



Appeal Decision

Site visit made on 10 May 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/W2465/W/22/3306036

205-207a Uppingham Road, Leicester LE5 4BQ

- 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 B Khunti against the decision of Leicester City Council.
 - The application Ref 20212663, dated 25 October 2021, was refused by notice dated 13 June 2022.
 - The development proposed is described as 'Change of use from sui generis car garages to B8 storage and distribution of building materials (Builders Merchant)'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the proposal on the Council's decision notice states, 'Change of use from lockup garages (Sui Generis) to builder's merchant (Sui Generis); single storey extension'. The appellant has confirmed that the Council's description more accurately reflects the proposed development. I have therefore considered the appeal on this basis.

Main Issues

3. The main issues are:
 - (i) the effect of the proposal on the living conditions of neighbouring residential occupiers with particular regard to levels of noise and dust; and
 - (ii) the effect of the proposal on highway safety.

Reasons

Living conditions of neighbouring residential occupiers

4. The host property sits within a parade of commercial uses fronting Uppingham Road, some of which have residential units within their upper floors. The appeal site also includes land to the rear of this parade. Residential properties within the parade, on Coleman Road and on Exton Road all sit in close proximity to this land. The evidence before me indicates that this land was previously in use for garaging and parking purposes. I observed on my site visit that Coleman Road and Uppingham Road are busy roads and traffic noise contributes to the existing background noise levels in the vicinity of the site.

5. The Noise Impact Assessment (23 August 2022) (NIA) suggests that predicted noise emissions from the development are equal to the background noise levels at Coleman Court and 2dB higher than the background noise levels experienced at a flat at No 207 Uppingham Road to the north of the site. The predicted noise levels are based on a series of assumptions. The NIA states that one of these assumptions is that 'The forklift and delivery vehicles will operate no closer than 10 metres (m) from the nearest sensitive receptors'.
6. However, the vehicular access point to the proposed storage yard sits close to the southern boundary of the site with the properties at Coleman Court. On my site visit I noted that the nearest main habitable ground and first floor windows serving Coleman Court are located in very close proximity to the southern boundary of the appeal site. In the absence of a detailed layout plan, it is unclear how the access and internal circulation areas could be laid out to ensure that delivery vehicles and forklift operations would not encroach upon the assumed 10 m buffer between the nearest habitable windows serving Coleman Court. My concerns in this regard are not allayed by the fact that the vehicle tracking diagram provided within the appellant's Transport Statement (March 2022) (TS) shows a 7.5 tonnes box van manoeuvring close to the boundary with Coleman Court.
7. In addition, it is not clear whether the results of the noise survey take into account other distinct features of noise likely to be associated with a builders' merchants yard. To my mind, it would usually be expected that there would be noise associated with offloading materials including, for example, those associated with metal-to-metal impacts or bulk materials. This casts further doubt over the findings of the NIA.
8. I acknowledge that operating hours and delivery times could be controlled by condition. However, given the identified deficiencies in the evidence before me, I cannot be certain that noise from the proposal would not have a harmful effect on the living conditions of neighbouring occupiers during working hours or that other mitigation measures such as acoustic fencing would be effective.
9. With regards to dust, the appellant's Air Quality Assessment (11 March 2022) (AQA), acknowledges amongst other things that operations at the site would have the potential to generate dust emissions associated with the storage and supply of building equipment. It identifies 10 properties, 7 of which are given a 'high' sensitivity rating with respect to 'operational phase fugitive dust emissions'. The closest of these again relates to the property to the immediate south of the appeal site, identified in the AQA as 'No 15 Coleman Court'.
10. In terms of dust during the construction phase, the AQA suggests that there would be a negligible effect. In this particular regard, I accept that any effects experienced by neighbouring occupants would be relatively short lived. Taken together with the controls that could be put in place during the construction phase to mitigate or reduce any impacts resulting from dust (as per Table 24 in the AQA), it is likely that any effects on neighbouring living conditions during the construction phase would not be significant.
11. With regards to the operational phase, the AQA suggests that there would be a slight effect on the neighbouring property at Coleman Court, but that in terms of all other identified neighbours the effect would be negligible. However, the absence of a specific layout which includes locations where materials such as sand, cement or other aggregates would be stored, somewhat undermines this

conclusion. In particular, given the very close proximity of the windows serving No 15 Coleman Court to the appeal site boundary, and that there are other nearby residential properties in close proximity identified as being down wind, I am concerned that there may be occasions when the storage locations and weather conditions could combine to result in unacceptable levels of dust being experienced by nearby residential occupiers.

12. Even if I were to reach a different conclusion in respect of the potential effects of dust, this does not address my overall concerns that the various assessments commissioned by the appellant are not informed by a detailed layout plan which demonstrates that the assumptions made are achievable.
13. I conclude, it has not been demonstrated that acceptable living conditions would be retained for neighbouring residential occupiers with particular regard to levels of noise and dust. In that regard, the proposal would conflict with the requirements to take the amenity of existing residents into account including in terms of noise and dust within Policies PS10 (Residential Development and New Development) and PS11 (Protection from Pollution) of the City of Leicester Local Plan (2006) (LP). For the same reasons, the proposal conflicts with the requirements at Paragraph 130 of the National Planning Policy Framework (the Framework) to ensure that developments create places with a high standard of amenity for existing and future users.

Highway safety

14. The appeal site is currently served by a narrow access drive taken from Coleman Road. This access point sits in close proximity to the signalised junction with Uppingham Road. There are on-street parking restrictions in place within the immediate vicinity of the site both on Coleman Road and Uppingham Road. While only a snapshot of the traffic conditions in the area, these roads were busy at the time of my site visit and there was a regular queue of traffic from the junction with Uppingham Road extending back across the site access point on Coleman Road.
15. The appellant's TS suggests that the proposal could generate up to 6 peak hour and 48 daily two-way movements, equating to a maximum of one additional vehicle every 10 minutes on average. The proposals include alterations to widen the existing access drive and the TS indicates that 6 on-site parking spaces would be provided. The TS also appends a plan showing vehicle tracking for a 7.5 tonnes box van which the TS suggests would be the largest vehicle accessing the site.
16. I have seen the concerns of the Highway Authority (HA) that a builders' merchants would normally take delivery by much larger vehicles than a 7.5 tonne box van. The appellant suggests that a height restriction system could be installed at the vehicular entrance to the appeal site to prevent Heavy Goods Vehicles from entering the site. However, the Council has provided photographs of a 7.5 tonne 'grab lorry' which it suggests would need a larger turning space than is shown in the TS. This point has not been disputed by the appellant and there is nothing before me to demonstrate that a height restrictor which allows for a 7.5 tonne box van would at the same time prohibit access for vehicles such as a 7.5 tonne grab lorry.
17. Policy AM11 of the LP confirms that parking provision for non-residential development should not exceed the maximum standards appended to the LP. It

confirms that reductions below these maximum standards will be required after consideration of several criteria, including availability, accessibility and safety of existing or alternative car parking provision and consequences of under provision in a particular location.

18. I have not been provided with details of the maximum standard that would be applicable in this instance. However, the HA suggests that the trip generation figures in the TS have underestimated the parking requirements for the site and that this has the potential to lead to indiscriminate parking within the site. At the time of my site visit, there were very limited opportunities for on-street parking close to the site. The appellant has not sought to justify the methodology used in the TS for calculating on-site parking requirements in light of the HA's comments. Given my own observations on the parking situation in the area, should insufficient on-site parking be provided, the HA's concerns in respect of the potential for indiscriminate parking within the site are understandable.
19. Notwithstanding the above, for the reasons already set out, vehicles requiring a larger turning space than that accounted for in the TS cannot be ruled out. In the absence of a detailed layout which shows that a suitable turning space, parking spaces, storage areas and internal circulation routes for staff, visitors and a forklift could all be accommodated and clearly demarcated, I cannot be certain that vehicles visiting the site would always be able to turn and exit onto Coleman Road in a forward direction. Indiscriminate parking would only increase the potential for this scenario. Given the busy location of the site access point close to a junction, vehicles reversing onto Coleman Road would have the potential to compromise the safety of the highway.
20. I conclude, it has not been demonstrated that the proposal would not have an unacceptable impact on highway safety on Coleman Road. In that regard it would conflict with the access and parking considerations of Policy AM11 (Parking Provision with Non-Residential Development) of the LP and Paragraphs 110, 111 and 112 of the Framework which require that developments provide safe and suitable access, allow for the efficient delivery of goods and do not have an unacceptable impact on highway safety.

Other Matters

21. The appellant has suggested that planning permission could be subject to a condition requiring provision of a 'Site Management and Traffic Management Plan' to be submitted. However, a condition would not provide sufficient certainty that such a plan could address all aspects of harm identified under the main issues.
22. I recognise the proposal has the potential to have some economic and social benefits for the area through investment in the site to bring it into use and in terms of employment opportunities created. However, this does not justify the potential harmful effects of the proposal on neighbouring living conditions and highway safety.

Conclusion

23. The proposal has the potential to have a harmful effect on neighbouring living conditions and highway safety and would therefore conflict with the development plan taken as a whole and the Framework. The other material

considerations in this instance do not indicate that the decision should be made other than in accordance with the development plan.

24. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

M Russell

INSPECTOR