

COMMITTEE REPORT

20251299	172 Fosse Road North	
Proposal:	Change of use from shop (Class E) to restaurant and hot food takeaway (Class E/Sui Generis); installation of extraction flue at rear (amendments received 03/11/2025)	
Applicant:	Mr Khasraw Abdalla Seed	
App type:	Operational development - full application	
Status:	Minor development	
Expiry Date:	6 March 2026	
LKL	TEAM: PD	WARD: Fosse



©Crown Copyright Reserved. Leicester City Council Licence 100019264(2025). Ordnance Survey mapping does not imply any ownership boundaries and does not always denote the exact ground features.

Summary

- Brought to committee as more than six objections have been received;
- Seven objections have been received raising concerns regarding principle of development, residential amenity and waste management;
- The proposal is recommended for conditional approval

The Site

The application relates to a two storey terraced building with the ground floor in use as a shop (Class E) with the upper floor in use as a flat (Class C3) located within the Fosse Road North local centre.

A locally listed building, 2b Empire Road, is situated to the rear of the site.

The site is covered by an Article 4 Direction restricting Houses in Multiple Occupation (HMO.) The site is within a 250m buffer of two pollution sources: Tesco Stores Ltd and L J M Lowe. The site is also within a critical drainage area.

Background

The site has no recent relevant planning history.

The Proposal

The proposal is for a change of use from a shop (Class E) to a restaurant and hot food takeaway (Class E / Sui Generis), including the installation of an extraction flue to the rear.

Given the proposed seating provision and internal layout, the description of development has been amended to more accurately reflect a mixed restaurant and hot food takeaway use (Class E / Sui Generis). As amended, the proposed extraction flue would be clad with a MechSlip brick cladding system to match the existing brickwork and would terminate 1.15m above the ridge line.

The unit would comprise a food preparation area with a cold room, a disabled toilet, a seating area, and an extraction canopy hood running across the unit. Bins would be stored to the rear as per the existing arrangement and taken to the nearest collection point for collection.

The proposed number of employees is 2 full time and 4 part time.

The proposed hours of use are 11:00-21:00 from Monday to Friday and 12:00-19:00 on Sunday/bank holiday.

The application is accompanied by the following documents:

- Design and access statement
- Ventilation Flue Specifications
- Noise Assessment
- Kitchen Odour Assessment

Policy Considerations

National Planning Policy Framework (NPPF) 2024

Paragraphs 2 (Application determined in accordance with development plan and material considerations)

Paragraph 11 (Presumption in favour of Sustainable Development)

Paragraphs 40 and 41 (Pre-applications)

Paragraphs 44 (Sufficient information for good decision making)

Paragraph 57 (Six tests for planning conditions)

Paragraph 97 (Concentration of hot food takeaways)

Paragraph 109 (Transport impacts and patterns)

Paragraph 115 (Assessing transport issues)

Paragraph 117 (Highways requirements for development)
Paragraph 135 (Good design and amenity)
Paragraph 139 (Design decisions)
Paragraph 140 (Clear and accurate plans)
Paragraph 198 (Noise and light pollution)
Paragraph 202 (Heritage as an irreplaceable resource)
Paragraph 208 (Considering impact on heritage assets)
Paragraph 210 (Sustaining significance of heritage assets)
Paragraph 216 (Non-designated heritage assets)

Development Plan Policies

Development plan policies relevant to this application are listed at the end of this report.

Other legal or policy context

Residential Amenity SPD (2008)
Appendix 01 Vehicle Parking Standards (2006)
The Town and Country Planning (Development Management Procedure) (England) Order 2015

Consultations

Pollution (noise and light) – no objections following the submission of Noise Assessment and Kitchen Odour Assessment

Representations

Seven objections have been received raising the following concerns:

- A hot food takeaway is proposed rather than a restaurant, contrary to the original description, and another food establishment would draw competition away from other food businesses in the area.
- There are already two hot food takeaways in the parade, and the proposal would result in an over-concentration of this use.
- The proposal would result in increased use of the alleyway serving Nos. 172 to 176, which is used as a shared access to the flats above.
- One of the existing hot food takeaways uses the alleyway to take out bins and to receive deliveries.
- The alleyway is too narrow for deliveries associated with a hot food takeaway
- No. 174, which is currently in use as a hot food takeaway, has six small commercial bins, which are placed on the footpath on bin collection days.
- The alleyway is also used for oil removal for No. 174, where once a week an oil recycling company removes the barrel and replaces it with an empty one, sometimes causing spills and resulting in smells in the alleyway.
- There was a previous incident where the alleyway was not locked, resulting in a bicycle belonging to an occupant of the flats being stolen from the rear yard.
- Odour from cooking.
- Noise issues in the evening.
- Poor living conditions for residents of the flats.
- Rat issues.
- Anti-social behaviour late in the evening.

- Difficulty in retaining or finding tenants for the flats above.
- The occupants of the flats would lose their use of the rear yard.
- Work has started internally

Consideration

Principle of development

Policy CS11 (“Retail Hierarchy”) of Leicester’s Core Strategy (2014) states that “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.”

Given the emerging Local Plan is due for adoption in Spring 2026, it would also be important to consider the policy below. However, it should not be given equal weighting to adopted planning policy when determining the acceptability of the application.

Emerging Local Plan Policy TCR06 (“Development for Hot Food Takeaway and Food and Drink uses Purposes in Town, District and Local Shopping Centres”) reinforces that these uses 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.*” It goes on to state that “*to help maintain a diverse and active shopping street and avoid disturbance to residents it is recommended that normally no more than three hot food takeaway (sui generis) uses should be adjacent to each other in a frontage length and that between groups of hot food takeaway uses there should be at least two intervening non hot food takeaway uses.*”

The principle of the proposed hot food takeaway is acceptable in this location, given that it is situated within a local centre. I note that if planning permission were granted, there would be three consecutive hot food takeaways at 170 Fosse Road North, 172 (the application site), and 174. I consider that the proposal satisfies emerging planning policy, as there would be no more than three adjacent hot food takeaways, and there would be at least two non-intervening uses between these hot food takeaways and others elsewhere within the centre.

I consider the proposal is acceptable in principle under policy CS11. However, this is subject to considerations of design, impact on heritage, residential amenity, highways and parking, and arrangement of bin storage.

Character and design/Impact on heritage

Policy CS03 of the Leicester Core Strategy (2014) states that high-quality, well-designed developments that contribute positively to the character and appearance of the local built environment are expected. It goes on to require development to respond positively to the surroundings and to be appropriate to the local setting and context and, at paragraph 1 (first bullet point), to contribute positively to an area’s character and appearance in terms of inter alia urban form and high-quality architecture.

Core Strategy Policy CS18 states that the Council will protect and seek opportunities to enhance the historic environment including the character and setting of designated and other heritage assets. It goes on to state that an archaeological assessment will be required where a proposal would affect a site thought likely to contain below ground and low-level archaeological remains.

The site comprises a late C19 terraced building converted to commercial use, which backs onto the locally listed Former Co-operative Stables. No works are proposed to the shopfront. The external works relate only to internal alterations and the installation of an extraction flue to the rear. I consider that the flue, as amended and encased in brick cladding, would read more like a traditional chimney than a piece of modern industrial kitchen equipment. As such, it would blend more successfully with its surroundings and have a more traditional appearance, which would better preserve the setting of the locally listed heritage asset.

I am therefore satisfied that the proposal is acceptable in terms of the character and appearance of the area and its impact on the locally listed asset.

Residential amenity

Saved Policy PS10 of the Local Plan (2006) sets out a number of amenity factors to be taken into account when determining planning applications, including the visual quality of the area, privacy and overshadowing, and the ability of the area to assimilate development. Policy PS11 states that proposals which have the potential to pollute air, ground or water by reason of noise, dust, vibration, smell, light, heat, radiation or toxic discharge will not be permitted unless the health and amenity of users, neighbours and the wider environment can be assured.

The adjoining ground floor units are hot food takeaways, however, the upper floors of these units including the application site are in residential use. Noise and odour to these residential units are the main concerns.

The ventilation flue at the rear is proposed to terminate at least 1m above the ridgeline to allow appropriate dispersion of odour. The Noise and Pollution Control Officer has reviewed the Kitchen Odour Assessment (KOA) document P9121-R2-V1 (dated 03/10/25), together with the manufacturer's specifications, and is satisfied that the proposed ventilation flue would not result in a detrimental impact on neighbouring residential amenity in terms of odour, subject to a condition requiring that the approved details and recommendations are fully implemented on site. I therefore have no reason to doubt their conclusions.

In relation to noise, the Noise and Pollution Control Officer has reviewed the Noise Impact Assessment (NIA) document P9121-R1-V1 (dated 03/10/25) and notes that "*without additional mitigation measures, significant adverse impact is likely at the worst affected NSRs*". A number of mitigation measures have been recommended. I consider it reasonable to require that details of the chosen mitigation option be submitted to and approved by the Noise and Pollution Control Team (NPCT) prior to the commencement of works.

The proposed hours of use are 11:00–21:00 Monday to Friday and 12:00–19:00 on Sundays and Bank Holidays. Given that the site is located within a local centre with a

reasonable level of footfall and traffic, I consider the noise generated by comings and goings associated with the use would not be significantly harmful to neighbouring residential units, subject to a condition restricting the opening hours of the premises to close by 23:00 hours.

Waste management/Use of alleyway

I note that representations have raised concerns that the proposed use could increase activity in the shared alleyway serving the flats above, due to deliveries, bin collection, and oil removal. Similar issues are noted in connection with the existing hot food takeaway adjacent to the site.

The agent has confirmed that the alleyway at the rear is primarily for residents' use, there is no vehicle access from the rear, and deliveries would be taken from the front parking bay. I note concerns that deliveries could instead use the alleyway, as the cold room is located at the rear. However, given the size and scale of the proposed unit, I do not consider that use of the alleyway for deliveries would result in a significant impact.

The bin storage area is proposed to the rear, with access via the alleyway. Although the number of bins may increase compared with the existing shop use, given the scale of the unit, I also do not consider this would significantly affect residents' use of the alleyway. However, I consider it reasonable to attach a condition requiring the bin storage area to be provided prior to the occupation of the unit, and that the bins shall not be stored elsewhere on the site or in the alleyway.

With regard to oil removal, this is not automatically required for all hot food takeaways. As no specific provision is proposed, I have assessed the proposal on the basis of the information before me.

Highways and parking

Saved policy AM11 states that proposals for parking provision for non-residential development should not exceed the maximum standards specified in Appendix 01. It goes on to state that reductions below these maximum parking standards will be required by the City Council, in accordance with the reduction targets for non-residential parking provision.

There are no proposed changes to the parking or highway arrangements. I consider parking and loading arrangements would not be significantly different to the existing Class E use and are therefore acceptable.

Other matters

- Proposed descriptions/competitions of businesses: The proposed description has been amended to a mixed use of restaurant and hot food takeaway to accurately reflect the proposed use, and subsequent notifications have been carried out. In any case, competition between businesses is not a material planning consideration.
- Theft from the alleyway: I note concerns relating to theft, but I do not consider that the proposed use would give rise to such issues.
- Rats: This is not a planning matter and should be reported to the Council's Pest Control Team for investigation.

- Anti-social behaviour late in the evening: There is no evidence to suggest that the proposed use would give rise to such issues.
- Difficulty in retaining or finding tenants for the flats above: This is not a planning matter.
- Loss of use of the rear yard: The rear yard is a shared space between the ground floor unit and the flat above and is not considered a private amenity space in this case. There is no evidence that the occupants of the upper floor would lose access to this space.
- Internal works have started: I can only assess the information before me, and even if internal works have commenced, I do not consider this would impact the planning assessment.

Conclusion

I recommend that this application be APPROVED subject to the following conditions:

CONDITIONS

1. The development shall be begun within three years from the date of this permission. (To comply with Section 91 of the Town & Country Planning Act 1990.)
2. The proposed extraction flue shall be constructed in facing bricks to match the existing building. (In the interests of visual amenity and the setting of the locally listed heritage asset, and in accordance with Core Strategy Policies CS3 and CS18.)
3. The development shall be carried out in accordance with the details and recommendations set out in the Kitchen Odour Assessment (KOA) document P9121-R2-V1 (dated 03/10/25). (To ensure proper dispersal of odours, in the interests of residential amenity, and in accordance with saved Policies PS10 and PS11 of the City of Leicester Local Plan (2006).)
4. Prior to the commencement of works on site, details of the chosen mitigation measures as recommended in the Noise Impact Assessment (NIA) document P9121-R1-V1 (dated 03/10/25) shall be submitted to and approved in writing by the Noise and Pollution Control Team (NPCT). The approved measures shall be installed prior to the occupation of the premises and retained thereafter. (To ensure an acceptable level of noise, in the interests of residential amenity, and in accordance with saved Policies PS10 and PS11 of the City of Leicester Local Plan (2006).)
5. The use shall not be carried on outside the hours of 07:30 - 23:00 daily. (In the interests of the amenities of nearby occupiers, and in accordance with saved policies PS10 and PS11 of the City of Leicester Local Plan (2006).)
6. The bin storage area shall be provided as shown on the approved plans prior to the first occupation of the premises as a hot food takeaway and shall be retained thereafter. The bins shall not be stored elsewhere on the site or in

the alleyway. (In the interests of the amenities of nearby occupiers, and in accordance with saved Policy PS10 of the City of Leicester Local Plan (2006).)

7. Development shall be carried out in full accordance with the following approved plans:
Proposed Plans and Elevations, 0801/03C, received 03/11/2025
(For the avoidance of doubt).

NOTES FOR APPLICANT

1. The City Council, as local planning authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received. This planning application has been the subject of positive and proactive discussions with the applicant during the process (and/or pre-application).
The decision to grant planning permission with appropriate conditions taking account of those material considerations in accordance with the presumption in favour of sustainable development as set out in the NPPF 2024 is considered to be a positive outcome of these discussions.
2. It is recommended that care is taken during works should any bats or birds or their roosts or nests be discovered on or adjacent to the building or rooftop. In such a case, it is recommended that advice from a qualified ecologist should be sought before proceeding with works, given environmental protection legislation. Bats can roost or be present in roof structures of buildings or in crevices of walls. Further information on bats and the law can be found by searching for Bats: protection and licences - GOV.UK (www.gov.uk). Further information on birds and the law can be found by searching for Wild birds: protection and licences - GOV.UK (www.gov.uk)
3. There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply.

Based on the information available, this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because the following statutory exemption/transitional arrangement is considered to apply:

Development below the de minimis threshold, meaning development which:

- i) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
- ii) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).

Policies relating to this recommendation

- 2014_CS11 The Council supports a hierarchy of retail centres in Leicester. The policy sets out measures to protect and enhance retail centres as the most sustainable location for retail development.
- 2006_AM11 Proposals for parking provision for non-residential development should not exceed the maximum standards specified in Appendix 01.
- 2006_PS10 Criteria will be used to assess planning applications which concern the amenity of existing or proposed residents.
- 2006_PS11 Control over proposals which have the potential to pollute, and over proposals which are sensitive to pollution near existing polluting uses; support for alternative fuels etc.
- 2014_CS03 The Council will require high quality, well designed developments that contribute positively to the character and appearance of the local natural and built environment. The policy sets out design objectives for urban form, connections and access, public spaces, the historic environment, and 'Building for Life'.
- 2014_CS18 The Council will protect and seek opportunities to enhance the historic environment including the character and setting of designated and other heritage assets.

