



Appeal Decision

Site visit made on 12 January 2021

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2021

Appeal Ref: APP/W4223/W/20/3258821
10 Rochdale Road, Royton OL2 6QJ

- 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 Shahed Alam (A3S Investments Ltd) against the decision of Oldham Council.
 - The application Ref PA/344475/20, dated 31 January 2020, was refused by notice dated 2 April 2020.
 - The development proposed is change of use from Class A3 (restaurant and cafe) to Class A3 (restaurant and cafe) and Class A5 (hot food takeaway).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Class A3 (restaurant and cafe) to Class A3 (restaurant and cafe) and Class A5 (hot food takeaway) at 10 Rochdale Road Royton OL2 6QJ in accordance with the terms of the application, Ref PA/344475/20 dated 31 January 2020 subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby approved shall be fully implemented in accordance with the following approved plans and specifications dated 03/02/2020:
 - Location Plan
 - Proposed Floor Plans (Drawing no. AROL18C2-PFP-01-B)
 - Elevations (Proposed) (Drawing no. AROL18C2-PELE-01-B)
 - 3) The restaurant and hot food takeaway use hereby permitted shall only take place (including preparation and deliveries) between the hours of 11.00 to 23.59 Monday to Sunday inclusive.

Procedural Matters

2. The Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 came into force on the 1 September 2020 and has significantly amended aspects of the previous system of use classes. Under the new system, Class A has been revoked and a new Class E has been created which incorporates several of the previous use classes, including restaurants and cafes (Class A3). Hot food takeaways (formerly Class A5) no longer fall

within any use class. As the application was submitted before the new regulations came into force, it must be determined in accordance with the previous Use Classes Order.

3. The proposal is for a mixed use of Use Classes A3 and A5 for the purposes of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO). Where the primary use of land is a mixture of different uses, such mixed use does not fall into any of the classes set out in the UCO. The stated use subject to the application is therefore sui generis. I have considered the appeal accordingly.

Application for costs

4. An application for costs was made by Mr Mohammed Shahed Alam (A3S Investments Ltd) against Oldham Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is the effect of the development on highway safety.

Reasons

6. The appeal site is an end of terraced property in a commercial row within Royton Centre. Entrance to the premises is from the Rochdale Road frontage. There is an existing ATM machine within the front elevation located between the two proposed entrances. To the rear of the appeal site is a public car park which can be accessed on foot via a passage to the side of the appeal building.
7. The planning history indicates that the appeal premises has planning permission for use as a restaurant. The appellant confirms that the appeal site is currently operating a takeaway service in accordance with the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020 which, in response to the Coronavirus pandemic, permits restaurants and drinking establishments to temporarily provide a takeaway service.
8. The appeal site is located close to the traffic signalised junction at High Barn Street/Rochdale Road/Oldham Road and Middleton Road. There are pedestrian guardrails close to the edge of the footpath along most of Rochdale Road from the zebra crossing to the signalised junction. A short section of the frontage outside the appeal property is not protected by guardrails, however, a large pole mounted highway camera occupies part of the gap. Traffic Regulation Orders (TRO's) restrict parking along Rochdale Road with double yellow lines to both sides including in front of the application site.
9. There are two lanes of traffic on the approach to the signalised junction. The lane closest to the appeal property is reserved for traffic turning left and proceeding straightforward. I consider that indiscriminate parking outside the front of the property is unlikely to take place due to the proximity of the appeal site to convenient public car parking at the rear of the premises, the TRO's in place and the limited gap in the guardrails being occupied by highway equipment.
10. Whilst the Council considers that the majority of customers arriving by car would use the parking spaces in nearby public car parks, the Council states

that since the take-away has been in place customers have been witnessed parking illegally on Rochdale Road. I have not been provided with any evidence of this. Further, although the Council indicates that the parking has started recently there is no evidence that the parking is related to the takeaway rather than other businesses along the frontage or the ATM to the front of the site. Nor has any evidence been provided that such parking has detrimentally affected traffic flows in the area or resulted in harm to highway safety.

11. I agree with the appeal decisions provided by the appellant¹ that even if takeaway customers ignore the on-street parking restrictions and risk parking on the double yellow lines, such restrictions should be enforced by the relevant authorities.
12. Nevertheless, I acknowledge that there are circumstances where the contravention of such regulations and issues of highway safety may coincide, as in the appeal case highlighted by the Council². However, in this case, I have no evidence that such parking would not be enforced, and I am satisfied that the available public car parking is acceptable and convenient for users of the takeaway.
13. Therefore, I conclude that the development would not prejudice highway safety and would accord with the requirements of Policies 9 and 15 of the Oldham Local Development Plan Joint Core Strategy and Development Management Policies where these policies seek to ensure highway safety. It would also accord with Matter 8 of the Oldham Supplementary Planning Document adopted July 2012 which is similar in its intent to the above policies.

Other Matters

14. I note the third-party concerns raised about the number of takeaways within the area. However, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on this matter.

Conditions

15. A condition specifying plans is required in the interests of certainty. I consulted both parties on the opening hours as those suggested by the Council did not accord with those sought by the appellant. Neither party raised concerns about the proposed operating hours suggested. I noted during my site visit that there is no living accommodation above the appeal site and the Council indicate that it is within a centre with a relatively vibrant night-time commercial element. However, there are residential properties within the vicinity of the appeal site and the collection and delivery of takeaways would generate the potential for noise and disturbance at certain times. It is, therefore, appropriate to restrict the use of the operating hours of the business by condition.
16. A condition requiring the materials shown on the plans to be used is not necessary as this is controlled by the plans condition. The appeal site has enough space to the rear to provide facilities for the storage and disposal of waste. A condition requiring details of waste disposal facilities is therefore not necessary.

¹ APP/T2350/W/17/3178610 and APP/W4705/W/17/3191392

² APP/W4223/W/18/3203761

Conclusion

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

Diane Cragg

INSPECTOR