



Appeal Decision

Inquiry held on 4 February 2025

Site visits made on 4 and 5 February 2025

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2025

Appeal Ref: APP/B4215/C/24/3352312

Land at 101 Manchester Road, Chorlton, Manchester M21 9GA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Chorlton Takeaway Sales Limited against an enforcement notice issued by Manchester City Council.
- The notice was issued on 23 August 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a hot food takeaway (Sui Generis).
- The requirements of the notice are to cease the use of the premises as a hot food takeaway (Sui Generis)
- The period for compliance with the requirement is :14 days from the date the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld.

Applications for costs

1. Applications for costs have been made, which are the subject of a separate decision. Costs Application A is made by Chorlton Takeaway Sales Limited against Manchester City Council. Costs Application B is made by Manchester City Council against Chorlton Takeaway Sales Limited.

Background and Preliminary Matters

2. This Enforcement Notice (Notice) relates to the material change of use of the planning unit. The operational development, in the form of alterations to the shopfront, is dealt with under a separate Notice. For simplicity, the Notice dealing with the shopfront changes is dealt with in a separate Decision¹.
3. On the same day as issuing the Notice, the Council issued a Stop Notice under Section 183 of the Town and Country Planning Act 1990 (1990 Act). The Stop Notice took effect on 27 August 2024 and required the cessation of the use of the premises as a Hot Food Takeaway (HFT). A challenge to the issue of the Stop Notice was made by the appellant, but permission was refused on 29 November 2024. From my understanding, the appellant has complied with the Stop Notice and has ceased any activities associated with an HFT at the site.
4. During the appeal determination, a revised version of the National Planning Policy Framework (the Framework) was adopted in December 2024. The main parties were made aware of the change to national policy and were allowed to comment on

¹ Appeal Ref: APP/B4215/C/24/3347933

the revised Framework's relevance to the developments subject of the Notices before the date of the Public Inquiry.

5. A Lawful Development Certificate (LDC) granted by the Council has been referred to by both parties and is material to the determination of the appeal on both grounds. The LDC application, Council reference 086718/LE/2008/S1, was granted on 20 May 2008 for the use of the property at 101 Manchester Road as an HFT. At that time, the HFT was known as the 'Treasure Pot' and would have been classed as an A5 use under the Town and Country Planning (Use Classes) Order 1987 (1987 Order). I will hereafter refer to this permission as the '2008 certificate.'
6. The Inquiry commenced on 4 February 2025 and was programmed to last for 1 day. All the oral evidence given to the Inquiry was given by sworn affirmation. Although all the oral evidence was heard on that day, an additional virtual event was required on 7 February to hear closing submissions and costs. I undertook an accompanied site visit in the evening following the event on the 4 February to view the premises internally but carried out the remaining part of the site visit around the area unaccompanied. I also carried out an unaccompanied site visit to the site and area on the morning of 5 February at approximately 9 am, including one of the alternative Miami Crispy locations requested by the Council at Lane End Road, Burnage.

The Appeal on Ground (c)

7. To succeed on ground (c), the appellants must demonstrate that, on the balance of probability, the use or operations alleged do not amount to a breach of planning control. When appealing on this ground, the onus rests with the appellant to make their case. If the local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
8. Based on the evidence before me, the Council do not dispute that the 2008 certificate granted lawfulness for an HFT at the appeal site, and the appellant's activities from March 2024 were consistent with an HFT use. However, the main dispute, and on which the ground (c) appeal turns, is whether the premises were primarily being used as an HFT by the previous tenants and occupiers known as Ruyi Vegetarian House. For this decision, I will hereafter refer to Ruyi Vegetarian House as 'Ruyi.'
9. If the previous tenants materially changed the use of the HFT to a restaurant between September 2020 and November 2023, then the subsequent HFT use by the appellant would be a breach of planning control as alleged in the Notice. The Statement of Common Ground confirms that if an intervening material change of use to a restaurant took place between 1 September 2020 and 31 August 2021, then the change would have been permitted from Class A5 to Class A3². The consequence of the material change of use occurring after 1 September 2021 is that it would no longer have been permitted³.

² Pursuant to the transitional arrangements in place following the change to the 1987 Order that took effect on 1 September 2020

³ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

10. The above has implications for the appellant in respect of section 57 (4) of the 1990 Act. Section 57 (4) of the 1990 Act allows the recipient of the Notice to return to a previous lawful use once the requirements of the Notice had been complied with, provided it was a lawful use. However, it does not allow the resumption of a past lawful use when there has been an intervening unlawful use between that and the current unlawful use. In this scenario, the land and premises may be regarded as having a nil use.
11. The concept of a material change of use (MCU) is not defined in the statute. The basic approach is that, for an MCU to have occurred, there must be some significant difference in the character of the activities from what has gone on previously. As a matter of fact and degree, a HFT use is materially different in character from that of a restaurant. The nature of the uses would typically mean that a restaurant provides facilities for the customers to eat and drink on the premises whereas a HFT will primarily sell hot food and drink to be consumed off the premises.
12. It is accepted that activities associated with a restaurant, such as seating and tables, can sometimes be found in an HFT, and restaurants occasionally provide takeaway services. However, in these instances, it is necessary to have regard to the layout, its facilities as well as the scale and nature of the activities before determining whether they are incidental to the primary use, or if an MCU has occurred. The appellants have, therefore, submitted evidence to demonstrate that, on a balance of probability, the intervening use by Ruyi was as an HFT, with incidental or ancillary restaurant activities and did not result in an MCU.
13. Given the matters in dispute, I have had regard to the evidence produced by the previous tenant and a local resident, the layout and facilities as well as the use evidenced by online content and its reliability.

Use of Premises by Previous Tenant and Local Resident

14. A Statutory Declaration (SD) by Mr Jun Ren Chen, was included with the submissions. The SD is dated 27 February 2024, it is signed by Mr Jun Ren Chen and cosigned by a solicitor, ensuring it accords with the provisions of the Statutory Declarations Act 1835. I can attach significant weight to his SD, especially since it has been properly declared and witnessed.
15. The SD does not include much detail on the day-to-day activities, and there is no corroboratory evidence with the SD to support or substantiate his claims of an HFT use with ancillary restaurant activities. Nonetheless, the SD is sufficiently precise and unambiguous when stating that the primary use was as HFT with ancillary restaurant activities. However, a significant issue is that the alleged MCU is said to have occurred in September 2020, two and half years before he began operating Ruyi. As such, despite Mr Jun Ren Chen's SD being precise and unambiguous on the use as an HFT, it only covers the eight months he operated Ruyi. Consequently, the evidence does not cover the disputed period of change and fails to demonstrate, on a balance of probability, that Ruyi was operating as HFT with incidental activities between September 2020 and March 2023, before Mr Jun Ren Chen's occupation.

16. In coming to the above conclusion, I have also had regard to the detail provided on the use set out in the letter by Weifeng (Victor) Chen, dated 9 January 2025⁴. Weifeng (Victor) Chen's letter does not carry as much weight as Statutory Declaration. Nonetheless, it is still relevant to the appeal, and states he worked on a part-time basis at Ruyi between March 2023 to November 2023. He details that the HFT was conducted via collection and deliveries and amounted to 60-70% of the orders. He also outlines that he did not think that the nature of the business changed after his parents took over, and it continued to operate as it did in 2020, which was a HFT with tables.
17. I find the statement by Weifeng (Victor) Chen on the nature of the business not changing after his parents took over as imprecise and ambiguous. He provides no reasoning on why he does not think it changed, and there is uncertainty about whether the activities were the same. Furthermore, like Mr Jun Ren Chen's SD, his period of use does not cover the relevant time period when the MCU occurred. I accept that HFT sales were taking place at the same time as the restaurant activities. However, sales are not always conclusive in these matters, and it is still necessary to consider the sales for the restaurant activities together with the scale, nature and impact of the activities before determining whether it is another primary use or incidental to the HFT.
18. The appellant's witness, Mr Ahmed is a local resident of Chorlton. He outlines that he used Ruyi as a customer over the years it operated. In his written proof of evidence, Mr Ahmed, outlines that he purchased three or four takeaways over a calendar year. Based on his experience he goes on to state that Ruyi 'felt more like a takeaway that had some eat-in space, similar to what Miami Crispy offers.' However, under cross-examination, Mr Ahmed outlined that he had never said Ruyi was not a restaurant and accepted that it could have been either use. Accordingly, in my judgement, given his infrequent visits and uncertainty, Mr Ahmed's evidence does not demonstrate with any precision and unambiguity that the primary use was as an HFT between the relevant dates.
19. I have also had regard to the detail set out in the email from Mr. Iqbal, dated 10 January 2025⁵. who is a local person who lives near the site. The email does not carry as much weight as Mr Ahmed's written submissions and oral evidence. Nonetheless, Mr. Iqbal admits that he never used Ruyi, and his opinion is based on how it was referred to locally, the fact that it did not seem to have many tables and that it was not busy. Mr. Iqbal's evidence is, therefore, limited and does not demonstrate with any precision and unambiguity that the primary use was as an HFT between the relevant dates.

Layout and facilities

20. The Council has produced evidence from Facebook and Instagram accounts for Ruyi, which detail a refurbishment of the premises before 17 September 2020⁶. Based on the images and posts, changes were made to the layout of the premises by repositioning the counter back from its original position. The setback increased the customer area, and several tables with chairs were introduced, as well as protective screens due to the COVID-19 pandemic. Later images show tables laid

⁴ Appendix TA5 to Mr Tayyab Akhlaq's Proof of Evidence

⁵ Appendix TA6 to Mr Tayyab Akhlaq's Proof of Evidence

⁶ CD15- Page 189 Core Bundle Documents- Appendix 5 Council Statement of Case, and Council's Rebuttal Document- Appendix 2 and 4.

with place mats, cutlery and menus on the table, whereas others show customers at the tables with plates, cutlery and glasses. The shopfront was also updated and new signage for Ruyi was included on the fascia board. Google Street View images dated August 2021 include a decked area at the front with an A-board menu.

21. A lease for the premises was provided by the appellant in evidence, it is dated 25 September 2020 and Ruyi is outlined as the tenant⁷. There is no detailed plan showing the premises, but the state and appearance were shown in photographs that were included with it. The photographs show an internal layout to the front, with tables and chairs that are largely consistent with my description above. They also show two toilets present on the ground floor, one with a boiler near a high-level window. The high-level window in the toilet is consistent with an external window on a side flat roof extension to the property⁸. The photographs internally also show an opening to the side of the service counter, which would access the toilet described.
22. Based on the evidence outlined above, the premises is a mid-sized commercial unit, with a layout and facilities that include formally laid tables with placemats, cutlery and chairs to accommodate approximately 30 persons. There is also access to a toilet at the premises. Given the size of the premises, the number of customers it could accommodate, the formal layout of the tables as well as the toilet facilities, the character of the site was more typical of a café or restaurant use, rather than a HFT with incidental tables and chairs.
23. Mr Tayyab Akhlaq, the sole director of the appellant company, maintains in his evidence that there was a single toilet when he purchased and inspected the property. The toilet he remembers was the one including a boiler, which was shown on the indicative drawing included with the late-night licences⁹. Mr Tayyab Akhlaq states that the toilet with the boiler is not one he would describe as intended for regular customer use, and it did not comply with the requirements for disability access. He goes on to outline that if the primary use changed to a restaurant, then he would expect to see modifications to the premises to include customer toilets.
24. I have had regard to Mr Tayyab Akhlaq's observations on the standard of the toilet facilities, but this is not evidence that the toilet was not used by customers of Ruyi. In contrast, the Council has highlighted images, which show a customer toilet sign was present on 24 September 2020 and March 2023¹⁰. The sign is above the counter and directs customers to the opening where the toilet with the boiler could be accessed at that time. Consequently, despite Mr Tayyab Akhlaq's concerns, in my judgement, the evidence indicates that the toilet with the boiler was available for customers to use between these dates.

Use from online content (September 2020 to November 2023)

25. In terms of use, the Council highlight social media posts by the operators of Ruyi between September 2020 and November 2023. The written posts, with images, promote the opening of Ruyi, as well as promote dine-in experiences associated with a 'Chef's Menu Tasting', 'Valentine's Day' and 'Mother's Day' events. It also includes a post promoting a 'Teatime Special' for dine-in customers only. The posts detail how much per person as well as outline that customers can book or reserve a

⁷ CD6- Core Bundle Document Pages 44 to 96

⁸ CD6- Core Bundle Documents Page 76

⁹ CD7 and CD8- Core Bundles Document

¹⁰ Page 23 of Council Rebuttal to Appellant's Proofs of Evidence- Facebook post by Ruyi 24 September 2020 and Page 58 of the Council's Statement of Case- Instagram post March 2023

table to eat at these events. The menus posted online include food and drink options, with alcoholic options being offered in a variety of measures. Online images from Google and Instagram also show customers eating and drinking at the premises.

26. Based on the evidence outlined above, together with the layout and facilities, the mid-sized unit could accommodate approximately 30 persons at any one time. Customers were being provided with tables, chairs, plates, cutlery and glasses and a toilet on site, and the operators were encouraging customers to book or reserve tables to dine in. Customers were provided with table service and were served drinks with their food, including alcohol to consume at the premises. Consequently, in my judgement, the layout and facilities together with the activities went beyond what I would typically expect of an HFT with ancillary sit-down facilities. These matters combined are more consistent with a restaurant or café type use.
27. Mr Tayyab Akhlaq has raised concerns over the reliability of the online content. For instance, he highlights that Ruyi had an alternative address at 536 Wilmslow Road. The website 'TripAdvisor' still lists 536 Wilmslow Road as its address and includes reviews from 2019. Due to the alternative address, he contends that it is not possible to know if the pictures and reviews are of the appeal site or the alternative address when determining the past use and activities of the business.
28. I accept that images without context could be of the previous address on some online reviews and posts, and during the investigation the Council highlighted images that were of the previous address. However, I am not aware of any reviews by TripAdvisor before 17 September 2020 being included as evidence by the Council. Furthermore, the posts demonstrate that Ruyi had moved to 101 Manchester Road by 17 September 2020, despite a sign remaining on the other address for some time after. The Council has also included evidence in the form of Google, Instagram and Facebook images, which in the main identify the site or are dated. Based on the evidence before me, I am satisfied that the two addresses were not operating concurrently, and the images and posts attributed to Ruyi after this time can be relied upon as being from Manchester Road.
29. Mr Tayyab Akhlaq has also highlighted that the late-night refreshment licence for Ruyi was for the retail sale of alcohol off the premises rather than on it¹¹, which he considers would be consistent with a HFT rather than restaurant use. However, contrary to the requirements of the licence, Appendix 2 of the Council's Statement of Case includes images of the menu, which offered alcoholic drinks in different measures, such as single glasses of wine. Customers can also clearly be seen to be drinking alcohol at the premises. As such, despite the fact the licence did not permit the sale of alcohol on the site, the images and menu would suggest that it is likely that alcohol was sold and consumed on the premises at that time.

Other matters

30. I note that the description of the use in the lease is a "Restaurant within Use Class A3/A5 of the Town and Country Planning (Use Classes) Order 1987. I appreciate that the unit was a HFT use (Class A5) at this time, and the description is an example of a lack of precision in the use of planning language in other documents. However, the description in the lease is not helpful to my determination of the use and activities being carried out at that time. The description just demonstrates that

¹¹ CD7- Core Documents Bundle

uses described in leases, valuation certificates and licences as well as sometimes planning application forms on their own are not conclusive in these matters.

Conclusion on the Appeal on Ground (c)

31. Based on the evidence before me, the layout, facilities and activities associated with the intervening use by Ruyi demonstrate that the restaurant activities went beyond what could be regarded as incidental or ancillary to an HFT. As such, in my judgement, an MCU occurred to a restaurant in September 2020, which would have been a permitted change at that time under the 1987 Order.
32. Consequently, the subsequent MCU to an HFT by the appellant company in March 2024 would have been a breach of planning control.
33. The appeal on ground (c), therefore, fails.

The Appeal on Ground (a) and the Deemed Planning Application

34. The **main issues** in this appeal are the effect of the development on: -
 - The living conditions of the nearest neighbouring occupants on Manchester Road and Kensington Road, with specific regard to traffic, waste as well as noise and disturbance.
 - The effect of the development on highway safety.
 - The effect of the development on public health, having regard to the proximity to a local primary school.

Reasons

Living conditions

35. The appeal site is located on Manchester Road, which is a busy road into and out of Manchester City Centre. It is predominantly commercial in character with residential flats above as well as terrace housing to the rear on Ransfield Road and Kensington Road. Despite being predominantly residential, Kensington Road is a well-used road for vehicles travelling to the west of the city. The site is within the Chorlton District Centre (District Centre), which from what I saw, is a well-used District Centre with a good mix of retail and evening or late-night uses.
36. The site is located on the outer edge of the District Centre where the commercial uses are less concentrated. However, the parade of shop units between Ransfield Road and Kensington Road is wholly commercial with a coffee shop, a barber, a flower shop, a picture framing shop, two bars and a dessert restaurant with residential flats above. Each one of the units along the parade has an external area to the front, with most utilising the space for additional sales or an external seating area. Outside the shops, the pavement is wide, a dedicated cycleway is present, and the site is accessible by public transport.
37. Policy C10 of the Local Development Framework Core Strategy Development Plan Document 2012 (Core Strategy) encourages development that supports the evening/nighttime economy in District Centres. However, this is subject to the use

not having an unacceptable impact on neighbouring uses in terms of noise, traffic and disturbance.

38. Saved Policy DC10 of the Unitary Development Plan for the City of Manchester 1995 (UDP) outlines that when considering development for HFT the Council will have regard to the effect on neighbouring residents. Criteria DC10.3 (b) states permission will not normally be permitted where there is a house or flat on the ground floor next to the proposed business, or only separated from it by a narrow street or alleyway. The Hot Food Takeaway Supplementary Planning Document (HFT SPD) states that on the edge of centres and near residential units, careful consideration should be given to ensuring the lives of people in the local area are not negatively affected.
39. It is acknowledged that the site is in the District Centre, but it is also an area where flats and high density terrace housing are in proximity, including dwellinghouses on Kensington Road and Rainsford Road separated from the site by a narrow rear alleyway. Based on the evidence before me, the popularity of 'Miami Crispy', coupled with the size of the unit, caused it to often be overcrowded. The unit being overcrowded meant customers were forced to queue and wait outside for orders. The limited internal space also meant customers would eat outside the premises on the street or in their car, as well as dispose of the litter in the immediate locality. The online presence also influenced customers from outside the area to visit, often in private cars, despite its accessible location. The limited spaces directly outside the site forced customers to park in the closest residential streets, widening the noise and disturbance and littering impacts into these areas.
40. Representations made to the appeal in writing, as well as oral evidence at the event, outline that the HFT use generated a high number of comings and goings. The resultant noise and disturbance from the frequent movements, people talking, car doors opening and closing as well as engines starting and idling were significantly affecting the nearest neighbour's living conditions. The noise and disturbance impacts were also exacerbated late at night due to the quieter nature of the adjoining residential streets, including the disposal of waste at the back of the site. Issues such as parking inconvenience and stress as well as anti-social behaviour during conflicts with customers were also raised as issues impacting the residents in the adjoining residential streets.
41. I acknowledge that in the immediate area, there is a small cocktail bar, three restaurants (one being a dessert restaurant) and an HFT. These uses generate activity later in the evening, but I do not have the detailed histories of these sites. Nonetheless, from what I saw, the HFT was a fish and chip shop, which closed by 2130, and all the other uses were modest bars and restaurants with sit-in facilities. In my experience, customers will typically eat and drink inside a restaurant or bar and will not litter or consume hot food on the streets outside. Furthermore, the number of covers available in a restaurant and the time spent in such places limits the frequency. The amount of activity and potential disturbance from the HFT is, therefore, greater than that generated by the other uses present. This is apparent from neighbours' representations regarding the unacceptable impact of the HFT use, despite there already being a few evening and late-night activities in the area.
42. Accordingly, it is evident that during the time the uncontrolled HFT use was operating, it resulted in an unacceptable impact on the living conditions of neighbouring occupants on Manchester Road and Kensington Road in terms of

noise and disturbance, traffic, litter and anti-social behaviour, contrary to Policy C10 of the Core Strategy, Saved Policy DC10 of the UDP as well as the advice and guidance set out in the HFT SPD.

43. The appellant has indicated that the online popularity, alike any viral success, will decline and opening further units will help to reduce the impact. Also, they have proposed ways of mitigating the impacts, which include conditions on opening times, delivery times as well as a Premises Management Plan, which would address the issues identified¹². It is also indicated that the popularity of the site will decrease over time as the viral videos become less popular and more of the Miami Crispy sites open in different locations. Also, a condition requiring the first floor flat to be occupied by a member of staff would ensure the on-site management of the premises is maintained.
44. I have had regard to whether the conditions and controls would satisfactorily mitigate the unacceptable impact on the neighbour's living conditions. However, the Premises Management Plan and the operating hours mostly reiterate conditions and controls that were in place as part of the Premises Licence granted on 18 March 2024¹³. Despite these controls being in place, the HFT use still resulted in an unacceptable impact on the living conditions of the neighbours for the reasons set out above. This also demonstrates the difficulties in relying on staff to control noise, litter and disturbance impacts through management plan controls, with limited enforcement powers. A condition restricting the flat to an employee could help to manage the HFT and reduce complaints to the Council. However, it would not lessen the impact of the HFT use on the occupier of the flat's living conditions
45. I also have concerns regarding the overall enforceability of these conditions, particularly as planning conditions are limited to the ground floor of the planning unit and within the land edged in red. The noise conditions also comprise subjectively worded phrases, such as 'excessively loud' or 'rowdy behaviour.' While I understand the intention of such controls, the practicalities of enforcing conditions with subjective wording would also be a challenge and is unlikely to result in effective mitigation of the noise and disturbance impacts identified.
46. Furthermore, although the popularity online may diminish and opening new units will reduce the impact to some extent, I am not persuaded that that scale of the unit, its facilities and area can accommodate the customer demand associated with this HFT use without adversely impacting on the neighbour's living conditions.
47. The appellant has highlighted shop units within the District Centre, including bars, restaurants, and HFTs that open late into the evening/early morning. I note that they are all within the District Centre, and some uses stay open until the early morning. However, I do not have the full details of these sites, whether planning permission was granted and if conditions control their hours. As such, I do not know if they are directly comparable to the site subject of this appeal. I accept that the principle of an HFT with late night opening can be acceptable in the District Centre, but the existence of others does not infer that the use at this location would have to be acceptable. In line with the policy and guidance requirements, the impact of the proposal on the nearest neighbours living conditions still needs to be fully assessed.

¹² Appendix 4 of the Appellant's Statement of Case

¹³ Appendix 6 of the Appellant's Statement of Case

48. Accordingly, the development results in an HFT use, which significantly impacts the living conditions of the nearest neighbouring occupants on Manchester Road and Kensington Road, with specific regard to increased noise and disturbance, traffic, waste and anti-social behaviour. The development is, therefore, contrary to Policies SP1, DM1, C2 and C10 of the Core Strategy, Saved Policy DC10 of the Unitary Development Plan for the City of Manchester 1995 (UDP) as well as the HFT SPD. These policies, and guidance, seek to make a positive contribution to the health, safety and well-being of residents by ensuring their living conditions are protected in terms of noise, traffic and disturbance from developments proposed to support the evening economy.

Highway Safety

49. Policy 2 of the HFT SPD indicates that planning permission for hot food takeaways will only be granted where there would not be an adverse impact on highway safety. It outlines that it is important that vehicle movements associated with customers and deliveries do not worsen existing traffic conditions in the immediate area. To avoid this, proposals will need to demonstrate that they will not adversely affect existing traffic conditions, that it is near public parking, and that the overall approach to managing vehicles associated with customers and deliveries is agreed with the Council.
50. Paragraph 116 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.
51. The Council indicated that it does not have any parking standards that outline the required parking demand for an HFT unit of this size. The site is accessible by public transport, with regular bus and tram services being within a short walking distance. There is limited, but unrestricted, on-street parking outside of the appeal site on Manchester Road for approximately five cars. Aside from yellow lines and dropped kerbs to the front of the terraced properties, there were no parking restrictions on the nearest residential streets on Kensington Road and Rainsfield Road.
52. I acknowledge that the site is in an accessible location and there are good alternatives to accessing the site other than by private car. However, I have not been provided with a transport assessment or a parking survey, to demonstrate what level of private car traffic is generated and whether there is sufficient capacity on the streets to accommodate its parking needs. I am also mindful that customers were regularly attending the site by private car, resulting in a high drop-in trade. Those who do visit by private car would be reliant on parking in the surrounding area, as would any delivery drivers.
53. At the time of my visit on 4 February¹⁴, Manchester Road was very busy with traffic, cyclists and pedestrians using it to get into and out of Manchester. Kensington Road was also busy, with a line of cars attempting to exit onto Manchester Road. The cars exiting Kensington Road were being held up by the traffic on Manchester Road as well as cars parked on the pavement near the junction. The parking outside the parade of shops was at capacity, as were on-street spaces within

¹⁴ Between 1800 and 1830

approximately 100-150m of the junctions with Kensington Road and Rainsfield Road. Although my visit represents a snapshot in time, the Council has produced photographs of parking on two separate days at times in the mid-afternoon¹⁵. The photographs show the on-street parking to be high at this time, with limited spaces available.

54. I am also conscious that what I saw represents the parking situation on a weekday. Consequently, the existing commercial uses at this location and the high density residential properties are likely to generate an even higher demand on the weekends. As such, parking is needed for the use, but it would not always be readily available close to the premises for customers and delivery drivers. Even if some customers are content with parking further away, this is unlikely to be the case as the HFT is a destination where most customers are looking to quickly visit the premises and leave. Also, delivery drivers with cars are unlikely, in practice, to park away from the premises, especially when busy or orders are in high demand.
55. The Council and interested parties have indicated that the limited spaces directly outside means that when there was no available space, customers were parking across the dedicated cycle lane on Manchester Road. Furthermore, on Kensington Road cars were parking close to the junction, partway across the pavements and in front of off-street parking areas to the front of the terraces. These actions lead to an unacceptable impact on highway safety due to the conflict between the illegally parked cars and cyclists travelling along the dedicated cycle lane. The indiscriminate parking on Kensington Road also obstructs the free flow of pedestrians and traffic at a busy and congested junction. This would result in an unacceptable level of increased risk of accidents involving vehicles and pedestrians at the junction to the detriment of highway safety.
56. I do accept that any illegal parking would be a matter of separate control by the police or the local authority. Nonetheless, the typically short duration of parking associated with this use, especially in the evening and on weekends, would make effective enforcement difficult. As such, I do not agree that other controls can be relied on to address the highway safety issues. Indeed, during my site visit, I witnessed several cars parked on the pavements and one across part of the cycleway despite the presence of these separate controls.
57. I have also had regard to the fact that the appellant could return to a restaurant, and they would also need to park to use the premises. However, in my judgement, the nature of the use means customers would be leaving their cars for longer periods. As such, customers are more likely to be considerate when parking and more mindful of the parking restrictions when leaving them unattended for some time. Although an element of HFT sales could be involved, it is unlikely to lead to the same level of parking demand when the scale should be no more than incidental to its primary use as a restaurant.
58. Accordingly, based on the evidence before me, the HFT use would lead to unacceptable impacts on highway safety along Manchester Road and Kensington Road, conflicting with Policy 2 of the HFT SPD, and paragraph 116 of the Framework.

¹⁵ 2025 CD38- Appendix 2 of Proof of Evidence by Adam Neil and Matthew Kilsby- Photographs show parking on 20 December 2024 and 9 January 2025

Public Health

59. Policy 3 of the HFT SPD states that where proposals for any new HFT are located within 400 metres(m) of a primary or secondary school, and the proposal is acceptable in all other respects, planning permission will only be permitted subject to a condition restricting the opening hours to the following;
- A primary school: the hot food takeaway is not open to the public between 3 pm to 5.30 pm on weekdays.
 - A secondary school: the hot food takeaway is not open to the public before 5.30 pm on weekdays.
60. The exception to this approach will be where the proposal is within a district centre designated in the Local Plan and can demonstrate that the introduction of such a use will meet all other relevant policies. However, the HFT SPD is not entirely consistent with paragraph 97 of the Framework, which states that local planning authorities should refuse applications for HFT within walking distance of schools unless the location is within a designated town centre. It also supports the refusal of applications for those uses but only where there is evidence that a concentration of HFTs is having an adverse impact on local health.
61. The appeal site is within 400m of Oswald Primary School, but it is situated within a District Centre, which is included in the definition of a designated town centre in Annex 2 of the Framework¹⁶. No evidence has been put before me that shows that a concentration of such uses is having an adverse impact on local health in the area. The appellant also outlined at the Inquiry that he does not object to the condition of the hours if it is considered necessary.
62. Accordingly, I find that the development would not adversely affect public health, despite its proximity to a local primary school. The development is within a designated town centre and there is no evidence of a concentration of uses, making it compliant with the policies set out in paragraph 97 of the Framework.
63. Furthermore, the development could be compliant with the HFT SPD if an adequately worded condition limiting the hours was included. However, as I have considered that the use is unacceptable for other reasons, it is not necessary to consider whether the imposition of the condition is necessary in this instance.

Other Matters

64. The Council have outlined that the development is contrary to Policies EN1, C1 and C6 of the Core Strategy and Policy JP-S1 of the Places for Everyone Joint Development Plan 2024 (JDP) in the reasons for issuing the Enforcement Notice. Although these policies are relevant to the determination of a proposed HFT use in a District Centre, none of them include criteria that involve consideration of impacts on neighbouring uses, highway safety or public health. As such, in my judgement, the HFT use is not contrary to these policies.
65. I have had regard to the letter from a local Councillor detailing that Mr Tayyab Akhlaq addressed matters associated with littering when opening a Miami Crispy at 5 Meldon Road. Although I appreciate that this demonstrates that the appellant has

¹⁶ Annex 2- Glossary of the Framework- Town Centre definition outlines that references to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance.

addressed littering issues raised at another site, I have not been provided with the full details of this case and whether it is comparable to the site subject of the appeal. As such, I have given this limited weight in my determination.

66. I have had regard to the benefits of the use to both the daytime and the nighttime economy in the area. The HFT would bring a vacant space into use, helping to maintain the vitality and viability of the District Centre as well as provide jobs to local people. Nevertheless, I must balance this against the requirement to protect the living conditions of residential occupiers and ensure the development does not adversely impact highway safety. In this instance, the benefits associated with this use are small in scale and do not overcome the significant harm I have identified.

Conclusion on Ground (a) appeal and the Deemed Planning Application

67. For the reasons given above, the development conflicts with the development plan as a whole and other material considerations are insufficient to indicate that planning permission should nevertheless be granted, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice.

Formal Decision

68. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr John Barrett	Counsel appointed by the appellant
Mr Tayyab Akhlaq	Appellant and witness
Mr Asim Ahmed	Witness for the appellant
Ms Sophie Stewart	Solicitor appointed by appellant
Mr Russell Adams	Planning Agent appointed by the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Killian Garvey	Counsel appointed by the Council
Mr Matthew Kilsby	Senior Development Compliance Officer and witness for Manchester City Council
Mr Adam Neil	Development Compliance Manager, Manchester City Council

INTERESTED PARTIES:

Mr Joesph Attar	Interested Party- Neighbouring resident
Mr John McLaren	Interested Party- Neighbouring resident
Mr Richard Lord	Interested Party- Neighbouring resident

INQUIRY DOCUMENTS

The following is a list of documents submitted at the Inquiry

- ID1 Mr McLaren representation/statement in written form with photograph
- ID2 Copy of High Court Judgement- Hertfordshire County Council v. SoS [2012] EWCA Civ 1473.