

Recommendation: Conditional approval	
20181049	10 FRIAR LANE, FERNANDEZ GRILLHOUSE AND 1 BERRIDGE STREET
Proposal:	RETENTION OF VENTILATION FLUE TO REAR OF RESTAURANT (CLASS A3)
Applicant:	FERNANDEZ GRILLHOUSE
View application and responses	http://rcweb.leicester.gov.uk/planning/onlinequery/Details.aspx?AppNo=20181049
Expiry Date:	12 October 2018
ACB	WARD: Castle



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Summary

- Application reported to committee due to the number of objections
- 9 objections have been received on the grounds that the restaurant is still causing concerns relating to smell and noise from the flue.
- The issues are the impact on residential amenity and visual appearance.
- The application is recommended for approval.

The Site

The application site consists of two properties. 10 Friar Lane is a five storey building whilst 1 Berridge Street is a three storey building. They are located within the Greyfriars' Conservation Area and the Townscape Heritage Initiative area. The ground floor and basement of 10 Friar Lane are in use as a restaurant whilst the upper floors are in use as flats. The entirety of 1 Berridge Street is in use as a solicitors' office.

Background

Planning History

In May 2000 planning permission 20000063 was granted for a change of use from offices (Class B1) of basement, ground and first floors to restaurant/bar (Class A3), and of third, fourth and fifth floors to 6 flats (Class C3). This permission appears to have been implemented with the exception of the restaurant use. The ventilation flue was to be directed internally and terminate at the same height as the chimney stack of the property.

In December 2000 planning permission 20001510 was granted for a change of use from offices (Class B1) of first and second floors to 4 self-contained flats (Class C3). This permission appears to have been implemented on the basis that the first floor is in use as flats.

In 2002 (20021728) permission was granted for alterations to the ground floor windows.

In June 2005 planning permission 20050680 was granted for a change of use of the ground floor and basement from offices (Class B1) to a restaurant (Class A3) with a ventilation flue at the rear of the building. This flue was to be installed externally.

In May 2017 planning application 20170466 for retrospective approval for the installation of a ventilation flue to the rear was refused.

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 will expire on 1 November 2018. This limited period consent was to allow for an assessment of the impact of the flue and the abatement of it on the occupiers of nearby properties.

Enforcement History

First Ventilation Flue

Enforcement action was undertaken in 2016 against a ventilation flue that had been installed at the rear of the property without planning permission. An Enforcement Notice was served and the subsequent appeal was dismissed. The Notice was complied with and the flue removed.

Second Ventilation Flue

In March 2017 complaints were received that a further ventilation flue was in the process of being installed at the property without planning permission. Site inspections confirmed this and a planning application (20170466) for its retention was refused. The flue was in a different location to that which was covered by the previous Enforcement Notice.

A further Enforcement Notice was served on 14 September 2017 which required the removal of this flue. Shortly after the Notice was served it became apparent that there was an issue with one of the reasons for issuing the Notice, i.e. the potential for detriment to amenity from noise. The issues relating to noise came about as a result of a noise nuisance being observed at the property in August 2017. Subsequent to the Notice being issued it became clear that the noise nuisance that was observed was not categorically caused by the flue. This Enforcement Notice was therefore withdrawn and another Enforcement Notice was served on 9 October 2017 which requires removal of the flue.

The enforcement notice served on 9 October 2018 has been withdrawn on 17 May 2018 because planning permission for the installation of a flue was granted on 2 November 2017. Following the grant of temporary planning permission for the ventilation flue the enforcement notice ceased to have effect.

The Proposal

The application is for permanent consent for the retention of the flue and abatement unit, as installed at the rear of the restaurant. The flue is constructed to the rear of the application site and it exits at first floor level above the flat roof. It runs on the flat roof along the main building used as a stairwell at 10 Friar Lane and then runs vertically alongside 1 Berridge Street. The flue overhangs this property and terminates at ridge height of the roof of 1 Berridge Street.

Policy Considerations

National Planning Policy Framework (NPPF) 2018

The National Planning Policy Framework (NPPF) 2018 sets out the Government's planning policies for England and how these are expected to be applied,

Paragraph 2 states that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.

Paragraph 11 contains a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Paragraph 127 sets out criteria for assessing planning applications and requires decision makers to ensure that development proposals:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Paragraph 180 requires decision makers to ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development

Paragraph 183 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.

Paragraph 197 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

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

Most relevant Local plan policies are PS10 and PS11.

Consultations

Service Director, Environmental Health – No statutory nuisances have been witnessed during the period of the limited consent, however a noise assessment submitted in

objection to this application found noise levels to be higher than those stated in condition 3 of the limited period consent.

In June three reports were received and on 27 June 2018 an officer witnessed odour but it was not such to be regarded as nuisance. (The applicant has explained that between 26 June and 3 July extract system was not drawing air adequately but was fixed on 3 July 2018 The kitchen door was left open to relieve the heat which resulted the escape of odour.

Representations

Nine objections have been received. The grounds of objection are;

- The flue still produces too much noise and smell which impacts on the health of local residents.
- The installed flue does not match the height of the flue shown on the submitted plans.
- Conditions attached to the temporary consent have not been complied with.
- A survey report of noise from flue by NoiseAir Ltd has been submitted to support the objection. It concludes that noise level recorded at 1.05m from the kitchen extract flue were consistent at 63 dB L aeq,15mins and maximum sound pressure levels ranged from 65 to 68 dB Lamax during the course of survey. The survey was undertaken on 27 June 2018. (The applicant has stated it was the day when the flue was not functioning well and was fixed on 3 July 2018).

Consideration

The issues under consideration are the principle of the development, the impact on heritage assets and the impact on residential amenity.

Principle of development

The principle of the development has been previously established by planning permission 20171923. However the consent was for a limited period to allow assessment of the impact on the occupiers of nearby properties.

Design

Since planning permission 20171923 was implemented the flue has been painted in a colour to match the painted brickwork of the rear of 10 Friar Lane but has been left unpainted above the eaves of 1 Berridge Street. This is in accordance with the details agreed through the discharge of condition 4 attached to planning permission 20171923. The condition for painting the flue was imposed to mitigate the visual impact of the flue, the flue has been painted therefore it is acceptable in terms of appearance and design and is in accordance with the objective of policy PS10 of the local plan.

Heritage Assets

The site is located within the Greyfriars Conservation Area and the Townscape Heritage Initiative Area and there are a number of Grade II listed buildings in the vicinity of the site.

The flue is located to the rear of the property and is therefore not visible from the public realm. It is however visible from the rear of a number of properties in the vicinity of the application site.

Following the approval of planning permission 20171923 the flue has been painted in accordance with details agreed under the discharge of condition 4 attached to that permission and I therefore consider that the flue does not have a detrimental impact on the character and appearance of the conservation area. I do not consider that the retention of the flue is contrary to guidance in NPPF policies because the impact on the conservation area is mitigated by painting the flue and the development proposed facilitate the effective use of a building within the conservation area and the Townscape Heritage Initiative Area. Residential amenity

Noise

Condition 3 of planning permission 20171923 states that *“The sound level from the ventilation system shall not exceed 55dB(A), measured as a 3 minute LAeq 1 metre from any part of the system”* One of the objectors has submitted a noise survey which states that on 27 June 2018 that the LAeq reading was 62dB(A) measured 1.05m from the flue. Whilst this would appear to be a breach of condition 3, planning officer visits to the site have found that there are a number of other sources of noise in the immediate vicinity of the flue such as air conditioning units and an extractor fan for a toilet. Survey report of noise from flue by NoiseAir Ltd represents one occurrence of noise level exceeding the levels set in the condition when the flue was not working well and was repaired. It is therefore considered that the operation of the flue is not causing unreasonable harm in terms of noise to warrant refusal. Hence I do not consider that the proposal is contrary to policies PS10 and PS11 of the local plan.

Smell

Objections have been received that the flue is causing smells in neighbouring properties. The applicants have advised that they carry out a flare smoke test every month. This test involves lighting a red flare under the extractor units whilst another person watches the flue to check for any smoke leaking. Planning officers have observed the results of these tests and have witnessed a test occurring on the site and can confirm that there were no leaks from the flue identified. Objectors state that there are grease marks on the flue; however planning officer inspections have found these to be dirt rather than grease. There are a number of other ventilation flues in the area that have been observed to produce smell, namely in particular the flue to the Rutland and Derby on Millstone Lane and I therefore do not consider that the smells can be demonstrably associated with this ventilation flue. During the limited period which included a warm summer, only three reports were received by Noise and Pollution Team (NTP) and odour was witnessed by NTP officer on one occasion and it was not such to be regarded as nuisance. I do not consider the odours emitted from the equipment represent a level to be unacceptable to warrant a refusal

Other matters

One of the objections states that the flue that has been installed is not in accordance with the submitted plans and the Council should refuse to determine the application on this basis. Visits to the property have confirmed that the flue is in accordance with the submitted plans.

With regard to condition 2 of planning permission 20171923 which was relating to installation of ventilation apparatus including the abatement unit to control the emissions of fumes and smell and their maintenance, the applicants have provided copies of the maintenance and cleaning records for the ventilation system and I am satisfied that the condition is being complied with. I would recommend a condition for on-going compliance with the condition in terms of maintenance including painting of the ventilation apparatus.

Since the last limited period permission the NPPF has been revised and paragraph 183 is most relevant to this application. The Government guidance is that control of processes or emissions (where these are subject to separate pollution control regimes) should be dealt with by other regimes. In this particular case any proven effects of noise and smells should be dealt with under Environmental Acts.

Conclusion

In conclusion, I consider that the operation of the current ventilation system has been effective since it was installed in its current position.

I consider that this application should be APPROVED subject to conditions:

CONDITIONS

1. 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.)
2. 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.)
3. 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.)

4. 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.)

Policies relating to this recommendation

- 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_CS18 The Council will protect and seek opportunities to enhance the historic environment including the character and setting of designated and other heritage assets.
- 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'.