



Leicester
City Council

**WARDS AFFECTED:
CASTLE**

Planning and Development Control Committee

24 April 2019

10 Friar Lane, Fernandez Grillhouse Appeal – Council Position

Report of the Director of Planning, Development and Transportation

1. PURPOSE OF REPORT

- 1.1 The purpose of the report is to establish the Council's position to respond to appeal against the conditions attached to planning permission 20181049.

2.0 RECOMMENDATION

The committee is recommended to authorize officers to respond to the appeal as follows:

1. Not to defend the removal of condition 1 which limited the consent for the flue until 11 April 2019
2. Defend planning conditions 2, 4 and 5

3.0 BACKGROUND

- 3.1 In November 2017 planning permission 20171923 was granted for the retention of an extraction flue and installation of an abatement unit to the rear of the restaurant on a limited period basis for 12 months. The abatement unit has since been installed. The limited period permission expired on 1 November 2018. This limited period consent was to allow for an assessment of the impact of the flue and the abatement unit on the occupiers of nearby properties.
- 3.2 In October 2018 planning permission 20181049 was granted at your committee meeting for the retention of an extraction flue and abatement unit to the rear of the restaurant on a limited period basis for 6 months. Officers had recommended Planning Permission for the retention of the flue without a time limit.
- 3.3 The report into this application 20181049 is attached at Appendix 1.

4.0 APPEAL

- 4.1 An appeal has been received against conditions 1, 2, 4 and 5. The full conditions are:

1. The flue and other machinery and apparatus installed pursuant to this planning permission shall be removed and the land restored to its former condition not later than 11/04/2019. (The proposal is only acceptable on a temporary basis to allow for further assessment of the impact of the proposal on the occupiers of nearby properties and in accordance with policies PS10 and PS11 of the City of Leicester Local Plan.)
2. The Ventilation System and other machinery and apparatus including the abatement unit (" The Ventilation Equipment ") shall be retained in accordance with the plans approved by this planning permission installed pursuant to this planning permission and shall be used to control the emission of noise fumes and smell from the restaurant on the premises ground floor and basement of 10 Friar Lane and for the lifetime of the restaurant use and for no other purpose . (In the interests of the amenities of nearby occupiers, and in accordance with policies PS10 and PS11 of the City of Leicester Local Plan.)
3. The ventilation equipment including the abatement unit shall be maintained (including painting of the flue) and operated thereafter in accordance with the manufacturer's instructions. A logbook recording of the operations of maintenance and repairs of the ventilation equipment, abatement unit and the flue shall be maintained and submitted to the City Council when requested for an inspection. (In the interests of the amenities of nearby occupiers, and in accordance with policies PS10 and PS11 of the City of Leicester Local Plan.)
4. The sound level from the Ventilation Equipment shall not exceed 55dB(A), measured as a 3 minute LAeq 1 metre from any part of the Equipment. (In the interests of the amenities of nearby occupiers, and in accordance with policies PS10 and PS11 of the City of Leicester Local Plan.)
5. The operation of the flue shall not be detrimental to the amenity of the occupiers of any property in the vicinity of the site by reason of fumes, smoke, or odour. (In the interests of the amenities of nearby occupiers, and in accordance with policy PS10 of the City of Leicester Local Plan.)
6. This consent shall relate solely to the submitted plans received by the City Council as local planning authority on 10 May 2018 , unless otherwise submitted to and approved by the City Council as local planning authority. (For the avoidance of doubt.)

5.0 CONSIDERATION

- 5.1 The appeal is being dealt with through the written representations process. This involves the exchange of statements between the Council and the appellant. The Inspectorate is also sent copies of the objections received in the consideration of the planning application, whilst those who were notified of the application are also able to make further comments. All neighbours who were notified about the planning application and those who had made representation have been notified about the appeal.
- 5.2 During the Planning and Development Control Committee meeting which determined application 20181049 concerns were raised by members that they did not have sufficient information available on the operation of the flue and the

sources of odour and noise in the area to enable it to grant the permanent planning permission recommended. It was also suggested that it would be useful to have comparative data from other similar flues in the city. It was therefore decided to approve the permission for a limited period of 6 months.

5.3 This period has expired and the operators of the restaurant could have made a further application for permission for the retention of the flue, however they have chosen to appeal against the imposition of the conditions to the Planning Inspectorate. As it was your committee's decision to only grant limited period consent, your endorsement for the officer position in defending the appeal is sought.

5.4 Condition 1

Since the limited period permission was granted there have been no reports of concerns regarding the operation of the ventilation flue to either the Planning Service or the Noise and Pollution Team. Guidance from the Government within the National Planning Practice Guidance states that it will be rarely justifiable to grant a second temporary permission.

5.5 Paragraph 183 of Planning Policy Framework 2019 encourages planning decisions to focus on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

5.6 The Council considers that as there have been no further reports of concerns from the operation of the ventilation flue it has been tested sufficiently and there is no reason for the limited period condition to remain in place. Action may also be taken under Environment Act relating to noise and odour. If an application to retain the flue were made officers are likely to have recommended approval without a further limited period. It is therefore recommended that removal of this condition is not opposed at appeal.

5.7 Condition 2

This condition requires the ventilation system and abatement unit to be retained in accordance with the approved details for the lifetime of the restaurant use. The appellant states that this contradicts the limited period condition, however in the light of the above accepting the removal of condition 1 relating to limited period it is recommended that this condition should be defended.

5.8 Condition 4

This condition controls the noise levels that the flue can generate. It is limited to 55dB(A) when measured 1 metre from the flue. The appellant states that as the background noise level is higher than this it is not possible to ensure that the

noise level of the flue is kept below this. The Council considers that the noise limit is attached to the flue only and therefore if the background noise level exceeds this level it is not possible to prove that the noise is emanating from this flue. It is therefore recommended that this condition is defended.

5.9 Condition 5

This condition states that the operation of the flue shall not be detrimental to the amenity of the occupiers of any property in the vicinity of the site by reason of fumes, smoke, or odour. The appellant states that if the flue operates correctly it will not cause any harm to local residents. It is considered that this is a standard condition that is attached to applications concerning ventilation flues and is aimed at the long term protection of local residents. It is therefore recommended that this condition is defended.

6.0 FINANCIAL, LEGAL AND OTHER IMPLICATIONS

6.1 Financial Implications

There are no direct financial implications arising from this report apart from costs may be awarded to appellant for which he has also appealed. Such costs will be met by the existing Planning Service budget.

Paresh Radia
Finance Manager

7.0 Legal Implications

7.1 Under s78 of the Town and Country Planning Act 1990 there is a right of Appeal to the Planning Inspectorate against conditions imposed by the Council on Planning Permissions.

Under s79 a Planning Inspector on Appeal Secretary of State has power to review the whole of the local planning authority's decision to grant planning permission even although the appeal may relate only to the conditions imposed.

The Council can decide not to defend the Appeal (and so allow condition (s) to be deleted from a Planning Permission) or to defend the Appeal and argue that condition (s) should be retained. If the Council defend the appeal evidence must be submitted to support the retention of the condition (s). If no or insufficient evidence is submitted to support the Council's case there is a risk that if the Appellant makes a costs application and the Planning Inspector decides the Council acted unreasonably in defending all or part of the Appeal, the Council could be ordered to pay the Appellants costs.

Jane Cotton, Solicitor, Planning and Highways

8.0 Climate Change Implications

None

9.0 OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph references within the report
Equal Opportunities	No	
Policy	No	
Sustainable and Environmental	No	
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	No	
Corporate Parenting	No	
Health Inequalities Impact	No	

10.0 BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

Planning application 20181049

11.0 REPORT AUTHOR

Alan Beckett - Planning, Development

Appendix 1 – Committee Report meeting on 10/10/2018 Planning application
20181049