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# Appeal Decision

Site visit made on 13 September 2023

**by S Brook BA (Hons) MA MRTPI**

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

**Decision date: 23<sup>rd</sup> November 2023**

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**Appeal Ref: APP/W2465/W/23/3319973**

**2 Gervas Road, Leicester LE5 2EH**

- 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 Roman Walid against the decision of Leicester City Council.
  - The application Ref 20222030, dated 11 December 2022, was refused by notice dated 21 February 2023.
  - The development proposed is Change of use from butcher shop (Class E) to hot food takeaway (Sui Generis) & Installation of a new extraction flue to the West Elevation.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Works had commenced at the time of my site visit, which included the installation of a flue. Nevertheless, I have determined the appeal based on the plans before me.
3. A set of revised plans have been provided as part of the appeal which alter the flue arrangements for the proposal. Instead of terminating above the single storey part of the building, the revised plans show the flue extending up the side of the two-storey part of the building before terminating above the roof ridge. These revised plans have not been formally considered by the Council or been subject to any public consultation. Therefore, I have not considered these drawings as part of the appeal, because to do so would deprive those who should have been consulted with an opportunity to comment.

## Main Issues

4. The main issues are (a) whether this would be a suitable location for the proposed development, having regard to the vitality, viability and diversity of the Gervas Road Local Centre, and (b) the effect of the proposed development upon the living conditions of occupiers of nearby residential properties, with specific regard to noise, odour and disturbance.

## Reasons

### *Suitability of location*

5. The appeal scheme relates to the ground floor of a part two-storey, part single storey building. The property sits within a small parade of local shops and services, with residential units above. Other premises include a convenience store, two vacant hot food takeaway (HFT) establishments and a hair salon. Opposite the site is a vacant public house, with a car sales premises located to

the west. Otherwise, this is a largely residential area. Some off street and layby parking is available along the frontage.

6. Gervas Road is defined as a Local Centre within the Leicester City Core Strategy (2014) (CS). CS Policy 8 states that existing district and local centres will be supported as the most sustainable and accessible way to provide local shopping facilities to meet people's everyday needs. CS Policy 11 states that the Council will work with partners to protect and enhance retail centres as the most sustainable location for retail development, through a number of measures, including b) safeguarding the retail character and function of centres by resisting development that would detract from their vitality and viability, and d) Food and Drink facilities will continue to be supported in centres to meet demand and to add vitality and diversity. However, this will be subject to considerations of residential amenity, the effect on the retail function of the centre and the cumulative impact of these uses.
7. CS Policy 11 seeks to safeguard retail character and function within this local centre and the proposed change of use would result in the loss of a retail unit. The shop is not presently occupied, however there is no evidence before me to suggest it is not capable of continued use for retail purposes. Neither CS Policies 8 nor 11 explicitly require any marketing exercise to justify the loss of such a retail use. Nevertheless, the appellant's submission has referred to such an exercise. This information is limited, and it does not explain how long the premises were marketed for. It does not allow me to conclude that a retail use is not viable at this location.
8. CS Policies 8 and 11 do not set a percentage threshold for the number of HFT's within a local centre, nor a specific separation distance between such premises, nor a requirement for the retention of retail frontage. Nevertheless, CS Policy 11 requires consideration of the effect on the retail function of the centre and the cumulative impact of such uses, which will be a matter of judgement in each case. The proposal would introduce a third HFT premises within this local centre of five units. As such, the proposal would not add diversity to the range of permitted uses. It would increase the proportion of HFT's from 40% to 60%. This is a significant increase and a high number of HFT's overall, when considering the small scale of the centre.
9. The appellant indicates that the only interest in the premises has been for an HFT and therefore the proposal would bring a vacant unit back into commercial use, when vacancy rates within this local centre are high. Whilst there is no substantive evidence before me to support the assertion that vacancies have resulted in limited footfall, I accept that the boarded up public house to the opposite side of the road and the vacant, roller shuttered premises in this local centre are impacting negatively on the visual appearance and sense of vitality of the area. Occupancy of the appeal site, which would retain a shop type frontage, would therefore improve activity and vitality, as well as natural surveillance, over and above a vacant premises. Occupancy would likely improve footfall, and could potentially generate linked trips, improving viability in this respect. However, vacant HFT premises already exist at this location, and so the same benefits could be achieved through re-occupation of one of these units.
10. Further, any improvement of the centre arising from HFT use would be tempered by the nature of HFT's, which can be closed for a large portion of the

day, as would be the case for the appeal scheme which would not open until 2pm each day. Cumulatively with other HFT uses at the local centre, this would have a detrimental impact on the vitality of the local centre in the long term, whilst the negative impacts arising from vacancies may only be short term. A third HFT at this location would impact detrimentally on the viability of the retail function of this centre, by further diminishing its ability to work successfully as a place to meet the people's day to day needs.

11. The appellant suggests that the existing HFT premises at Nos 6b and 8 Gervas Road are unlikely be occupied as such going forward, and consequently the number of HFT's at this local centre would not be as high as the Council suggests. I am not convinced by the information provided in this regard. Whilst I accept that No 6b is small, it appears to have been utilised as an HFT in the past. Gas provision could presumably be installed, if required. Whilst the ventilation flue may need to be altered, planning permission has previously been granted for an alternative flue at this property. The assertion that the HFT at No 8 is unavailable, appears only to be based on a lack of marketing at the present time. Nor is there sufficient information to support the suggestion that the existing flue at this property is not fit for purpose or could not be made so.
12. I have been provided with detailed information relating to the proximity and range of shops and services within the wider area, including HFT's, as an alternative means by which local residents could continue to meet their day to day needs. These range between approximately 500m and 2km. Whilst some residents may choose to walk these distances, others would choose to drive and so I am not convinced that relying on shops and services in the wider area would deliver the accessible local shopping facilities to meet people's everyday needs, sought by CS Policy 8. Nor would this approach sustain the Local Centre at Gervas Road, as required by Policy CS11.
13. To conclude on this first main issue, the evidence before me has not demonstrated that this would be a suitable location for the proposed development, having regard to the vitality, viability and diversity of the Gervas Road Local Centre. The proposed development would therefore conflict with CS Policies 8 and 11, the purposes of which have been set out above.

#### *Living conditions*

14. Whilst the former use as a butcher's shop would have likely included fixed plant, it remains necessary to ensure that any such requirements in relation to the appeal scheme are appropriate. The proposed plans indicate that the flue associated with the extraction system for the HFT would extend approximately 1m above the single storey section of the building. The Council has raised concerns that this would not meet the required standard and specifies that this should be 1m above the highest ridge, which would be the adjoining two-storey building. Whilst I have not been provided with the standard referred to, the appellant has not disputed this requirement, and the plans submitted as part of the appeal seek to address the matter. However, for the reasons indicated above, I am not able to consider these revisions as part of this decision. For the same reasons, a condition securing these details would not be appropriate.
15. Given that there are existing residents close to the proposal, I share the Council's concerns with the extraction system as originally submitted. Options for the filtration system are discussed, but full details are not provided and termination of the flue at the height proposed would not adequately disperse

residual odours. At this height, the wind could direct odours from the flue towards windows and outdoor areas of residential properties. The proposal would therefore harm the living conditions of occupiers of nearby dwellings in this respect.

16. Additionally, there is insufficient information provided in relation to noise emanation from the extraction/ventilation system. Whilst the use of internal insulation measures, motor silencers and anti-vibrational mounting are referenced on the plans, the specification provided indicates a sound pressure level of 60 dB(A) measured in free field conditions at a distance equivalent to three times the diameter of the impeller. This does not demonstrate the noise levels that would be experienced by sensitive residential receptors, over and above existing background noise levels. As such, the proposal fails to demonstrate that additional harm would not arise from an increase in noise.
17. Existing uses within this small parade of shops and services are likely to generate some activity and associated noise and disturbance, including into the evening. This proposal would introduce a further premises, with late opening hours. Although this is a Local Centre where some trade would be expected on foot, patrons could potentially arrive by motor vehicle or utilise delivery services requiring collection/delivery by car, resulting in the potential for additional noise from car engines and radios, car doors closing and conversations. As there is parking to the front of the premises, these activities would most likely be confined to this area, which would not be directly to the front of residential properties on Gervas Road or Ocean Road, with the exception of those flats above the commercial units.
18. The Council states that it is common practice that they restrict commercial uses within local centres to specific hours (opening between 7:00 and 23:00 only), where there are residential properties nearby. The consented HFT at No 6b Gervas Road, has been restricted by condition to opening hours within these specified hours (opening between 7:30 and 23:00 only). Further, the Council has not disputed that the HFT at No 8 is a lawful use and is unrestricted in terms of operating hours. The appellant has confirmed that a condition imposing restricted opening hours as specified by the Council would be acceptable. Subject to the imposition of such a condition, the proposal would not add substantially to the level of general noise and disturbance that could arise from existing lawful uses at this location.
19. Overall, I conclude that the proposed development would harm the living conditions of occupiers of nearby residential properties, with specific regard to noise and odour from fixed plant. The proposal would conflict with saved Policies PS10 and PS11 of the City of Leicester Local Plan 1996 – 2016, Adopted January 2006, which collectively, and amongst other matters, set out the relevant factors concerning the amenity of residents and state that proposals which have the potential to pollute air, by reason of noise and smell, will not be permitted unless the amenity of neighbours can be assured. There would also be conflict with CS Policy 3, which is referenced in the Council's Officer Report, albeit not the Decision Notice. This policy requires that new development responds positively to its surroundings and is appropriate to the local setting and context.
20. The proposal would also conflict with paragraphs 130 and 185 of the National Planning Policy Framework, (NPPF), which require new developments to

function well and add to the overall quality of an area, provide a high standard of amenity for existing users, and ensure that new development is appropriate for its location, taking into account the likely effects of pollution on health and living conditions.

### **Other Matters**

21. The economic benefits of the proposal and the direct and indirect employment resulting from it, weigh in its favour. Additionally, I note the level of support, which includes that the appeal scheme would complement the area and have a positive impact, improve consumer choice and footfall. Nonetheless, the benefits and support for the proposal do not outweigh the harm I have identified in relation to the main issues.
22. I am referred to an example at Bowhill Grove, where it is stated that an HFT has been approved, despite an existing over-concentration of takeaways. However, I have not been provided with the full circumstances of this development, sufficient to establish whether it has any relevance to this proposal. In any event, I have considered the appeal scheme on its individual planning merits.
23. The appellant's submission references that there is no compelling evidence to suggest that the proposal would give rise to anti-social behaviour. However, this does not appear to have been asserted by the Council in any event.
24. Both parties refer to changes to the Town and Country Planning (Use Classes) Order 1987 (as amended) with regards to HFT's. I have had regard to the comments made in relation to this matter, however they do not lead me to a different conclusion.

### **Conclusion**

25. For the reasons set out above, the appeal scheme would not represent a sustainable form of development. It would conflict with the development plan when taken as a whole, and there are no other material considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

*S Brook*

INSPECTOR