant at Nos 268 – 270 Catherine Street and provision of a new ventilation flue. The appeal seeks permission to remove conditions 2 and 10 of that permission which respectively required the ventilation system to be installed in accordance with the approved drawings and for a ground floor window serving an existing flat to be blocked up. The restaurant extension has already been undertaken and a ventilation flue has been installed, although not in accordance with the approved drawings. The clear glazed window, required by condition 2 to be blocked up, currently remains in situ.
4. The main issues are:
  - (i) whether condition 2 is reasonable and necessary having regard to the living conditions of the occupants of the host flat with particular regard to means of light and outlook; and
  - (ii) whether condition 10 is reasonable and necessary having regard to:  
the character and appearance of the area; and  
the living conditions of nearby residential occupiers with particular regard to odour.

## **Reasons**

### Condition 2

5. The window required to be blocked up serves a kitchen and there is a dividing wall to a utility room which is served by a separate window. The dividing wall is shown to be removed on the approved drawings with the window currently serving the utility room widened to serve the combined space.
6. The close proximity of the side wall of the extension means that there is some effect on the level of outlook from the kitchen window for the occupants of the flat. However, even accounting for the fact the extension dissects a 45-degree line from the window, the single storey scale of the extension and overall appreciation of space to the rear of the property means the impact is limited to an acceptable degree in this particular instance. My observations on site were that the window also provides a suitable level of light to the room that it serves. As a result, the alterations to the ground floor rear elevation of the flat are not necessary to provide suitable living conditions for occupants. This is regardless of whether or not the occupants have a connection with the restaurant.
7. To conclude, an acceptable level of outlook and light is provided for the occupants of the host flat and Condition 2 is not necessary. Consequently, in that particular regard, the development does not conflict with Policy CS03 (Designing Quality Places) of the Leicester City Council Core Strategy (2014)

and Saved Policies H07 (Flat Conversions and New Build Flats) and PS10 (Residential Amenity and New Development) of the City of Leicester Local Plan (2006) (the LP).

#### Condition 10

##### *Character and appearance*

8. The approved drawings show the flue outlet to be directed through the roof of the building and clad in brick slips. The height above ground level and traditional appearance of the approved cladding materials would assist in assimilating the previously approved flue into the street scene. In contrast, the flue installed is a prominent feature given its position closer to street level over the ground floor extension. This is exacerbated by the metallic materials utilised which do not complement the prevailing residential character and appearance of Sutton Avenue. The appellant has confirmed that they would be agreeable to a requirement to cover the area around the flue. A condition requiring details of suitable cladding would be likely to reduce the visual impact of the flue to an acceptable degree in this instance.
9. To conclude, subject to a condition for cladding to be provided, the flue would have an acceptable relationship with the character and appearance of the area. Consequently, the development could comply with Policy CS03 (Designing Quality Places) of the CS in this particular regard.

##### *Living conditions of nearby residential occupiers*

10. As approved, the top of the flue would sit 1.0 metre above the highest ridge of the building. This was part of the specific criteria set out by the Council's noise and pollution team given their concerns in respect of the relationship of the flue with neighbouring occupiers. The flue as installed is situated at a lower level, to the rear of the building and closer to the boundary with No 72 Sutton Avenue than the approved scheme. The garden and windows to the side and rear elevations of No 72 are in close proximity to the shared boundary with the appeal site. Given these factors, there is greater potential for fumes to be dispersed towards this neighbouring property and for there to be a detrimental effect on the living conditions for its occupants as a result of odour.
11. I have not been presented with any substantive technical evidence to demonstrate that fumes would not be dispersed towards No 72. The appellant suggests that the flue could be altered either by rotating or elevating the shield if retained in its existing position or alternatively that the flue could be repositioned to the side of the building. However, no detailed plans or technical specifications have been provided to demonstrate that such alterations would be effective and the appellant acknowledges repositioning the flue on the side elevation of the building could be detrimental to the street scene. Consequently, I am not persuaded by the evidence before me that the living conditions of No 72 would be protected if Condition 10 were to be removed.
12. The Council's noise and pollution team also specified maximum noise levels in respect of any flue. The delegated report raises concerns about noise but this is not included in the reason for refusal. The original planning permission included a condition restricting noise levels and I have no substantive evidence before me to indicate that this condition could not be reapplied to the flue as presently

installed. Nevertheless, this does not overcome the potential harm in respect of odour.

13. To conclude, it has not been demonstrated that neighbouring living conditions would be protected from odour. Consequently condition 10 is reasonable and necessary to protect the living conditions of neighbouring residential occupiers in accordance with Saved Policies PS10 (Residential Amenity and New Development) and PS11 (Protection from Pollution) of the LP which amongst other things confirm that the amenity of existing residents will be taken into account including with regards to smell caused by the development and that proposals which have the potential to pollute air by reason of smell will not be permitted unless the amenity of neighbours can be assured.

### **Other matters**

14. My attention has been drawn to other flues in the area which the appellant suggests do not meet the requirements being placed on their proposal. I do not have the full technical specification for these examples nor details of when they were installed or whether they benefit from planning permission. I therefore do not find these examples persuasive in terms of considering the specific relationship of the flue installed at the appeal site with the character and appearance of the area or neighbouring living conditions. Furthermore, the long-established use of the premises as a restaurant and the existence of a previous flue in a similar position does not justify the provision of a new flue for an extended restaurant which has the potential to have an adverse impact on neighbouring living conditions.
15. The appellant suggests that provision of the flue through the main roof would require reconfiguration of a bathroom, would be costly and would impact on the ability to convert the roof space of the building for additional accommodation. I also note the concern raised that provision of the flue as previously approved would increase risks associated with noise, fire and maintenance of the flue which would need to be accessed through the self-contained flat. However, the plans indicate that the flue could be brought in through the corner of the bathroom with minimal impact on the layout of this room. Fire safety and access requirements through the self-contained flat are a matter within the appellant's control. The evidence before me does not persuade me that these matters could not be effectively managed. Whilst I appreciate there would be an associated cost and that there is also a desire to convert the roof space, these matters do not override the need to ensure that the flue is provided in a way that protects the living conditions of nearby residents.
16. The appellant is aggrieved that they were not able to pursue a two-storey extension to the building. However, I must consider whether the conditions are necessary or reasonable in respect of the development that has been granted planning permission. The acceptability or not of a larger extension and whether or not it would have screened the flue has not therefore been material to my decision. The suggestion that the plans were only amended to show the flue to be provided through the main roof space in order to secure planning permission does not justify an alternative approach to provision of the flue which does not demonstrate that neighbouring living conditions would be protected.

## Conditions

17. Other than Conditions 2 and 10, none of the other conditions attached to the previous planning permission on the site are being contested. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those conditions that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
18. With regards to Condition 1 in respect of the time limit for development to be begun, the development has already been substantively completed save for the matters in dispute and therefore it is not necessary to retain this condition. Other than Condition 2 contested under this appeal, I consider all remaining conditions are reasonable and necessary. The majority of conditions are therefore unaltered. However, given my conclusions in respect of Condition 2, removal of this condition also necessitates an amendment to Condition 13. This condition stipulates that the development must be carried out in accordance with the approved drawings. Therefore, the condition needs a caveat to allow the windows to the ground floor rear elevation of the flat to remain as existing and is renumbered as condition 11 in the attached schedule of conditions.

## Conclusion

19. For the reasons given, the appeal is allowed and condition 2 should be deleted whilst Condition 10 should be retained.

*M Russell*

INSPECTOR

## Schedule of conditions

- 1) The new walls and roof shall be constructed in materials to match those existing.
- 2) Before the extension is first brought into use, the redundant vehicular crossings shall have been reinstated to Highway Authority standards including a full height kerb, provision of bollards to prevent pavement parking and the removal of white 'H' bar markings at the redundant crossing.
- 3) The parking for the existing flat and the service area for the restaurant shall be provided before the use of any part of the extension and shall be retained and kept available for that use.
- 4) All street works shall be constructed in accordance with the Council's standards contained in the "6Cs Design Guide" (view from [www.leicester.gov.uk/6cs-design-guide](http://www.leicester.gov.uk/6cs-design-guide)).

- 5) No part of the development shall be occupied until the 2 metre by 2 metre sight lines on each side of each vehicular access have been provided, and they shall be retained thereafter.
- 6) There shall be no live or amplified music or voice played which would be detrimental to the amenities of occupiers of nearby properties.
- 7) There shall be no deliveries/collections including refuse outside the hours of 0730-2300 Monday to Saturday and 0900-2100 on Sundays unless otherwise agreed in writing with the City Council as local planning authority.
- 8) The extension authorised by this permission shall not be used until the ventilation system to control the emission of fumes and smell from the premises has been installed as shown on the approved plans and it shall be maintained and operated thereafter in accordance with the manufacturer's instructions.
- 9) No noise or vibration from the operation of the local exhaust ventilation system detrimental to amenity shall be perceptible in any adjoining property.
- 10) No doors or windows shall open outwards over the public highway from the approved extension.
- 11) This consent shall relate solely to the amended plans received by the City Council as local planning authority on 14/06/2018, other than the ground floor rear elevation windows annotated 1 and 2 which shall remain as per the respective windows on the existing rear elevation also shown on this plan, unless otherwise submitted to and approved by the City Council as local planning authority.