
Appeal Decision

Site visit made on 2 September 2025

by **L C Hughes BA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 September 2025

Appeal Ref: APP/C4615/W/25/3367399

157A Wolverhampton Street, Dudley DY1 3AH

- 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 Miss Marie Nadine Ebomo Nkongo against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P24/1426.
 - The development proposed is change of use from retail (E) to hot food takeaway (OSG).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from retail (E) to hot food takeaway (OSG) at 157A Wolverhampton Street, Dudley DY1 3AH in accordance with the terms of the application, Ref P24/1426, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have taken the address and description of development from the decision notice, as this more accurately describes the proposed development and its location.

Main Issue

3. The main issue is whether the site is an appropriate location for a hot food takeaway, with regard to the vitality of the town centre and the health of the local community.

Reasons

4. The appeal unit is currently a shop. Wolverhampton Street comprises a mix of residential properties, shops and commercial units, including several hot food takeaways.
5. The Council's reason for refusal did not specifically reference Policy D9 of the Dudley Borough Development Strategy (2017) (DS), which relates to Hot Food Takeaways, although it is referenced in the Planning Officer's Report and the Council's Statement of Case, and it is relevant to the appeal. The Policy indicates that no more than two takeaways will be permitted adjacent to one another within the boundaries of all of the Borough's centres and retail parades. In this instance, the proposal would not be located directly adjacent to another takeaway.
6. DS Policy D9 also indicates that proposals should not create or exacerbate a concentration of takeaways, which it is stated would typically be 3 or 4. Whilst there are other takeaways in proximity, the majority are located a short distance from the appeal site, in another row of buildings along Wolverhampton Street,

separated by a road. The proposal would not exacerbate a concentration of takeaways within the row of buildings where it would be located.

7. The proposed takeaway would be located in the Town Centre, but outside of the defined Retail Core and Primary Shopping Area, in a street which has a different character to those areas. I noted on my site visit that a number of the retail units were not in use along Wolverhampton Street, with shutters presenting a blank and unattractive frontage to the street. There is no substantive evidence before me to suggest that a takeaway at the appeal site, despite there being other takeaways in proximity, would undermine the retail function of Dudley Town Centre.
8. Policy S2 of the DS seeks to control the concentration of hot food takeaways and promote greater access to healthy food. The evidence before me indicates that the proposal would be located approximately 0.2 miles from a primary school, 0.4 miles from a children's playground and 0.7 miles to a secondary school. In the ward where the proposed takeaway would be sited, there are high levels of health inequalities and obesity. The evidence indicates that obesity in year 6 pupils is higher than both the Dudley and National levels.
9. Whilst the types of food sold in hot food takeaways may contribute to poor nutritional choices by children, other types of food outlets also sell food of low nutritional value which appeals to children. The appeal site has a lawful use under Class E of the Use Classes Order, and as such could be used as a shop, café or restaurant. Cafes and restaurants could sell similar food to the proposed hot food takeaway, and a shop could sell such items as sweets, biscuits, crisps and sugary drinks. These snacks are often attractive to children, and may be cheaper and therefore more accessible than the food from the proposed takeaway. There is no clear evidence that the type of food sold at the proposed takeaway would be of lower nutritional value, or any more harmful to children's health, than that which could be purchased at the appeal site if it were to open as another use within Class E.
10. Whilst the appeal site is located within walking distance of two schools it is on a different road to both and is not particularly prominent in relation to either school. Although it is likely to be passed by a proportion of children travelling to and from school, many will use a different route altogether. Given the type of food which would be sold at the proposed takeaway, and the fact that primary school children are generally accompanied by adults on their way to and from school and stay on the premises during the school day, it is unlikely that primary age children would, on their own, buy food from the proposed takeaway.
11. Older children attending the secondary school may venture out during their lunch break, but their time is likely to be limited. The combination of the walk to reach the site, and the need to wait for food to be prepared, is likely to put pupils off visiting the proposed takeaway, which would be located more than half a mile from the school. Whilst the pupils may visit after school, there is no substantive evidence before me that it is the concentration of takeaways at this particular location that is leading to adverse impacts on health and weight.
12. Whilst paragraph 97 of the National Planning Policy Framework states that applications for hot food takeaways should be refused in certain circumstances, one exception is if the location is within a designated town centre, such as the

appeal site. No compelling evidence has been presented to show the proposal would unacceptably impact local health.

13. Having regard to the above considerations, the proposal would not harm the vitality of the town centre or lead to an increase in health inequality and obesity. It would be an appropriate location for the proposed use as a hot food takeaway. It would not conflict with Policy S2 of the DS which seeks to promote a healthy borough. The proposal would comply with DS Policy D2 which seeks to ensure that development is compatible with surrounding uses. DS Policy L9 relates to development within local and district centres, whereas the proposal would be located in a town centre, and as such I have not concluded against this policy.

Other Matters

14. The proposal would be close to residential properties, with a residential flat being located above the appeal unit. Concerns have been raised regarding the potential impact from fumes and odours on neighbouring residents. However, with the imposition of conditions regarding the extraction system and opening hours, the proposal would be controlled to ensure that the living conditions of neighbouring occupiers would be protected in this regard.

Conditions

15. I have considered the conditions suggested by the Council, having regard to the Planning Practice Guidance on conditions. I have amended the conditions where necessary in the interest of clarity.
16. In addition to the standard timeframe condition, in the interest of certainty it is necessary to impose a condition requiring the development to be carried out in accordance with the submitted plans (conditions 1 and 2). Conditions regarding air extraction, odour control, discharge, noise, opening hours, deliveries and despatches (conditions 3, 4, 5 and 6) are necessary in order to ensure that the living conditions of neighbouring occupiers are protected.

Conclusion

17. For the reasons given above, the proposal would comply with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
18. As a result, the appeal should be allowed.

L C Hughes

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: Location Plan, Plans Elevations Section V2 H0171.
- 3) The development hereby permitted shall not operate until a scheme containing full details of arrangements for internal air extraction, odour control, and discharge to atmosphere from cooking operations, including the location and appearance of any external ducting and flues, has been submitted to and approved in writing by the Local Planning Authority. The works detailed in the approved scheme shall be installed in their entirety before the operation of the use hereby permitted. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions for the lifetime of the development and operated at all times when cooking is being carried out.
- 4) The rating level of sound emitted from any fixed plant or machinery associated with the development shall not exceed background sound levels by more than 5dB(A) between the hours of 0700-2300 (taken as a 15 minute LA90 at the nearest sound sensitive premises) and shall not exceed the background sound level between 2300-0700 (taken as a 15 minute LA90 at the nearest /any sound sensitive premises). All measurements shall be made in accordance with the methodology of BS4142 (2014) (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property. Any deviations from the LA90 time interval stipulated above shall be agreed in writing with the local planning authority.
- 5) The premises shall only be open to customers between the following hours: 0800 - 2300 Mondays-Saturdays and 0900 - 2200 Sundays and Public Holidays.
- 6) Deliveries shall only be taken at or despatched from the premises between 0800 - 1800 on Mondays-Saturdays and not at any time on Sundays or on Bank or Public Holidays.

*****END OF SCHEDULE*****