



Appeal Decision

Site visit made on 4 August 2020

by R Cooper BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal Ref: APP/W4223/W/20/3250645

141, 143 and 145 Lee Street, Oldham OL8 1EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mohammed Irfan against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/344449/20, dated 26 January 2020, was refused by notice dated 19 March 2020.
 - The development proposed is the change of use for unit 3 to A5 to relocate existing business from unit 1.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to create a mixed use A1/A5 premises with associated storage and welfare facilities at 141, 143 and 145 Lee Street, Oldham OL8 1EG in accordance with application Ref PA/344449/20, dated 26 January 2020, subject to the schedule of conditions to this decision.

Procedural Matters

2. The address on the application form refers to the site as being 145 Lee Street, whilst the plans show the proposal to comprise Nos 141 to 145. The Council's decision notice and appeal form refer to 141, 143 and 145 Lee Road, Oldham OL8 1EG, so I have used this address in the banner heading above.
3. The Council's decision notice and the appellants appeal form describe the proposal as the change of use of units to create a mixed use A1/A5 premises with associated storage and welfare facilities. I understand that this was agreed by the parties, and it is more precise than that given on the application form.
4. The proposal is to relocate the existing hot food takeaway business from No 141, to the former travel agents at No 145 which is positioned on the corner of Lee Street and Park Street. The appellant states No 141 would become storage associated with the shop and take away. However, the submitted floor plans show the units would remain separate, as no internal doorways are proposed. I also understand that No 141 benefits from planning permission for its use as a hot food takeaway.
5. The appellant has stated that they would accept a planning condition requiring the welfare and storage facilities to be implemented at No 141 before the takeaway at No 145 is brought into use. However, although No 141 falls within the application site, the appellant does not own the premises, and the landlord has stated that they would not surrender the hot food takeaway use. In which

case, I consider that a negatively worded condition such as that suggested would have little prospect of the action being performed within the time limit envisaged.

6. Even if the landlord was willing to surrender the use, the suitable mechanism to secure this would be a legal agreement. In the absence of a legal agreement, if the appeal were to succeed, the subsequent permission could be part implemented, with No 141 continuing to operate as a takeaway as well as No 145. Therefore, I have dealt with the appeal on that basis.

Main Issues

7. The effect of the proposal on highway safety; and the living conditions of occupiers of nearby residential properties with regard to noise and disturbance, cooking smells, air quality and littering.

Reasons

Highway Safety

8. The appeal site comprises three existing units at Nos 141, 143 and 145 Lee Street. These consist of a hot food takeaway, a shop and a former travel agent. They form part of a parade of retail units, located within a residential area. The properties in the area are mainly terraced without off street parking. On street carparking is available to the front of the parade of shops, as well as further down Lee Street, and around the corner on Park Street.
9. The Council and the Local Highway Authority are concerned that an additional takeaway would generate more customers, create additional parking demand and associated vehicle manoeuvres on Lee Street. They are also of the opinion that since the takeaway at No 141 was granted permission, highway conditions have changed, with recent residential development creating additional parking demand in the area.
10. However, No 145 is an existing retail unit which can already operate at the same time as the existing takeaway at No 141, and the other units within the parade. Therefore, when in use, existing customers and staff already utilise the on street parking to the front of the property on Lee Street, and to the side on Park Street, carrying out the necessary manoeuvres to do so. The proposal before me is to continue to use this on street parking.
11. No details of parking availability, or the existing and proposed vehicle movements associated with the proposal have been provided. However, during my site visit there were no signs of traffic congestion on the adjoining highway network. On-street parking was also available to the front of the property on Lee Street and on Park Street.
12. During the site visit I could also see the parking restrictions on the opposite side of the road and the width of the carriageway, which allow for vehicles to pass cars parked to the front of the shops freely. The road is also straight allowing for good visibility of oncoming traffic. And whilst the site is in close proximity to the junction with Park Street, there are pavements on either side of the road, which allow for good inter-visibility with pedestrians, whilst vehicles manoeuvre around the corner.

13. Therefore, whilst the proposal would result in an additional hot food takeaway, it has not been substantiated that the level of additional vehicular movements associated with an additional use would harmfully compromise highway safety.
14. Consequently, the proposed development would not have an unacceptable impact on highway safety, and the residual cumulative impacts on the road network would not be severe. It accords with Policies 9 and 15 of the Oldham Council Joint Core Strategy and Development Management Policies DPD which collectively seek to ensure safe access and satisfactory parking provision in new developments.

Living Conditions

15. No 145 is located at the end of a terraced building. Although the surrounding area is predominantly residential, the property forms part of a well-established parade of shops, which contains a variety of retail uses serving the local community.
16. Concerns have been raised that the proposal would result in an additional takeaway, and that this would have a cumulative effect causing an increase in noise and disturbance associated with the comings and goings of customers and staff, cooking activities and that the associated smells would affect the living conditions of nearby residents, particularly when these take place late into the evening.
17. The takeaway shares a party wall with an existing retail unit. The property on the opposite corner of Park Street is also a commercial unit. The roads to the side and front, and the alleyway to the rear provides a degree of separation from residential properties opposite on Lee Street and those to the rear on Park Street. By virtue of this separation, the comings and goings, and activities within the building associated with cooking and serving of customers would be well contained and would limit the effect on nearby occupiers.
18. I also note that the existing retail unit at 145 does not have any restrictions on hours of use or opening to customers. It could therefore already be open to customers late into the evening, and at the same time as the takeaway at No 141. Whereas, the proposed hot food takeaway would operate between the hours of 12:00 to 22:00, which could be secured by condition.
19. Furthermore, a suitable condition could ensure that the extraction equipment was of an appropriate specification that would minimise disturbance through noise and smell from cooking activities. I also note that the Councils Environmental Health Department do not object to the proposal and have recommended a condition limiting the opening hours. In my view these conditions would adequately mitigate the effects, preventing an unacceptable cumulative impact.
20. I have considered the Council's concerns with regards to air quality and littering. I also note resident's objections to an additional hot food takeaway contributing to anti-social behaviour, and vermin. However, there is no evidence before me of existing problems, or that the proposal would create or exacerbate such matters.
21. Therefore, I conclude that the proposal itself or in combination with the existing hot food takeaway would not give rise to an unacceptable level of harm to the living conditions of occupiers of nearby residential properties. It would accord

with Policy 9 of the Oldham Council Joint Core Strategy and Development Management Policies DPD which seeks to ensure proposals do not have an unacceptable impact on the environment or health caused by noise, disturbance and pollution, amongst other things.

Other Matters

22. I note resident's concerns with regards to the sharing of kitchen facilities between the shop and the takeaway, although, this is not a matter for planning. I have also considered the comments in relation to the potential to put flats above, however, there is no evidence before me of such a proposal.

Conditions

23. The Council have suggested planning conditions in the event of this appeal being allowed. I also have considered the use of planning conditions following the guidance set out in the Planning Practice Guidance and the Framework. In addition to the standard time limit condition, I have included a condition that specifies approved drawings to provide certainty. A scheme for treating fumes and smells from the premises, and a condition for the hours of opening are also necessary to prevent pollution and associated nuisance to nearby occupiers.
24. I have not included a condition for the cessation of use of No 141 as a takeaway, as for the reasons given above.

Conclusion

25. For the reasons given above, the appeal is allowed.

R. Cooper

INSPECTOR

SCHEDULE

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos 001 Rev 000 (page 1 of 2) and 001 Rev 000 (page 2 of 2).
3. Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
4. The premises shall only be open for customers between the following hours:
1100 – 22:00 Mondays to Sundays

SCHEDULE ENDS