

Appeal Decision

Site visit made on 20 August 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2024

Appeal Ref: APP/A0665/W/24/3340779

18/20 Overpool Road, Ellesmere Port, Cheshire CH66 1JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Abdul Sattar against the decision of Cheshire West and Chester Council.
 - The application Ref is 22/01255/FUL.
 - The development is change of use from empty retail shop (Class A1) to hot food takeaway (Class A5).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from empty retail shop (Class A1) to hot food takeaway (Class A5) at 18/20 Overpool Road, Ellesmere Port, Cheshire CH66 1JN in accordance with the terms of the application, Ref 22/01255/FUL, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Location plan.
 - 2) The premises hereby permitted shall only be open to customers between the following hours: 1100 to 2300 hours.

Preliminary Matters

2. The appeal scheme seeks for the provision of a hot food takeaway use within 18 Overpool Road. I observed at the time of the site visit that the change of use had taken place. As such, I am dealing with the appeal retrospectively.
3. I have used the revised description of the development from the decision notice and the appeal form in the above banner header and my formal decision as this accurately describes the scheme. I have removed the words "Retrospective - (Re-submission of 10/01894/COU)", as this does not form part of the development.
4. The Council's sole reason for refusal relates to whether an additional hot food takeaway in this location would have a significant cumulative impact on public health. However, during the appeal the Council has confirmed that a Certificate of Lawfulness, Ref: 24/00255/LDC, has been issued confirming that

the previous planning permission, granted on appeal¹ was lawfully implemented. The certified development is 'Application to confirm the lawful commencement of planning permission reference 10/01894/COU (Change of use from empty retail shop (Class A1) to hot food takeaway (Class A5))' at 20 Overpool Road.

5. The Council has acknowledged that the Certificate of Lawfulness represents a material planning consideration and that the appeal proposal has expanded the hot food takeaway within no. 20 into no. 18 as opposed to it representing a wholly new hot food takeaway use. On this basis, the Council request that I allow the appeal as there would be no conflict with Policy SOC 5 of the Cheshire West and Chester Local Plan – Part One, Policy DM 29 of the Cheshire West and Chester Local Plan – Part Two and the National Planning Policy Framework (the Framework), which seek to promote and positively contribute to health and well-being.
6. On the evidence before me, I see no reason to disagree, and I have not considered this matter any further.

Conditions

7. I have had regard to conditions suggested by the Council, as well as to the Framework and national Planning Practice Guidance. As the development is retrospective, a commencement condition is not necessary. However, I have imposed a plans condition in the interests of certainty. Additionally, a condition controlling the hours of operation is necessary in the interests of protecting the amenity of the area, including nearby residential properties.

Conclusion

8. For the reasons given above, and having regard to all other matters raised, the appeal is allowed.

N Bromley

INSPECTOR

¹ APP/A0665/A/11/2165469