



Appeal Decision

Site visit made on 11 July 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2023

Appeal Ref: APP/W2465/W/22/3313532

163 Evington Road, Leicester LE2 1QL

- 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 Tariq Noormohammed against the decision of Leicester City Council.
 - The application Ref 20221601, dated 10 August 2022, was refused by notice dated 24 October 2022.
 - The development proposed is described as "change of use from A1 shop to hot food takeaway and the installation of ventilation system."
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from shop (Class E) to hot food takeaway (Sui Generis) and the installation of ventilation system at 163 Evington Road, Leicester LE2 1QL in accordance with the terms of the application, Ref 20221601, dated 10 August 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: ME7222-01 and ME7222-02, received by the Council on the 10 August 2022 and the kitchen ventilation technical specification, received 10th August 2022
 - 3) The premises shall only be open for customers between the following hours:
0800 - 2230 Mondays - Fridays
0800 - 2300 Saturdays
1000 - 2230 Sundays.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form. However, A1 and A5 uses of the Town and Country Planning (Use Classes) Order 1987 (UCO) have been superseded by the changes brought about by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. Retail shops are now within Class E uses and hot food takeaways are within Sui Generis uses. I have therefore amended the description for my decision to take account of the changes to the UCO.
3. While the draft Leicester Local Plan is in the process of review, and has reached Regulation 19 stage, the Council advises no weight should be afforded to emerging policies. The main parties do not rely on any emerging policies within their submissions, nor did the Council refer to any emerging policies in their

reasons for refusal. Therefore, I have determined the appeal having regard to the adopted development plan which consists of the City of Leicester Local Plan, 2006 (LP) and the Leicester City Local Development Framework Core Strategy, 2014 (CS).

Main Issues

4. The main issues are the effect of the proposed hot food takeaway on:
- the vitality and viability of the Evington Road District Centre;
 - the living conditions of nearby residents, with particular regard to noise and general disturbance; and
 - the safety of pedestrians.

Reasons

Vitality and viability

5. The appeal site is a mid-terrace property which has a commercial ground floor with a residential flat above. It lies within the Evington Road District Centre as identified in CS Policy 11 of the Leicester City Local Development Framework, Core Strategy, 2014 (CS) and is one of a block of commercial frontages set within the wider commercial frontage of Evington Road.
6. During my visit I walked most of Evington Road and noted that it is made up of blocks of commercial frontages separated by residential roads. Evington Road, as a whole, is not dominated by typical retail uses. However, I acknowledge it is predominately uses which would fall within Class E of the Order¹. There is a mix of retail, other uses and food and drink facilities, including hot food takeaways, cafes, and restaurants and there are very few vacant units. The appellant's Shopping Frontage Survey also shows the mix of uses along Evington Road.
7. In my judgement the centre, especially the block containing the appeal site, has already developed a strong food and drink offer and is likely to attract customers for the range of food and drink facilities available. Overall, the character of Evington Road is a vibrant district centre which includes a number of food and drink facilities, and these contribute positively to the character of the area.
8. The appeal proposal would result in the six properties in this block, which front Evington Road, being hot food takeaway uses which fall within a Sui Generis use rather than a Class E use. The remaining one retail unit within the block has its frontage on Chepstow Road. As such the proposal would result in all the frontages that face Evington Road, between Cromer Street and Chepstow Road, being food and drink facilities and, therefore, a cluster of such uses within this block.
9. Notwithstanding the Council's concern that the concentration of such uses would harm the retail vitality and viability of the district centre, there is no substantive evidence before me that would indicate that the proposed addition of one extra hot food takeaway use in this block would result in harm,

¹ The Town and Country Planning (Use Classes) Order 1987 as amended

- especially considering the existing character of the Evington Road centre as a whole and the existing concentration of hot food takeaways within this block.
10. Moreover, CS Policy 11 supports retail and non-retail uses in the district centres as providing a valuable range of facilities for the local community. CS Policy 11 supports food and drink facilities, which would now include sui generis hot food takeaway uses, subject to consideration of the effect on the retail function of the centre and the cumulative impact of these uses.
 11. CS Policy 11 does not set any restrictions to the number of hot food takeaway uses that can be accommodated within any centre or block within the centre. The policy accepts that food and drink facilities add to the vitality and diversity of centres. It does not require new food and drink facilities to specifically show how they add to the range of uses or require such uses to evidence need or demand.
 12. The assessment needs to be whether the proposed use would affect the vitality and viability of the centre as a whole, rather than on one block within the centre. The existing centre appears to be vibrant and healthy with a good range of retail and other uses, predominately Class E uses, and with an existing high proportion of food and drink facilities. Although the proposal would group six hot food takeaways into one block there are other blocks within Evington Road which I noted included groups of retail uses or services. As a whole the centre has a broad mix of uses.
 13. There is no substantive evidence before me that the appeal proposal, as one further hot food takeaway use within a block, which is predominately of the same use, would adversely affect the retail function, viability or vitality, of the centre, as a whole. Furthermore, the character and retail function of the centre will still remain due to the wide mix of uses across the whole of the centre and, therefore, the proposal would not undermine the objectives of the District Centre set out in CS Policy 11.
 14. Both main parties have referred to the Explanatory Memorandum to the Town and Country Planning (Use Classes) (amendment) (England) Regulation 2020 no. 757. The memorandum acknowledges that in removing hot food takeaways the use class order enables local considerations, for example the prevention of the proliferation of hot food takeaways. The memorandum does not set proliferation as a national concern, it notes that it may be a local concern.
 15. In refusing the current application the Council has raised a local concern about the proliferation of hot food takeaways. However, I have not been provided with substantive evidence that proliferation of such uses, including all the units in one block, is harmful to the viability and vitality of Evington Road district centre as a whole. Based on the evidence before me and my own visit, the centre, as a whole, appears to be viable and healthy with a good range of retail and other uses, which are and will remain predominately Class E uses, notwithstanding the level of food and drink establishments already present.
 16. Third-party representations have also referred to Policy TCR06 of the draft Leicester Local Plan which, within the supporting information, recommends that no more than three hot food takeaway uses should be adjacent to each other in a frontage. However, based on the Council's latest correspondence, the policy is still at an early stage and is yet to be submitted for examination. As such I cannot be certain whether the policy, or supporting text, will be modified,

whether there are any unresolved objections and when the draft Leicester Local Plan is likely to be adopted. I am, therefore, not able to give the policy any weight in my decision. Moreover, the proposed limitation upon the number of units in any row is within the supporting text rather than within the policy itself. As such the proposed approach in the draft Leicester Local Plan is that it would be guidance rather than policy.

17. I also acknowledge that hot food takeaways often only open in the evenings and therefore can present 'dead' frontages during the daytime. However, the appellant's opening times stated on the application form include daytime opening and I saw evidence of other similar uses on Evington Road open during the day at my visit to the area. The block had active frontages during my visit and there is no reason to suggest that this would not continue to be the case.
18. For the reasons set out above, whilst the proposal would result in an additional hot food takeaway use on Evington Road, and all of the frontage properties between Cromer Street and Chepstow Road being hot food takeaway uses, I conclude that the proposal would not harm the vitality and viability of the Evington Road District Centre as a whole and would, therefore, not conflict with CS Policy 11 which, amongst other matters, seeks to safeguard the retail character and function of centres and resists development that would detract from the vitality and viability.

Living conditions

19. Evington Road is commercial in character with residential terrace housing immediately adjoining and off the main road. The Council has not raised any concerns that the submitted plans and information would not provide appropriate extraction equipment. I have no reason to dispute that the extraction equipment, subject to installation in accordance with the plans would not minimise noise and odours from the proposed equipment.
20. Noise, general disturbance and litter generated by the comings and goings of customers and delivery drivers late into the night would be experienced by occupiers of nearby residential properties. However, given that the appeal site is within a block which already contains a number of hot food takeaways it is unlikely that the increase in noise and general disturbance would be perceptible by neighbouring residents above the current situation. Moreover, the opening hours can be suitably controlled by condition to avoid any unacceptable impact from the cumulative increases in activity, noise or disturbance.
21. The existing parking restrictions and bollards along Evington Road, immediately outside the appeal site, would restrict parking on this side of the road. Furthermore, there is on-street parking in the immediate area, including the parking lay-by on the opposite side of the road and also in the wider area. I have not been provided with any substantive evidence that there is insufficient on-street parking available to accommodate the proposed additional hot food takeaway. In my judgement, there would be sufficient parking available in the locality so as to discourage illegal parking.
22. The addition of one further hot food takeaway would not result in a significant change to the pattern of activity in the area as there are already comings and goings, and associated parking, with the existing hot food takeaway uses in the block. Furthermore, the appeal proposal includes an indoor seating area for customers and delivery drivers to wait while their food is prepared which would

reduce loitering on the street outside the site and also provides natural surveillance over the street.

23. A waste bin could be provided within the seating area for customer waste. The rear yard would be accessible from the hot food takeaway storeroom and commercial waste bins would be stored in the yard, as shown on the plans. As such the proposal would not likely result in a significant increase in littering or vermin within the immediate area.
24. For the above reasons I conclude that the proposal would not give rise to unacceptable levels of harm to the living conditions of occupiers of nearby residential properties, particularly with regard to noise and general disturbance. In regard to this main issue there is, therefore, no conflict with CS Policy 11 which supports food and drink facilities subject to consideration of residential amenity, amongst other matters.
25. For the same reasons there is no conflict with Policy PS10 of the City of Leicester Local Plan, 2006 (LP) which seeks to ensure that residents are provided with a quality living environment, taking into account noise, smell and air pollution, litter and the ability of the area to assimilate development, amongst other matters.

Pedestrian safety

26. As already noted, there is available on-street parking and lay-bys in the area which provide short term parking during the daytime and have no restrictions in the evenings. I have no substantive evidence that the availability of parking is insufficient to accommodate the increase in parking demand that would arise from the proposal, even when considered cumulatively with the existing uses within the block. In my judgement, the vehicles, including those used by delivery drivers, could be accommodated within the existing on-street parking.
27. Moreover, the pavement outside the appeal site is relatively wide with bollards which are intended to minimise the risk of vehicles mounting the kerb and reduces the risk of conflict between vehicles and pedestrians on the footway. Given the availability of parking in the immediate area and the restrictions outside the appeal site, I consider that the proposed change of use would not result in an unacceptable risk of accidents between vehicles and pedestrians.
28. Although there is already a significant level of food and drink establishments in Evington Road, especially within this block, I have not been provided with any substantive evidence that the cumulative effect of the proposed additional use would cause significant harm to highway or pedestrian safety.
29. For the above reasons I conclude that the proposal would not cause significant harm to pedestrian safety and, therefore, complies with CS Policy 11, which supports food and drink facilities subject to consideration of residential amenity, and Policy PS10 of the LP, which seeks to ensure that residents are provided with a quality living environment taking into account additional parking and vehicle manoeuvring, amongst other matters.

Conditions

30. The Council has provided a list of conditions that it considers would be appropriate and the appellant has commented on this. I have considered these in light of Paragraph 56 of the National Planning Policy Framework and the

Planning Practice Guidance. In addition to the standard condition which limits the lifespan of the planning permission I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.

31. Given the lack of certainty over the operating hours of the existing uses within the block there is a risk that the proposal could result in additional noise and disturbance to the occupiers of the nearby residential properties to the detriment of their living conditions, especially if this were allowed late into the evenings and night-time when residents would expect quieter living environments. To ensure that nearby residents are not unacceptably disturbed late into the evenings a condition relating to hours of opening is, therefore, required. The Council requested a closing time of 2230, daily, however this would conflict with the appellant's original application. The appellant has agreed to 2300 on a Saturday and I have no substantive evidence that the additional half hour of opening would result in significant cumulative harm.

Conclusion

32. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should succeed, and planning permission should be granted subject to conditions.

K Townsend

INSPECTOR