



Leicester
City Council

Wards: see individual reports

Planning & Development Control Committee

Date 24th April 2019

SUPPLEMENTARY REPORT ON APPLICATIONS AND CONTRAVENTIONS:

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APPLICATION ORDER**

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Recommendation: Refusal	
20172677	FLEET STREET, FLEET HOUSE
Proposal:	DEMOLITION OF BUILDINGS; CONSTRUCTION OF 10 AND 11 STOREY BUILDING COMPRISING 211 FLATS (76 X 1 BED; 136 X 2 BED) (CLASS C3); ANCILLARY COMMUNAL ANCIALLYRY FACILITIES; 238 SQM OF FLEXIBLE SPACE TO BE USED FOR A RANGE OF USES (CLASS A1, A2, A3, A4, A5, B1A); 163 SQM OF LEISURE (GYM) USE (CLASS D2); LANDSCAPING AMENITY SPACE; NEW VEHICLE AND PEDESTRIAN ACCESS(AMENDED PLAN REC 27/6/18)
Applicant:	LEE CONTRACTS
App type:	Operational development - full application
Status:	Largescale Major Development
Expiry Date:	30 November 2018
KER	WARD: Castle

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Amended Reasons /Notes

Reason 2 amended to include reference to the negative influence the proposal will have for appropriately managing growth in the area.

Reason 3 amended to take out reference to size of units, added in reference to poor living environment exacerbated by number and density of units.

New note added regarding engagement.

Representations

Additional objection:

The development is unsuited to this location being too dense and too high. The developers argument that they are providing much needed housing is self serving. The housing needed is good quality with adequate space and density standards otherwise the property will deteriorate within relatively few years and Wharf Street, which did have a stable community, will have been recreated with a myriad of short term lets, contributing little to the regeneration of the area.. We need an overview and a comprehensive vision for this area of Leicester not a patchwork of vanity projects.

Anything considered on this site should incorporate the original frontage of Fleet House which could form the nucleus of an attractive post industrial and commercial complex, limited to a height coordinated with the surrounding blocks and the car park.im unsure how wide consultation needs to be but residents such as me who live within 500 yards, do not seem to have had any specific request for observations, and I feel more might have been appropriate for such a major development which would overshadow the rest of the buildings.

An objector has questioned whether paragraph 182 of the NPPF has been considered which states:

Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.

Comments from the applicant:

1)Tilted balance and its application

The tilted balance has not been properly applied. The report for 20172678 refers to whether the adverse impacts outweigh the benefits of the scheme, not whether they significantly or demonstrably do so, which is the test required by Policy.

The report for 20172677 wholly fails to identify any application of the tilted balance. This failure to approach the decision in the correct way is concerning and the Report should be amended to make it clear that the Council is obliged pursuant to the NPPF paragraph 11 d) ii) to ask itself whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

There are no policies in the NPPF that protect areas or assets of particular importance in accordance with footnote 6 and therefore the paragraph 11 d) i) is not applicable. As detailed further below, there is no acknowledgement in the Reports of the substantial public benefits of the development which, of course, is required for the Council to properly undertake the tilted balance required by the NPPF. Please can you correct this.

2) Pd alterations

The assessment made by the Council has been placed within the “Background” sections of the Reports but does not inform consideration of heritage significance in consideration of “Conservation and Heritage”. Nonetheless, the Report suggests that alterations to ground floor under office alterations PD rights would not affect the buildings “substantive positive contribution”. Given the architectural quality led to the local listing such an assessment is wholly conflicting. The Reports should be amended to reflect this.

3) Air Quality

The Air Quality Assessment was prepared and submitted to Katy over 2 months ago. The report does not assess this. The Reports should be amended to confirm it was submitted and there is no issue.

4) Fire escape

Issues have been raised about the fire escape by the Private Rented Sector department. We have received confirmation from our architects that the fire strategy assumes sprinklers protection to the flats and that a Grade D LD1 fire alarm and detection system is fitted. This fully complies with BS9991. Please see the relevant extract. The Reports should be amended to confirm this.*

5) Sustainable energy

The Report implies assessment based on the earlier Sustainable Energy Statement. A revised Sustainable Energy Statement was submitted in October 2018 (7 months ago) which I am not sure why is still under consideration. This deals with all of these concerns raised within the report. The Reports should be amended to confirm this.

6) Sequential assessment

There is no acknowledgement that a Sequential Report was submitted to the Council in November 2018 (6 months ago). The Reports should be amended to confirm this.

7) Heritage

Heritage comments seem to be a copy of the original comments made.

The only new issue raised relates to the Council's assessment of impact of 80 Wharf Street South. It is disappointing that the Council has not raised this issue before, verbally or in writing. 80 Wharf Street South is on the Council's Heritage Register because of its historic interest, architectural interest (its frontage), age & rarity and representativeness. These factors will not be detrimentally affected by the proposed development.

Any suggestion that Fleet House has group value with 80 Wharf Street South is clearly rebutted by the Asset Register itself which identifies 80 Wharf Street South as having group value with 4 Wheat Street and the Gilbros Business Centre but not Fleet House. Clearly the Council considered group value at the time but determined that Fleet House did not form part of this group value.

As detailed below, no assessment is made of the public benefits against the supposed impact, as required by the NPPF. This assessment should be made.

The Report has also incorrectly included reference to para 193 of the NPPF which relates to designated assets whereas there are no designated assets affected by the development. Both Fleet House and 80 Wharf Street are non-designated. This reference should be removed.

8) Townscape analysis

The Report relies on the Townscape Appraisal notwithstanding that it is acknowledged as not being an adopted document.

Within the Report, CS Policy 3 is the basis for the Townscape Appraisal although there is no reference to it within the Policy itself, supporting text or key evidence base. It also does not form part of any SPD. As advised by the Council the Townscape Appraisal is not publicly available and is not an adopted document. The TA should not be afforded any planning weight as it cannot, as a matter of law, be a material planning consideration.

9) Lighting and open space

The Report raises concern with the light to residents for flats and useable open space. This concern extends to the proposed windows in proportion to depths of room and the impact of the design fins on light. We have submitted, and have had agreed, the Daylight and Sunlight Report which concludes that an acceptable level of light to residents is provided as part of the Scheme. This should be reported to the Committee.

We have also received confirmation from the Architect that the open space provision for Blocks A + B is 660m² + 145m² equalling 805m². Blocks C + D equal 308m². This exceeds the policy requirement for open space provision over the two applications in accordance with the Council's Residential Amenity SPD. Again, the reference within the Report should be amended to reflect this.

10) Design standards

There is the suggestion the units do not comply with M4(2) standards. Confirmation from the Architect is that all flats are built to M4(2) standards. The reference within the Report should be amended to reflect this.

11)Regeneration and Public benefits, housing supply
The Reports have not made an appropriate or sufficient assessment of the benefits of the development. No weight has been given to the regeneration benefits and only very limited reference to the lack of housing supply and the contribution the Scheme would make towards it. These are substantial economic and social benefits which the Council must acknowledge and would be expected to give substantial weight when assessing against any significant and demonstrable adverse impacts.

12) Size of units

There is nothing in the either of the Reports which indicate any concern with regard to the size of some of the units of the Scheme. This therefore appears to be an error in the recommended reasons for refusal and it should be deleted.

Further Considerations

In terms of the additional representations I have the following comments:

Response to comment from original objector

Paragraph 182 of the NPPF is not referred to in the main report; however the impact upon the existing business at 24 Dryden Street was considered. The recommendation is one of refusal, however, the site is suitable for an appropriate development. Any development would need to be subject to appropriate noise insulation to ensure it would not be affected by external noise. Paragraph 182 requires appropriate mitigation and therefore I consider it could be integrated effectively with the existing business.

Response to comments from additional objector

In response to the comments raised by the additional objector, I have the following comments:

Their comments endorse the reasons for refusal and the assessment of the area that is taking place to inform the new local plan, but that also informed the urban design assessment of this application.

Response to applicant

In terms of the issues raised by the applicants I have the following comments:

1) Tilted balance and its application

The applicant considers the tilted balance has not been properly applied. The presumption in favour of development and the potential contribution towards the city's five year housing land supply set out in para 11 of the NPPF is recognised. However, the adverse impacts of the development comprising the partial loss of the heritage asset and the impact of its severance, unacceptable design in terms of local context, the level of accommodation that would be afforded to future residents and the impact upon neighbouring buildings are significantly and demonstrably harming for the reasons set out in the main report. I consider that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

I therefore consider that para 11 d) ii applies and that the balance is tilted towards refusal.

2) Permitted Development (PD) alterations

The reference to PD alterations is kept in the background section and out of the main assessment as the alterations do not form part of the application and cannot be taken into consideration. However, they are referred to to make members aware that changes may take place to the building which could undermine its character.

The architectural detailing is one component that helped form the justification for the local listing. Although the removal of architectural detailing on the lower part of the front elevation would represent incremental harm to the heritage asset, it would be reversible and would not negate the broader heritage significance of the property. Unsympathetic alterations are inadvisable in terms of creating a less cohesive looking frontage that will be harmful to the wider amenity of the area, but the building would still retain its broader value in terms of contributing to the townscape and enhancing the setting of other nearby heritage assets.

3) Air Quality

An Air Quality Assessment has been submitted and is considered acceptable.

4) Fire escape

I note the comments made by the applicant in respect of sprinklers and particularly that the fire strategy *assumes* sprinkler protection. It would be a matter for building control to assess if an acceptable scheme was achieved. If the premises was to be subject to a licence from private sector housing and the arrangement was deemed to be unsatisfactory a licence may not be issued. The submitted plans do not show the provision of a sprinkler tank for the storage of water for a sprinkler system.

5) Sustainable energy

It is acknowledged the information was sent in October, and further assessment was made, and if an acceptable scheme was to be provided this element could be secured by condition.

6) Sequential assessment

A Sequential Assessment has been submitted and is considered acceptable.

7) Heritage

The guidance document to Local Heritage Assets is not exhaustive in terms of its content and, as with any heritage guidance document – such as a conservation area character appraisal, lack of detail within it should not be taken as being a statement that a factor is of no significance.

Fleet House and 80 Wharf Street South are both located within the same street block and a development of the scale proposed will quite clearly have an impact on the setting of the other heritage asset. The loss of another heritage asset within the same block, that is of complementary scale and architectural detailing, and the construction of a contextually inappropriate development will quite clearly harm the setting of the retained heritage asset.

The more detailed assessment that has taken place in relation to evaluating the proposed development has resulted in more content than is contained within the relatively brief section on the properties in the older guidance document.

St George's Conservation Area is nearby and is a consideration, so para 193 is relevant in terms of broader assessment.

8) Townscape analysis

Developments should respond to the area in which they are located and before arriving at a development proposal a through urban design analysis of the area should be undertaken which looks at the site in its current form and what influenced the sites evolution and constraints. From there an appropriate scheme should evolve.

It is recognised that certain areas of the city have a greater potential for growth than others. This area, through submitted applications, pre-application enquiries and work being carried out in preparation for the emerging local plan has been identified as one that has a high potential for growth and regeneration. The Townscape Analysis referred to in the officer report is an assessment of the area collecting baseline information and using this to provide design guidance for the future development of this area comprehensively. It will provide guidance for managing growth in the future and for the creation of a good environment for people to live and work in.

This baseline information serves to provide a context for any development proposal and is not dissimilar to an appraisal of the constraints, context and rationale which would be expected to support any development proposal, addressing Policy CS03.

What is obvious from the analysis that has been done is that many of the local heritage assets have been retained through many decades of change in the area, an indication of their importance to the townscape of the area. They provide focal points and landmarks, often important to wayfinding, in their own right ensuring legibility through the area. The justification for a tall building of the nature proposed to provide legibility and a focal point is not founded as existing buildings already make a positive contribution to the character of the area.

The applicant claims that the proposed development is “good” development but good development could be achieved on this site without the form and massing proposed and with the retention of a valuable historic asset. Other developments have already been built and others are coming forward in a form respecting surrounding context demonstrating that developers are keen to build in the area and that development is viable. The Townscape analysis will ensure that the area continues to develop appropriately and will give certainty to developers in bringing forward proposals.

9) Lighting and open space

Whilst daylight and sunlight assessments have been submitted it does comment that some of the windows do not meet with the relevant BRE criteria and that mitigation is required. There are still concerns about the size and covering of some of the windows and layout of some of the flats which could result in a poor level of accommodation.

In terms of the amount of amenity space available the main report does go into some detail on this. A large amount of the external amenity space is merely incidental space that could not be formally used as amenity space. The public terrace would provide a level of amenity, however, it may not be preferable for all residents given it's location and nature.

10) Design standards

This could be secured by condition in terms of compliance with M4(2).

11) Regeneration and Public benefits, housing supply

Whilst a scheme to provide residential accommodation in this part of the city would contribute to the regeneration of the area and would provide additional activity and surveillance in an area, this should not be at the cost of providing an acceptable well designed place that integrates into its surroundings and preserves buildings which make a positive contribution to the area as a whole.

12) Size of units

The deficiency is more to do with the layout of the flats and the fact that many have very small windows which are sited away from the living areas. The reference to size of units has been taken out of the reason for refusal.

REASONS FOR REFUSAL

2. The proposal fails to appropriately consider and respond to the local context and to the immediate surroundings of the site. The proposal is not justified in townscape terms and would not contribute positively to the area's character and appearance in terms of scale, height, urban form, massing and appearance and having a negative influence on the potential for appropriately managing the future growth of the area. As such the proposed building will be harmful to the character and appearance of the area and the proposal is contrary to policies CS03 and CS18 in the Core Strategy and to the relevant provisions of the NPPF; in particular paragraphs 122, 124, 126, 127, 128 and 130.
3. The proposed development would by reason of its design and layout result in a poor standard of living environment for future occupants due to the internal layout and positioning and size of fenestration of some units and the placing of fins to principal room windows and the lack of sufficient external amenity space. This is exacerbated by the number and density of the units and the layout and scale of the development. The proposal is therefore contrary to Policy H07 and PS10 of the City of Leicester Local Plan and Policy CS03 of the Core Strategy.

NOTE TO APPLICANT

The City Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application advice was given during the application process. Notwithstanding that advice the City Council has determined this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received. As the proposal was clearly unacceptable and could not be reasonably amended it was considered that further discussions would be unnecessary and costly for all parties.

Recommendation: Refusal	
20172678	FLEET STREET, FLEET HOUSE
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Applicant:	LEE CONTRACTS
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Expiry Date:	30 November 2018
KER	WARD: Castle

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The deficiency is more to do with the layout of the flats and the fact that many have very small windows which are sited away from the living areas. The reference to size of units has been taken out of the reason for refusal.

REASONS FOR REFUSAL

3. The proposal fails to appropriately consider and respond to the local context and to the immediate surroundings of the site. The proposal is not justified in townscape terms and would not contribute positively to the area's character and appearance in terms of scale, height, urban form, massing and appearance and having a negative influence on the potential for appropriately managing the future growth of the area. As such the proposed building will be harmful to the character and appearance of the area and the proposal is contrary to policies CS03 and CS18 in the Core Strategy and to the relevant provisions of the NPPF; in particular paragraphs 122, 124, 126, 127, 128 and 130.
4. The proposed development would by reason of its design and layout result in a poor standard of living environment for future occupants due to the internal layout and positioning and size of fenestration of some units and the placing of fins to principal room windows and the lack of sufficient external amenity space. This is exacerbated by the number and density of the units and the layout and scale of the development. The proposal is therefore contrary to Policy H07 and PS10 of the City of Leicester Local Plan and Policy CS03 of the Core Strategy.

NOTES FOR APPLICANT

1. The City Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application advice was given during the application process. Notwithstanding that advice the City Council has determined this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received. As the proposal was clearly unacceptable and could not be reasonably amended it was considered that further discussions would be unnecessary and costly for all parties.

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THIS APPLICATION HAS BEEN TAKEN OFF THIS COMMITTEE AGENDA. IT IS LIKELY TO BE REPORTED TO THE NEXT MEETING.

10 FRIAR LANE, FERNANDEZ GRILLHOUSE APPEAL

Representations

Two representations have been received from local residents who state that they are continuing to be affected by emissions from the flue but have not reported any issues as they believed that the Council would do its own monitoring of the site. They further state that the flue continues to leak grease and continues to breach the noise levels set in the conditions.

A copy of another email addressed to Members has been received with photographs attached to illustrate grease leaking from the flue. The committee is requested not to agree with officer's recommendation in respect of condition 1. The committee is asked to maintain its position from October 2018. It is claimed that the flue is still unsatisfactory and causing a daily nuisance for everyone in the vicinity.

Consideration

Complainants have been advised to make representations directly to the Planning Inspectorate as the final decision on this matter now rests with them.

The council received a number of complaints during 2016/17 and there were objections to the application for the now installed flue with mitigation measures.

There had been no reports of nuisance following the installation of the approved system.

The Council's pollution control monitoring service is available during office hours Monday – Friday and 4 nights a week. The staff in Noise and Pollution Monitoring Service need to measure noise levels and experience other nuisances from a complainant's property to assess any harm. The Service has received no complaints about noise or odour since June 2018.

Noise measurements taken by officers of the current flue in Sept 2017, did check that the flue is capable of meeting the 55dB(A) 1m from the flue requirement. If kept at this level, noise nuisance should not be witnessed in the flats in Phoenix House, Berridge St or in the premises on Friar Lane. The independent noise report did find noise from the flue was an issue on 27th June 2018, around the same time that officers received noise calls about it in June 2018.

The Council successfully prosecuted the operator of the restaurant in November 2017 for odour offences from the old flue. The complainants were informed that further odour nuisances witnessed after the prosecution, could be used in evidence at a further trial.

Government advice on the use of limited period conditions is that these should not continue to be imposed.

Officers consider that in the absence of any evidence to demonstrate that the flue has failed to perform reasonably there is no sound basis for asking the Inspector to consider either refusing retention of the flue or imposing a further limited period.