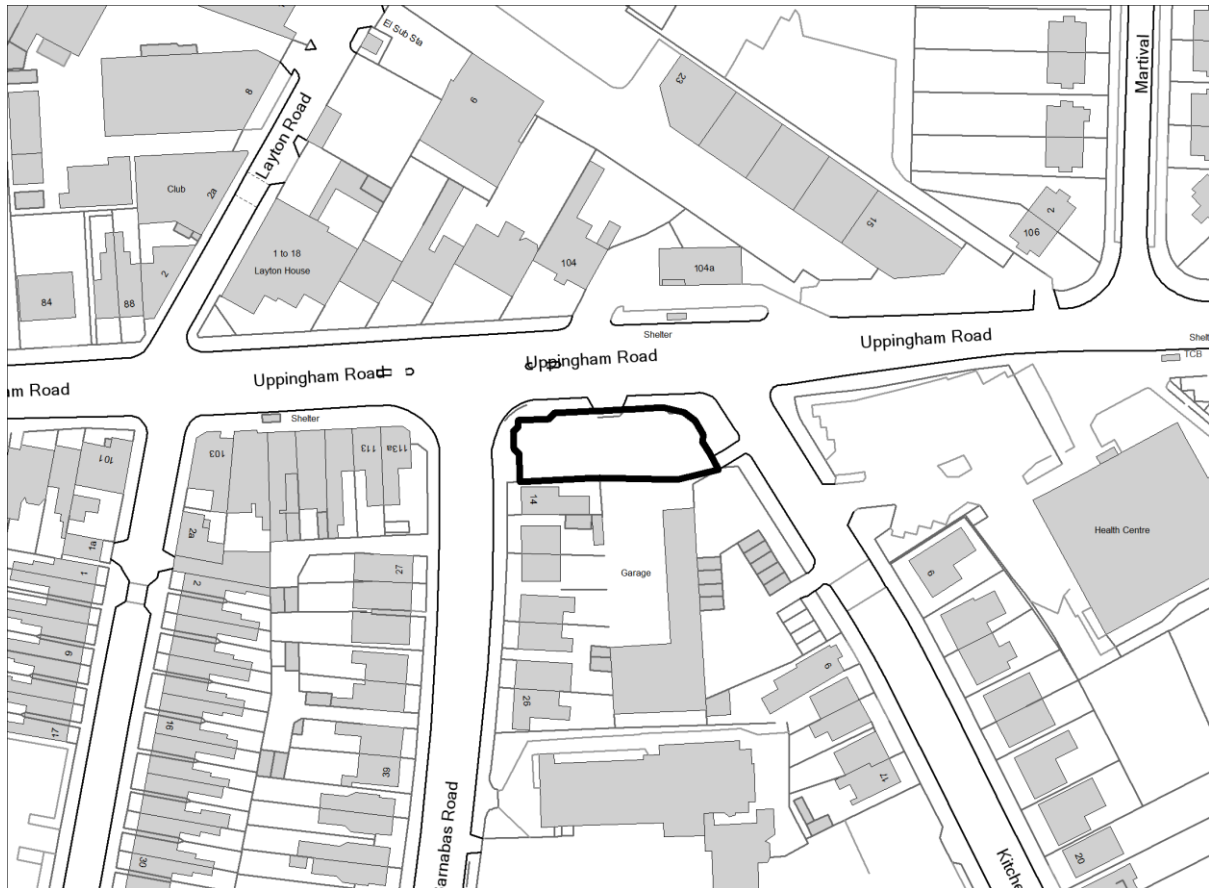


<b>Recommendation: Other or unclassifiable decision</b>	
<b>20201275</b>	<b>115 Uppingham Road, Hand Car Wash</b>
Proposal:	Retrospective application for use of site as a car wash and window tinting service (Sui Generis); with associated outbuildings
Applicant:	Mr N Okeke
View application and responses:	<a href="https://planning.leicester.gov.uk/Planning/Display/20201275">https://planning.leicester.gov.uk/Planning/Display/20201275</a>
Expiry Date:	5 November 2020
ACB	WARD: North Evington



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## Introduction

- The application is being reported to committee at the request of Cllr Fonseca and Cllr Joshi.
- Issues are the impact on residential amenity, the highway, drainage, character and appearance and the setting of a listed building
- Recommendation is to decline to determine the application under section 70a of the Town and Country Planning Act 1990.

## The Site

The site was previously used as a bus garage but has been in use as a car wash since 2015. It is located at the junction of Uppingham Road, St Barnabas Road and

Kitchener Road. The site is located within a mainly residential area with houses to the south. To the north of the site is a shop with houses to the east and west of this. To the west of the site is a doctor's surgery. To the east of the site is the Uppingham Road (West) Local Shopping Centre. There is a Grade II listed church to the south of the site. The site is located within flood zone 2.

## **Background**

The planning history relates to the bus garage use however the building was destroyed by fire in 2007 and was subsequently demolished.

In September 2010 planning permission 20101308 was granted for demolition of fire damaged buildings; Installation of 2.4-metre-high fence and gates. This was implemented.

In July 2015 planning permission 20150744 was granted on a limited period basis for one year for use of the site as hand car wash, one temporary building, hardstanding. This was implemented.

In September 2016 planning permission 20161183 was granted on a limited period basis for one year for the continuation of the use of the site as a hand car wash, the installation of a tyre fitting facility and the installation of three temporary buildings. The car wash use has continued but the tyre fitting facility has not commenced and there are only two temporary buildings.

In August 2019 planning application 20190751 for retrospective consent for the use of the site as a car wash and a temporary building was refused for the following reasons;

- 1. The proposal, by reason of the level of noise generated by the vehicle washing process, would be detrimental to the residential amenity of the occupiers of 14 St Barnabas Road contrary to saved policy PS10 of the City of Leicester Local Plan.*
- 2. The proposal, by reason of the use of temporary buildings, represents poor design for a permanent use and is contrary to policy CS3 of the Leicester Core Strategy and paragraph 124 and 130 of the National Planning Policy Framework 2019.*
- 3. The proposal, by reason of the appearance of the site, has a detrimental impact on the setting of the Grade II listed building of St Barnabas Church, St Barnabas Road contrary to policy CS18 of the Leicester Core Strategy and paragraph 192 of the National Planning Policy Framework.*

In February 2020 planning application 20191799 for retrospective permission for the use of the site as a hand car wash was refused for the following reasons;

1. The proposal, by reason of the level of noise generated by the vehicle washing process, would be detrimental to the residential amenity of the occupiers of 14 St Barnabas Road contrary to saved policy PS10 of the City of Leicester Local Plan.

2. The proposal, by reason of the use of temporary buildings and the proposed 2.4m laminated due to use of materials and their location, represents poor design for a permanent use and is contrary to policy CS3 of the Leicester Core Strategy and paragraph 124 and 130 of the National Planning Policy Framework 2019.
3. The proposal, by reason of the appearance of the site, has a detrimental impact on the setting of the Grade II listed building of St Barnabas Church, St Barnabas Road contrary to policy CS18 of the Leicester Core Strategy and paragraph 193 of the National Planning Policy Framework.

An appeal against the refusal was dismissed by the Planning Inspectorate on 3<sup>rd</sup> July 2020 with the Inspector considering that the harm caused to the setting of the listed building, the effect of the design and appearance of the site on the character and appearance of the area and the harm to residential amenity was not outweighed by the benefits of the services provided or job creation. The Inspector's decision and the reasons for refusing the previous identical Application are relevant to the recommendation.

The application for the current proposal was received on 13 July 2020.

## **The Proposal**

The proposal is exactly the same as refused application 20191799 in that it is for the continued use of the site as a hand car wash and window tinting service for a limited period of 36 months. The proposal also includes the relocation of the existing temporary buildings on the site to the rear to provide storage and an office. The window tinting area would be covered by a canopy. The application also seeks consent for the installation of 2.4m high laminated boards on the inside of the boundary fence to prevent water spraying onto the highway.

## **Policy Considerations**

### National Planning Policy Framework (NPPF) 2019

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 109 advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

Paragraph 120 states that planning decisions need to reflect changes in the demand for land and should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

- a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and
- b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

Paragraph 124 states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

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 130 states that permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions.

Paragraph 155 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

Paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

#### Development Plan policies

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

Most relevant Core strategy policies are CS2, CS3, CS18 and Local plan policy is PS10

#### **Representations**

Cllrs Fonseca and Joshi have requested that the application be determined by the Planning and Development Control Committee on the grounds that to require the use to cease would result in the loss of 5 jobs.

#### **Consideration**

Section 70A of The Town and Country Planning Act 1990 as amended by Section 123 of the Localism Act 2011 states

- (1) A local planning authority may decline to determine a relevant application if—
  - (a) any of the conditions in subsections (2) to (4) is satisfied, and
  - (b) the authority think there has been no significant change in the relevant considerations since the relevant event.
- (2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Secretary of State has refused a similar application [F4made to the Secretary of State under section 62A or] referred to him under section 76A or 77.
- (3) The condition is that in that period the Secretary of State has dismissed an appeal—

- (a) against the refusal of a similar application, or
- (b) under section 78(2) in respect of a similar application.

The purpose of the legislation was to restrict repeated planning applications for the same development where appeals against previous refusals had already been dismissed.

The NPPG provides:

*Must a local planning authority decline to determine repeat planning applications?*

Where an authority considers that an application is similar, it is not automatically obliged to decline to determine the application. The purpose of these powers is to inhibit the use of 'repeat' applications that the local planning authority believes are submitted with the intention of, over time, wearing down opposition to proposed developments. They are, however, designed to be flexible and to give local planning authorities the discretion to entertain 'repeat' planning applications where they are satisfied that a genuine attempt has been made to overcome the planning objections which led to rejection of the previous proposal or there has been a material change in circumstances.

Paragraph: 058 Reference ID: 14-058-20140306

In this case an appeal was dismissed less than a month before the submission of the application and the proposal is identical to that dismissed at appeal. I therefore consider that the provisions of section 70A apply in this case, and that there have been no material changes in circumstances and the Council should decline to determine the Application.

There is no right of Appeal if the Council declines to determine the Application under s70A but the decision can be challenged by judicial review if the decision falls outside the scope of s70A or is unreasonable.

If Members decide not to accept the recommendation, they should give reasons for a decision to determine the application notwithstanding the reasons given for the officer recommendation.

The application would then need to be determined; however the publicity and consultation period does not expire until 3<sup>rd</sup> November so such decision could not be made until after that date.

#### Principle of development

The site is located within an area which is predominantly residential in nature and therefore it is normally expected that either residential uses or uses normally found in residential areas would be the only acceptable uses for this site.

In this case it is acknowledged that the site is part of a former garage of which the remaining part is in use as a vehicle repair garage, however there are residential properties immediately to the south of the site on St Barnabas Road.

Hand car washes by their nature are not suitable permanent uses when they are the primary use, however they are sometimes acceptable permanent uses when they are a secondary use to a garage forecourt. In this case there is no connection between the vehicle repair garage and the hand car wash, and I therefore do not consider that the use could be considered to be a secondary use.

Hand car washes can sometimes be an acceptable temporary use in low grade employment sites where any impact on residential amenity can be kept to a minimum. Where temporary consents are granted these should also be kept to a short period to allow the owners to come forward with a redevelopment plan for the site.

Saved policy PS10 of the City of Leicester Local Plan states that in determining planning applications, the following factors concerning the amenity of existing or proposed residents will be taken into account including noise, light, vibrations, smell and air pollution (individually or cumulatively) caused by the development and its use.

Hand car washes especially those where jet washers are used, which is the case with this site, are noisy. Due to the fact that the cleaning of vehicles in this case takes place outside of a building; water, cleaning fluids and residue from the cleaning process can leave the site in an uncontrolled manner. The cleaning process results in a detrimental impact on the residential amenity of occupiers of nearby properties and would also have a detrimental impact on future occupiers of any possible development to the rear of the site.

The site has had two temporary consents for a hand car wash use previously. No formal plans for redevelopment of the site have been submitted although the applicant states that the owner is looking to redevelop the site once their current lease expires. Government guidance is that it will rarely be justifiable to grant a second temporary permission and that further applications should either be granted permanent permission or refused.

I do not consider that the details submitted justify a further temporary consent and I therefore consider that as permanent consent for a hand car wash would not be acceptable in this case the proposal is not acceptable in principle and contrary to policy PS10 of the City of Leicester Local Plan.

### Design

The existing temporary storage containers are in a poor condition and are also used for the purposes of advertising for the site. They are proposed to be relocated to the rear of the site and would remain painted red and blue. Whilst their relocation to the rear of the site would reduce the degree of prominence that they currently have I still do not consider that they represent appropriate design for either a temporary or permanent use.

The canopy for the window tinting business is already in position on the site and is located to the front of the site. It is a metal structure with a fabric roof. It is also considerably higher than the surrounding fencing and is prominent within the site.

The planning statement submitted with the application states that the temporary buildings would be replaced with timber framed buildings however the submitted plans fail to show any details of these buildings and only indicate the relocation of the existing storage containers.

The proposal also includes the installation of 2.4m high blue laminate boards which would be located behind the existing metal fencing. It appears that this is an attempt to reduce the level of water spray onto the highway and whilst it may be required for this purpose, I consider that it would result in a poor appearance of the site.

In the July 2020 appeal decision the Inspector found that *“given the temporary and utilitarian appearance of the proposal, as described earlier in this decision, and the somewhat monotonous and overdominant appearance of the proposed blank 2.4m high perimeter boarding, the development would not be of sufficient architectural quality at this prominent urban node to enhance the character and appearance of this substantially residential area.”*

I agree with this view and I therefore consider that the proposal represents poor design that fails to improve the character and quality of the area contrary to policy CS3 of the Leicester Core Strategy and paragraph 124 and 130 of the National Planning Policy Framework 2019.

#### Heritage Assets

The site is located around 50m from the Grade II listed St Barnabas Church. Whilst it was considered that the initial temporary use of the hand car wash would not have had a significant impact on the listed building, I consider that the prolonged use of the site has since detrimentally affected the setting of the listed building.

In the July 2020 appeal decision the Planning Inspector found that *“the storage containers and operations on site would be visible from the public domain through the site entrance and access. The combined effect would be a temporary and utilitarian appearance, which would distract from and visually jar with the historical, architectural solidity and grandeur of the LB’s exterior. The above effect on the setting of the LB would be noticeable, to various degrees, from the following viewpoints: from around the junction of Uppingham Road and Kitchener Road; from Uppingham Road; and from within the appeal site.”*

I agree with this view and I therefore consider that the previous reason for refusal has not been overcome and that the proposal is contrary to policy CS18 of the Leicester Core Strategy and paragraph 192 of the National Planning Policy Framework 2019.

#### Residential amenity (neighbouring properties)



The applicant has submitted a letter of support for the proposal which is claimed to be from the occupier of 14 St Barnabas Road. As this was submitted with the application, I am unable to verify the letter particularly as there have been previous objections from the occupier of this property. I therefore do not consider that this letter outweighs the concerns explained earlier.

In the July 2020 appeal decision the Planning Inspector found that *“The following combination of factors is likely to generate substantial noise close to openable windows and the rear garden of No 14: operation of equipment including jet washers on the site; vehicle movements on, off and within the site, including car doors closing and the starting of engines; and general discussions between staff and customers and in the absence of a substantive noise assessment to demonstrate acceptable effects, I have no certainty that, in respect of noise, the proposal would avoid harm to future residents’ enjoyment of their property, including the rear garden.”*

I agree with this view and therefore consider that the proposal would be contrary to saved policy PS10 of the City of Leicester Local Plan.

### Highways and Parking

The Local Highway Authority have not provided any comments on the application, however they previously provided comments on the last application. These were that although there had been a number of traffic accidents in the vicinity of the site these were at the road junctions and did not involve vehicles turning into the site. Concerns were raised over spray onto the highway; however, the proposed laminate boards would resolve these concerns. Signage has also been installed within the site to control the one-way system with access from Kitchener Road and egress onto St Barnabas Road with a left turn egress only.

Whilst the proposal would generate a significant amount of traffic, I consider that the previous garage use would also have generated a significant amount of traffic and I therefore do not consider that a refusal on the grounds of the impact on highway safety can be justified.

### Drainage

The site is located within Flood Zone 2 where there is a moderate risk of flooding and a Critical Drainage Area. The applicant had previously advised during consideration of application 20161183 that the drainage strategy for the site is to use storage attenuation and waste water recycling which would then be disposed of via the Seven Trent surface water system. The Local Lead Flood Authority (LLFA) have not commented on the application. The proposal also includes replacing the existing water butts with larger ones that would also be located to the rear of the site and would be able to use more recycled water.

I therefore consider that the proposed system will not result in an additional impact on the flood risk in the area to warrant refusal of the application for this reason.

### Conclusion

In conclusion consideration of this application would prolong the enforcement process which officers had started to commence. I consider that planning permission should not be granted for the application due to the reasons stated above and that if the application was to be determined the recommendation would be for refusal for the reasons the previous application was refused on Appeal.

I therefore consider that it is expedient and justified to decline to determine the application.

I recommend that the Council declines to determine the application under the provisions of section 70A of the Town and Country Planning Act 1900 and that the notification and wording of the decision is delegated to the Head of Planning.