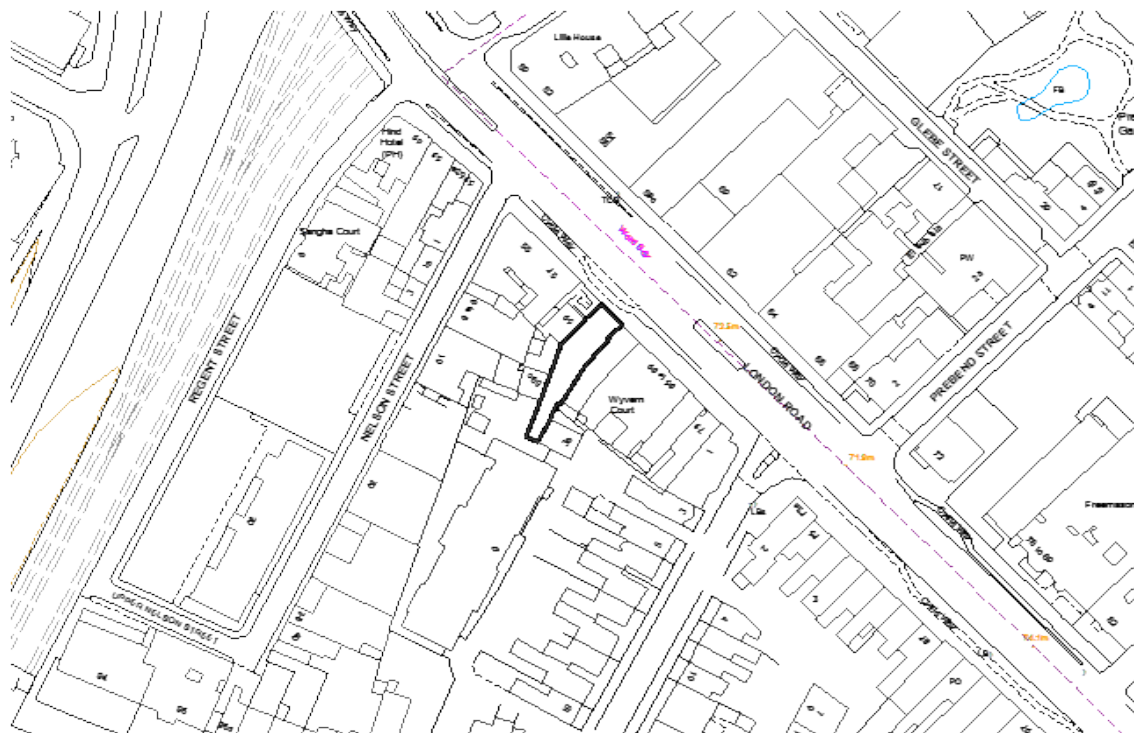


| | |
|---------------------------------|---|
| Recommendation: Refusal | |
| 20250839 | 61 London Road |
| Proposal: | Construction of new shopfront to front and side; installation of first floor doors, balustrade and screens to create first floor roof terrace; cladding to front and side; installation of ventilation system including units to rooftop; & alterations to restaurant (Class E) |
| Applicant: | Mr Riyaz |
| View application and responses: | https://planning.leicester.gov.uk/Planning/Display/20250839 |
| Expiry Date: | 30 July 2025 |
| SS1 | WARD: Castle |



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Summary

- The application relates to a restaurant on London Road;
- The proposal includes the use of the ground floor rooftop as a roof terrace at first floor level for dining space, along with alterations to the frontage and installation of ventilation systems;
- The proposal is recommended for refusal due to impacts on amenity of neighbouring residents;
- The application is brought to committee by request of Councillor Kitterick.

The Site

The application relates to a restaurant within the London Road local centre and South Highfields conservation area. The site is also in an air quality management area and critical drainage area.

The site includes dining space to the front on both ground and first floors, with kitchen space and ancillary areas including storage and offices. There is a single storey flat roof protrusion to the front of the site and a two storey flat roof protrusion to the rear of the site, as seen in photos on p5-6 of the design and access statement.

Current council tax records along with planning history confirms the following uses within close proximity to the restaurant as below:

- There is a 2-bedroom residential unit on the second floor of the site, above the restaurant (2nd floor 61 London Road).
- The neighbouring unit to the south also includes a restaurant (no.63), with a residential unit set back at 2nd floor (no.63a).
- The neighbouring unit to the north also includes a restaurant at ground floor (no.59), with a 4-bed house in multiple occupation at first and second floors (no.59b).
- A 2-storey (3-bed) dwellinghouse (no.59c) was granted planning permission on appeal to the rear of 59 London Road in 2023 (it is understood that the site may be being used as 3 flats).

Background

There is a recent refused planning application which is relevant to the consideration of the current proposal:

20240936: Installation of retractable awning & glass balustrade to first floor; alterations to front and side (north) elevations including new shopfront; & installation of ventilation system including units to rooftop (Class E)

Refused for 3 Reasons:

1. The proposed first floor seating/terrace area facilitated by the first floor glazed doors, glass balustrades and retractable awning would lead to diners being seated in close proximity to neighbouring first floor windows of rooms 2 and 3 of the 59b London Road HMO, and to neighbouring second floor windows serving the living room of the same property. The proposal would lead to unacceptable constant and severe loss of privacy to occupiers of rooms 2 and 3, and noise/disturbance impacts to both occupiers of those rooms and also to all occupiers of the HMO when using their living room. The proposal would be contrary to Local Plan 2006 saved policies PS10 and PS11 and National Planning Policy Framework 2023 paragraphs 135f and 191.

2. The proposed fans, ventilation units and heat pumps on the first floor roof would be adjacent to rear second floor windows that appear to serve the second floor 61 London Road flat. In the absence of information to demonstrate otherwise the proposal would be likely to lead to poor outlook for the second floor flat directly to the functional equipment, and noise impacts from the running of the mechanical equipment. The proposal would therefore be contrary to Local Plan 2006 saved policies PS10 and PS11 and National Planning Policy Framework 2023 paragraphs 135f and 191.

3. The proposed large awning would form a large visual mass of no architectural quality at first floor level and the glass balustrade would be a modern eye-catching design feature in close proximity to the listed building 55-57 London Road and within the South Highfields conservation area, to the detriment of the setting of the designated heritage assets contrary to Core Strategy 2014 policy CS18 and National Planning Policy Framework 2023 chapter 16.

There have been further planning applications & advertisement consent applications at the site:

New signage was refused under **20240937** on the grounds of illumination would be harmful to the conservation area, and the upper floor sign harmful to the conservation area.

There is a re-submission for proposed signage, ref **20250838** – still under consideration.

An application to amend hours of use to 0900-0500 under **20060130**, was refused on the grounds of detriment to amenity of neighbours.

Permission was granted for change of use of first floor to function room ancillary to ground floor restaurant granted under **19961235**.

Permission was granted for change of use of ground floor to restaurant, plus flue under **19940713** and **19950922** (temporary) and **19961226** (permanent) (hours of use 0900-2400).

The Proposal

As with the previous application 20240936, the proposal is to set out the ground floor roof to be used as an outdoor terraced part of the restaurant at first floor level. However, the current proposal has amended the proposed terrace balustrade to be formed of a charcoal grey steel frame with timber fins. The balustrade would be 0.85m in height to the front elevation and 1.85m to the side elevations. The roof terrace would accommodate 28 diners. It would be used alongside the same current hours of use of the restaurant which are Monday-Friday 4pm-10:30pm and Saturday-Sunday 1pm-10.30pm.

The previously proposed awning has been removed from the current submission.

Also proposed are amendments to the ground floor front and side frontages, which would see the installation of black upvc/aluminium framed windows and doors and black wall cladding. This has been carried over from the previously refused application. 3D renders of how the proposal would appear are provided on page 11 of the design and access statement.

New ventilation equipment is also proposed including ducting, fans, ventilation units and heat pumps on the roof. This would accommodate ventilation from the ground floor and first floor dining, kitchen and storage areas and protrude onto the rear first floor flat roof. The plans show additional equipment compared to that proposed within the previous application.

The previous application did not provide either existing or proposed second floor plans, these have however been submitted under the current application. The plans submitted under this application show that as existing, the second floor includes two bedrooms, one to front and one to rear, with a prayer room to front and kitchen to rear. The proposed second floor plans show that the floor would be entirely re-laid-out. It would include a flat to front with 3 bedrooms to front with a kitchen, shower and WC. It would also include general space to rear including a hallway, ablution room, two prayer rooms, and storage (with an access to the rooftop).

The application was accompanied by a specification/schedule of equipment relating to the works along with a document containing specification brochures of a variety of ventilation equipment.

The application was also accompanied by a heritage statement, and a noise impact assessment.

The agent was advised during considerations particularly of issues with impacts on residential amenity. Further information was provided by the agent via emails including comments, a photo and a video on the location/height of the flue; comments refuting the concerns regarding outlook of the neighbour; and comments from the applicant's noise consultant relating to the concerns on the heat pump noise impacts.

Policy Considerations

National Planning Policy Framework 2024

Paragraph 2 (Primacy of development plan)
Paragraph 11 (Sustainable development)
Paragraph 90 (Support town centres)
Paragraph 135 (Good design and amenity)
Paragraph 140 (Clear and accurate plans and drawings)
Paragraph 198 (Noise and light pollution)
Paragraph 202 (Heritage as an irreplaceable resource)
Paragraph 207 (Heritage statement)
Paragraph 208 (Considering impact on heritage assets)
Paragraph 210 (Sustaining significance of heritage assets)
Paragraph 212 (Conservation of designated heritage assets)
Paragraph 213 (Clear & convincing justification for heritage impacts)
Paragraph 215 (Less than substantial harm)

Core Strategy 2014 and Local Plan 2006

CS03 (Designing quality places)
CS11 (Retail hierarchy)
CS18 (Historic Environment)
BE10 (Shopfront design)
PS10 (Residential amenity and new development)
PS11 (Protection from pollution)

Further Relevant Documents

Planning (Listed Buildings and Conservation Areas) Act 1990
South Highfields Conservation Area Character Appraisal
The National Heritage List for England
GOV.UK Planning Practice Guidance – Noise <https://www.gov.uk/guidance/noise--2>
Leicester Shopfront Design Guide

Consultations

Noise & Pollution Control Team

The officer raised concerns as below:

On drawing MSHC-37802-M01, it shows a change in the existing flue height, being lower than seen in figure 10 and 11 in the design statement, and additional flue terminates against the near the adjacent building windows, this is likely to cause noise and odour issues with the HMO next door, we advise that all ventilation flues terminate 1m above the roof ridge.

The noise sensitive receptors in the noise impact report by noise air, do not include the 59 and 63 London Road which are residential properties and maybe affected by patron noise from the use of the terrace until 22:30.

The Noise impact Report - P8186-R1-V2 also states there are 5 heat pumps with each unit can generate up to 66dB(A), the report doesn't indicate whether this is the sound power or sound pressure level. If it is sound pressure level, this choice of air source heat pump is unacceptable as it is too loud, (approx 73dB(A) if all working at the same time, minus 10dB(A) for enclosure = 63dB(A), plus facade reflection of +3dB total would be 66dB(A). The ASHPS need to assessed using the latest MCS 020 a) guidance (April 2024), ensuring that the sound pressure level at all assessment positions is equal to lower than 37dB(A).

With the level of information given, refusal was recommended by the officer.

Representations

Councillor Kitterick made a supportive comment on the proposal, noting that

- “this application will positively contribute to the appearance and economic health of London Road. As a major arterial road in the City of Leicester I believe London Road is a success story for the city which has been brought about by food businesses investing in the improvement of the area of which this is another example; and
- If officers are minded to reject these applications under delegated powers I would like the matter to be determined by the Planning Committee as London Road is a strategic commercial area of the city sitting as it does next to Leicester Railway Station.”

Consideration

Principle of Development

The proposal is for additions to an existing restaurant in a local centre. Core Strategy policy CS11 seeks for local centres to be protected and enhanced, and NPPF paragraph 90 states that planning decisions should support the role that town centres play by taking a positive approach to their growth, management and adaptation. As such the principle of development is favourable in accordance with the above listed policies.

Neighbouring Residential Amenity

Policy Context

Local Plan policies PS10 and PS11 and NPPF paragraphs 135f and 198, taken together, require a high standard of amenity for neighbouring residents to be retained. This would include any impacts on privacy, outlook and impacts resulting from noise/disturbance.

Nearby Neighbours

As noted above, the neighbour directly to the north is 59 London Road. This is made up of no.59 at ground floor, no.59b at first and second floors, and the approved 3-bed dwelling at no.59c towards the rear of that site (which is understood to be in use as 3 flats). No.59b is a 4 bed HMO approved under application 20191807. Plans for that application show that bedroom 2 is served by the left hand first floor front window, bedroom 3 is served by the two right hand first floor front windows and the living room is served by the second floor front windows. GOV.UK Council tax records confirm that the 4 rooms are registered.

Also, there is a second floor flat above the food/drink unit to which the application relates, as confirmed by GOV.UK council tax records.

Assessment – Roof Terrace Impacts to Neighbouring Sites

The proposed first floor glazed doors and balustrades would facilitate the proposed outdoor first floor seating/terrace area for up to 28 diners. As with the previous application, the closest table shown on the floor plans would be around 4m from the no.59b HMO bedroom 2 window and only a little more distance from the bedroom 3 windows. The tables would also be just below the HMO living room windows. I consider that the proposed roof terrace will result in noise/disturbance impacts to amenity of the neighbours, from having diners seated a few metres away from their windows. These impacts could be constant and uncomfortable, over and above existing noise impacts from the nearby commercial premises and traffic due to the very close proximity of the terrace. I note the noise pollution officer raised concern on this issue also. As such the proposal would be unacceptable in this regard and contrary to the policies listed above.

I acknowledge that the noise impact assessment has attempted to deal with noise impacts from the development. However, as touched on by the noise pollution officer, the assessment has only taken into consideration impacts to other sites across the road and to the rear of the site. Despite being closer to the proposed terrace, 59/59b London Road is not shown as being a 'noise sensitive receptor' as per the maps on pages 2 and 11, so impacts to this neighbour have not been considered in the report.

I would not recommend that reasonable conditions could satisfactorily overcome the issues described above in this case as the proximity of the terrace to the HMO would be such as to be inherently concerning.

The current application has replaced the previously proposed glass balustrade to the right hand side elevation of the roof terrace, to a new 1.85m steel frame wall with overlapping timber fins. This would resolve the issue in the previous application in terms of intrusion of privacy to the neighbouring no.59b HMO bedroom windows. However, the issue would be replaced with impact on outlook from the no.59b bedroom 2 window. The occupier at current enjoys a reasonably clear outlook onto London Road. The proposed side balustrade would extend a further 4.6m in depth and result in the neighbouring bedroom 2 occupier having a narrowed and constrained outlook, significantly exacerbating the breach of the 45 degree rule (whereby, extensions should not extend beyond a 45 degree line taken from the centre of the neighbouring window). The proposal would also harm the neighbour's amenity in this way, and therefore would be unacceptable in this regard and contrary to the policies listed above.

There is a further second floor flat to the south at no.63. Although the proposed roof terrace would be in relatively close proximity to that flat also, it is set further back from the terrace and would not be likely to cause a significant unacceptable noise impact over and above the existing situation.

Assessment – 2nd Floor Flat

As noted above, the second floor 2-bed flat as existing is registered with council tax records. The proposal would see the re-configuration of the flat to include 3 bedrooms, all to front, with a kitchen behind. It would appear to be restricted to only the front part of the second floor through the door from room 'S1' to room 'S3'. The previous application did not include either existing or proposed second floor plans and the re-configuration of the flat to include an additional bedroom now raises concerns in terms of standard of living accommodation as follows:

- The flat would be separated from the rear rooms of the second floor and measure c.53sqm, which would be well below the recommended NDSS requirement of 74sqm
- There would not be any in-built storage space provided, despite the recommended NDSS requirement of 2.5sqm.
- The left hand bedroom would measure 6.6sqm, below the recommended NDSS requirement of 7.5sqm.
- The kitchen would not appear to benefit from any natural light or outlook.
- The new bedroom windows would all be directly above the roof terrace. As such the proposal would exacerbate noise/disturbance impacts from use of the roof terrace to the occupiers of the second floor flat, resulting in similar harmful impacts as described above in relation to no.59 London Road.
- It is unclear in terms of the intensity of the use of rooms S1 hallway /S2 ablution /S9/S10 (prayer rooms) /S11 (storage) and consequently their impact on the existing flat in relation to general noise and disturbance.

Taking the issues above together, the occupiers of the newly laid out second floor flat would have insufficient floorspace, limited and enclosed communal space, and suffer from noise and disturbance impacts, leading to unacceptably poor living conditions, contrary to Local Plan saved policies PS10 & PS11 and NPPF paragraphs 135f and 198.

Assessment – New Flue/Plant Impacts

The proposal shows the proposed installation of the new ventilation system on drawing MSHC 37802 - /M01, revision B. Detailed specifications of the system to be installed accompanied the application.

Firstly, the noise pollution officer raised concerns regarding the flue not terminating 1m above the highest adjacent roof ridge. This is a standard request to ensure that odours from cooking fumes disperse well away from neighbouring windows.

The agent responded to the concerns to advise that the new flue is situated near an existing flue. It has been placed in the most prudent position away from adjacent properties. There are other flues at neighbouring buildings positioned in a similar manner.

However, I share the noise pollution officer's concerns as the low flue height would risk causing odour impacts to the dwelling at 59c London Road, which has rooflights in close proximity to the proposed flue. I do not consider that the presence of other

flues would justify allowing the impacts that would be caused by this proposal. The proposal would therefore be contrary to Local Plan saved policies PS10 & PS11 and NPPF paragraphs 135f and 198 in this regard.

The noise officer also raised technical concerns regarding the noise of the plant to rear including the heat pumps. The noise consultant has responded to those concerns with technical justification of their own. I note that the noise assessment has considered the noise sensitive receptor no.59c London Road as the closest dwelling to the plant to the rear, and the second floor flat has been re-laid out to avoid any principal rooms to the rear. On balance I consider that this issue could have been resolved were the application otherwise acceptable.

Appearance & Built Heritage Considerations

Policy/Site Context

The application relates to a building within the South Highfields Conservation Area. Core Strategy policies CS03 and CS18, NPPF paragraphs 135, 195, 201, 203 and 205, and the Planning (Listed Buildings and Conservation Areas) Act 1990 require planning decisions to ensure the appearance and setting of the conservation area is retained.

The site is also located in the setting of the listed building 55-57 London Road which located to the north beyond the intervening property no.59. The above policies and legislation also require planning decisions to ensure the appearance and setting of the listed building is retained.

Assessment

Whilst the proposed frontage design would not strictly accord with the Leicester shopfront design guide, including in terms of materiality and the low stall riser, the replacement of the existing uPVC cladding with a new synthetic material in a darker colour and replacement of the existing windows and shopfront with metal-framed units were considered acceptable in the previous application, as this would represent improvement on the current situation subject to agreement of details of the exact material and details of the new glazing. The proposal has remained the same in this application in this regard and therefore this aspect is considered acceptable.

The new proposed timber fins would be low-rise to the front elevation and the previously proposed awning has been removed and is not proposed in the current application.

Overall, I do not consider that the proposal would cause harm to the appearance of the site in comparison with the existing situation and would not cause notable harm to the conservation area or setting of the listed building to the north.

Other Issues

The proposal is a modest extension in a sustainable city centre location and as such there would be no significant highways considerations.

The proposal is exempt from Biodiversity Net Gain.

The location of the development site means the likelihood of bats being impacted by the works is low, therefore it would be unreasonable to ask for a bat survey for this development.

As described below, the proposal is to be recommended for refusal. The design and access statement has noted that permission was granted in 1988 for a covered veranda to the neighbouring site no.63. This historic permission under historic planning policies is noted however an assessment of the current proposal against up-to-date planning policies is required and has been carried out, and a historic permission nearby would not significantly impact the above considerations.

Conclusion

The proposal is acceptable in principle as an extension to a main town centre use within a city centre location, however the neighbouring amenity impacts would be significantly detrimental and an overriding unacceptable element of the proposal. As such, having regard to the above considerations, I recommend refusal of the application for the following reasons.

REASONS FOR REFUSAL

1. The proposed roof terrace facilitated by the first floor glazed doors and balustrades, by reason of its close proximity to bedroom and living room windows of the neighbouring house in multiple occupation 59b London Road, would lead to harmful noise/disturbance impacts to the neighbouring residents from its use, and the balustrade would harmfully enclose and obstruct the outlook from bedroom 2 of the same neighbouring property. The proposal would therefore be contrary to Local Plan 2006 saved policies PS10 and PS11 and National Planning Policy Framework 2023 paragraphs 135f and 198.
2. The occupiers of the newly laid out second floor flat would have insufficient floorspace, limited and enclosed communal space, and suffer from noise and disturbance impacts from the close proximity to the roof terrace, leading to unacceptably poor living conditions, contrary to Local Plan 2006 saved policies PS10 & PS11 and National Planning Policy Framework paragraphs 135f and 198.
3. By reason of its low height of termination less than 1m above nearby roof ridges, the proposed flue to the rear first floor flat rooftop would fail to adequately disperse the odours beyond neighbouring residential properties including the rooflights at 59c London Road, to the detriment of neighbouring residential amenity contrary to Local Plan 2006 saved policies PS10 & PS11 and National Planning Policy Framework paragraphs 135f and 198.

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 no negotiations have taken place during the course of the application. 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 is clearly unacceptable, it was considered that further discussions would be unnecessary and costly for all parties.