



Appeal Decision

Site visit made on 12 January 2021

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2021

Appeal Ref: APP/W2465/W/20/3260758

Unit 9a, Maidstone Road, Leicester LE2 0UB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Rashid Ismail, NJs Takeout, against the decision of Leicester City Council.
 - The application Ref 20200929, dated 04 February 2020, was refused by notice dated 01 September 2020.
 - The development proposed is described as: Ventilation flue to unit; replace wooden doors with UPVC; food preparation area for consumption on and off the premises; hot food takeout.
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Procedural Matters

1. The wording of the description of development on the Council's Decision Notice differs to that on the planning application form. Moreover, it includes an external roller shutter. The appellant did not apply for a roller shutter. Although there was one in situ when I visited the site, the appellant claims it has been there since 1993, and I have no grounds on which to disagree with this claim. I have not been provided with any evidence that the parties agreed to a change of description. I have therefore used the description given on the planning application form. Consequently, the roller shutter does not form part of the proposal.

Decision

2. The appeal is dismissed.

Main Issues

3. The main issues are:
 - whether the site would be a suitable location for the proposed use, having regard to relevant local and national planning policies;
 - the effect of the proposed flue on the character and appearance of the area;
 - the effect of the proposal on the living conditions of occupiers of existing neighbouring residential properties, with regard to odours.

Reasons

Suitability of location for proposed use having regard to local and national planning policies

4. The proposal seeks to change the use of the premises from B2 (general industrial) to a mixed use A3/A5 (hot food being consumed on and taken away from the premises)¹.
5. The appeal building is a small, single-storey, general industrial unit, located within an area designated as a Primary Employment Area (PEA) for planning purposes. The unit is one of a small block of units, and the block is sited towards the centre of a row of 6 similar blocks, which are single storey with flat roofs, located on the western side of Maidstone Road. From my observations on site, there are around 24 units in total. Several units appeared to be unused at the time of my visit, confirmed by the presence of a handful of 'to let' notices attached to the buildings. Around half a dozen of the units are evidently being used as takeaway or catering/bakery facilities, and 5 or 6 of the units had extraction flues on the roof. There are residential properties on the eastern side of the road, opposite the site.
6. Policy CS10 of the Core Strategy (2010), (CS), aims to ensure that Leicester has a thriving and diverse business community. The policy seeks to achieve this aim by, among other things, carrying out a revised ELS to provide up-to-date guidance on whether employment land is fit for purpose, and retaining designated employment land for B1(c), B2 and B8 uses.
7. Saved Policy E03 of the City of Leicester Local Plan 1996-2016 (2006), (LLP), states that within PEAs planning permission will be granted for B1, B2 and B8 uses, and changes to other uses will not be allowed unless it is shown that the proposal satisfies one or more criterion from a list provided in the policy. In summary, these are: i) land and buildings that are no longer viable for employment purposes, ii) the use is ancillary/complementary to an existing or proposed B-Class use, iii) the use would provide a significant number of jobs, iv) redevelopment of the site would make an important contribution to improving the wider urban environment, v) the use would be for housing (where there isn't a greater need to retain the site for employment purposes), and vi) the proposed use is for a local community facility where no alternative sites are available.
8. The appellant claims that the employment land on which the site is located has been graded very poor quality and is dominated by surrounding units that are not fit for purpose. I appreciate the site may be graded as stated by the appellant. However, although the appellant has drawn my attention to an Employment Land Study carried out in 2017, and provided certain extracts from the study, I have not been provided with any details from any study that clearly identify, and confirm, the site as being of very poor quality and not fit for purpose. Consequently, it has not been demonstrated that the site meets criterion 'i' of saved policy E03 of the LLP.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended) – Changes relating to Class A came into effect on 01/09/20. However, with regard planning applications submitted prior to that the Use Classes as was still apply.

9. Although the proposal would create some jobs, it would not create a 'significant' number, as required by criterion 'iii'. I accept that the proposal would tidy up the appearance of the property and make use of a vacant site. However, I would not describe such alterations as making an important contribution to the wider urban environment, as required by criterion 'iv'. Criterion 'ii', 'v' and 'vi' clearly do not apply to the proposal.
10. Policy CS11 of the CS aims to support the hierarchy of retail centres in Leicester. To achieve this aim, among other things, the policy states that a sequential approach will be applied to the location of town centre uses; food and drink facilities will be supported in centres to meet demand and add vitality and diversity (subject to other considerations).
11. Paragraph 86 of the National Planning Policy Framework (the Framework) advises that a sequential test should be applied to applications for a town centre use which is neither in an existing centre or in accordance with an up-to-date plan. Out of centre sites should only be considered if suitable sites are not available in town centres or edge of centre locations. I consider policies CS11 and CS10 of the CS to be consistent with the Framework and therefore the plan is up-to-date with regard to these policies.
12. Details of a sequential test have not been submitted. I note that the appellant claims to have tried to secure premises in other areas via the use of estate agents, online enquiries, and social media posts, though to date no suitable property vacancies have arisen. I acknowledge that the appellant may have sought to find suitable premises elsewhere. However, again I have not been provided with any evidence to substantiate this.
13. Considering the above, I conclude that, having regard to local and national planning policies, the site is not a suitable location for the proposed use. It would remove a property with a general industrial use from the employment land provision in the area, and it would undermine the policy objectives of seeking to direct town/local centre uses to such centres to contribute to maintaining their vitality and viability.
14. In the absence of any substantive evidence to demonstrate otherwise, the proposal does not accord with policies CS10 and CS11 of the CS, Policy E03 of the LLP, or paragraph 86 of the Framework.

Character and appearance

15. As stated above, the roller shutter does not form part of the application. As regards the proposed flue, I noted that there are 5 or 6 flues across the 6 general industrial blocks; I also observed that some of the units have ventilation equipment sited on their roof. Within the context of the site and given that the proposed flue would be small in size and sited away from the pavement, I consider that the proposed flue would have a neutral effect on the character and appearance of the area. As such the proposal accords with saved Policy CS03 of the CS, which requires new development to contribute positively to an area's character and appearance.

Living conditions – existing occupiers

16. The residential properties closest to the site, and those that I consider could potentially be affected by the proposal in terms of odour pollution, is a block of flats opposite the site, numbered 145-159 Maidstone Road. Although no details

of the extraction system have been provided (in terms of its odour control mechanisms), given the small size of the unit, the small size of the extraction system, the distance it would be from the nearest residential properties and the fact that the B2 general industrial use of the unit could create odours, I am satisfied that the proposal would not harm the living conditions of existing occupiers with regard to odour pollution. As such, the proposal would accord with saved Policy PS10 of the LLP, which seeks to protect the living conditions of residents.

Conclusion

17. Notwithstanding the conclusions I have reached regarding character and appearance and living conditions, due to the harm I have found with regard to the location of the site not being suitable for the proposed use, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR