



Appeal Decisions

Site visit made on 30 September 2025

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th November 2025

Appeal A Ref: APP/A0665/C/24/3354139

27 Winnington Lane, Northwich, CW8 4DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Malimara Limited against an enforcement notice issued by Cheshire West and Chester Council.
- The notice was issued on 3 October 2024.
- The breach of planning control as alleged in the notice is Without planning permission, the material changes [sic] of use of the ground floor property from retail to takeaway within the building outlined in red on the attached plan ("the unauthorised development").
- The requirements of the notice are to: cease use of the ground floor for the operations [sic] of a takeaway and removal of any equipment in association with the takeaway service.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Appeal B Ref: APP/A0665/W/24/3354131

- 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 Mrs Mehmet Ali Maraslioglu against the decision of Cheshire West and Chester Council.
- The application Ref is 23/02350/FUL.
- The development proposed is Change of Use from a hairdressers to a takeaway.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the word 'changes' and its substitution with the word 'change' in section 3 of the Notice;
 - the wording in section 5 is amended to 'Cease the use of the ground floor for the operation of a takeaway and remove any equipment in association with the takeaway use, including the external extraction flue and mountings'.
2. Subject to the corrections and variations, 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.

Appeal B

3. The appeal is dismissed.

Preliminary Matters

4. As set out above, there are two appeals relating to the same site and the same development. Following a refusal of planning permission for a material change of use to a takeaway, the Council served an enforcement notice (the Notice) against that use of the site. The reasons for serving the Notice reflect the reasons for refusal of planning permission. Accordingly, to avoid repetition, and unless otherwise stated, I have dealt with the s78 appeal and the deemed application for planning permission under s174 ground (a) concurrently.
5. The description of development and allegation in the Notice refer only to a material change of use. I note the appellant's references to works to the shop front and the erection of an external flue. Notwithstanding that the plans submitted to the Council show those works, as potential 'development' beyond either the description of the planning application or the allegation in the Notice, I consider their planning merits only insofar as they are relevant to the use sought.

The Notice

6. Inspectors have a duty to try to get notices in order. If I consider the Notice is defective, I have broad powers under the provisions of s176(1)(a) of the Town and Country Planning Act 1990 as amended (the Act) to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellants or the Council. If the Notice cannot be corrected, I must quash the Notice.
7. Section 5 of the Notice requires the removal of 'any equipment in association with the takeaway service'. In the context of the Notice, it is uncertain whether or not this includes the external flue. A reader should be able to construe what is required by the Notice within its four corners without necessarily having first-hand knowledge of what has occurred on the Land.
8. However, some degree of uncertainty does not necessarily render the Notice a nullity. Having regard to both parties' cases - that they address both the equipment installed internally and the external flue; that there is no dispute that the flue requires planning permission; that it was erected within the last 4 years to facilitate the alleged material change of use; and has been subject of specific assessment, I am satisfied that an amendment to section 5 of the Notice to clarify its requirements extend to the flue would not cause injustice to either party.

Appeal A Ground (a) – the deemed application for planning permission and Appeal B - the s78 appeal

Main Issues

9. The main issues are:
 - whether or not the site provides a suitable location for the takeaway
 - the effect on nearby residents' living conditions with particular regard to noise, disturbance and odour
 - highway safety.

Reasons

Locations for commercial development

10. Policy ECON 2 of the Cheshire West and Chester Council Local Plan Part One: Strategic Policies (the LP1); Policy DM14 of the Cheshire West and Chester Local Plan (Part Two): Land Allocations and Detailed Policies (the LP2); and Policies RC1, RC4 and RC5 of the Northwich Neighbourhood Plan (the NNP) follow the National Planning Policy Framework's (the Framework) aim of supporting the role of town centres at the heart of communities.
11. For town centre uses outside of the defined town and local centres, Policy ECON 2 requires a sequential test to demonstrate that there are no available sites within those centres. This approach is echoed in policy RC1 of the NNP.
12. There is some dispute between the main parties as to whether or not a takeaway constitutes a town centre use. The Framework's Annex 2 definition does not explicitly refer to takeaways. However, as an outlet attracting customers to the site and requiring a degree of servicing (e.g. delivery of foodstuffs for sale), it has some similar land use characteristics to the town centre uses referenced. Moreover, Policy RC1 explicitly applies the sequential test to takeaways.
13. The appellant contends that Policy RC1 of the NNP is out-of-date as it refers to former use classes set out in the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). However, a reclassification within the UCO does not change the nature of individual land uses nor shared characteristics with other uses. In conjunction with other legislation, the UCO merely provides for changes between some uses without a need for planning permission. Accordingly, I find the development plan policy retains significant weight and the requirement for a sequential approach, including for former Class A5 uses, is appropriate in the case circumstances.
14. For the purposes of the appeals the appellant has provided a sequential assessment of sites within Northwich town centre and other centres. as agreed with the Council. Vacant units have been discounted on the basis of size, cost or both. The appellant also highlights potential costs associated with flooding within the town centre. This includes raised insurance premiums, for example. In other cases, sites are subject to permissions or proposals for redevelopment.
15. While some limited financial figures of the outgoings are provided, these do not include a comprehensive analysis of the takeaway business. They fail to demonstrate that the sites discounted on rental/purchase costs could not be viable. Nor do they demonstrate whether the business could afford flood resilience or prevention measures within parts of the town centre at risk from flooding to make them a viable option. In that context, the discounting of sites on the basis of their affordability is a significant limitation in that assessment. As such, I find there is a conflict with Policies ECON 2 of the LP1 and RC1 of the NNP.
16. In support of the development, the appellant asserts that while the location is not identified as a local centre in the development plan, it is within a cluster of commercial premises set behind open frontages. The ground floor units incorporate shop front/display windows and have been used for 'town centre uses' for some considerable time.

17. The appellant also highlights that Policy RC4 of the NNP recognises the value of local facilities as a focal point for communities. It seeks to protect existing provision and, in addition to the existing identified Winnington Neighbourhood Shopping Area a short distance town-side of the site, encourages the development of some additional centralised new facilities to meet demand from increases in the local housing stock.
18. The appellant contests that the site benefits from lawful Class E use such that a café or restaurant could be installed without planning permission. Although the Notice refers to a previous retail use, and there is no dispute between the main parties that Google streetview images since 2009 suggest consecutive previous uses which would now fall within Class E, there is little to show whether such uses had become lawful through the passage of time or benefitted from planning permission. Nevertheless, the arrangement of the small parade in contrast to the surrounding housing leads me to conclude that commercial premises of one sort or another have probably existed in the locality for some time.
19. Taking the above matters together, there is a clear policy tension between the town centre first approach and that seeking to preserve existing commercial units to meet local and expanding community needs. The latter could assist in reducing travel. Having regard to the probable established nature of the group of commercial properties on this section of Winnington Lane, I find the commercial re-use of the unit amongst other commercial premises is an acceptable use in principle.

Living Conditions

20. For the purposes of the appeals, the appellant has provided noise and odour assessments of the effects of the cooking facilities at the premises. Although some third parties expressed concerns over the potential for cooking smells, no complaints were made to the Council's Environmental Health office during the initial period of opening of the business. The appellant's odour assessment concludes that there would be no significant effects on the living conditions of neighbours arising from the effect of odours found to be categorised as 'slight' or 'negligible'. The Council does not dispute that finding.
21. However, a noise assessment concludes that the installed flue facilitating the dispersal of smoke, fumes or odours from cooking results in a significant adverse effect on neighbouring residential flats and an adverse effect on a dwelling on the opposite side of Winnington Lane. The flue is mounted towards the rear of the side gable of the premises. Its height terminates just beyond the roof verge. The installation is attached to the wall of the upper floor residential accommodation of no27 and within a short distance of a rear-facing first floor window. The neighbouring building at 29 Winnington Lane also provides first floor accommodation within a few metres of the extraction apparatus.
22. The assessment recommends various steps to reduce the noise arising from the operation of the extraction equipment. This includes measures such as the relocation of the fan to within the building, acoustic insulation to the ductwork and mounts, and the installation of silencers. However, the report highlights that, even then, further assessment would be necessary to categorise the actual effect on occupiers of the residential accommodation. Whilst the appellant contends such requirements could be secured by planning condition, there is little to demonstrate that the suggested measures would make the development acceptable in planning

terms. A condition requiring improvement to that extent is therefore unlikely to pass the test of reasonableness as it may nullify the benefit of any planning permission it was attached to.

23. I acknowledge again that no complaints were made to the Council during the operation of the extraction equipment. However, there is little to indicate that those residential units likely to be affected were occupied during that time. It is not therefore a strong reason to outweigh the findings of a formal noise assessment.
24. In addition to noise created by the cooking equipment, neighbours have raised concerns in relation to the noise associated with staff and customers utilising the site late into the evening. The appellant identifies that the opening hours would typically be between 1500 to 2245 Sundays to Thursdays, and to 2345 on Fridays and Saturdays.
25. Unlike town centre or local centre situations where the balance of commercial properties is greater, or where residents might expect later activity and noise, the site is isolated from other late-night uses. Having an intimate association with surrounding residential premises, the potential for late evening disturbance arising from customers arriving and leaving, associated car engine starting, door slamming or vehicle radio noise, for example, would be significant. Activity at and about the site into the late evening would have significant potential to cause noise of a nature and sufficient volume to break residents' slumber or relaxation at times when they might expect to enjoy undisturbed sleep or rest.
26. I acknowledge the appellant's claim that a café or restaurant use could be installed as a fallback position. If so, it could be operated unencumbered late into the evenings. However, notwithstanding that the lawful use of the site has not been definitively demonstrated, there is a clear distinction between the nature of those uses and a takeaway. To my mind, a takeaway is significantly more prone to frequent activity outside of the building. Rather than longer times spent at the venue, visits are more fleeting. Over the course of an evening, a takeaway use would be likely to generate significantly more trips to and from the site. A takeaway may also have greater propensity for revellers to attend late in the evening given the site's location on a main road out of the town centre.
27. A restriction to takeaway opening times could be imposed to avoid late evening effects. However, this would not address the assessed harm caused by the noise arising from the use of the flue at other times. Accordingly, the fallback position does not persuade me to grant planning permission for a development I have already found to cause harm to local residents' living conditions.
28. For the above reasons, I find the development would not preserve a suitable standard of living conditions for nearby residents. It conflicts with Policy SOC5 of the LP1 and Policy DM2 of the LP2 as they seek to safeguard the health, wellbeing and quality of life for nearby residents by avoiding significant adverse impacts on residential amenity including through the effects of noise.

Highway Safety

29. The site is located on a main radial route extending from the town centre. The locality features primarily high-density housing, including terraces and closely sited semis which have little or no on-site parking provision. Residents parking is therefore predominantly reliant on on-street provision. Aside from a break in front of

the small row of ground-floor commercial properties, parking restrictions are in place on much of the main road and about the junctions with neighbouring residential streets.

30. According to neighbours, significant parking pressure exists in the locality. Evidence provided by residents highlights the effect of the parking restrictions. It shows vehicles parked on double yellow lines close to the junction with Northway. It suggests a neighbour's driveway has been used by customers of the unit and visitors sometimes park across neighbouring accesses.
31. The forecourt to the premises accommodates a large commercial waste bin such that, along with limited access, it would provide little opportunity for staff or customer car parking. Although existing neighbouring businesses may not currently operate in the evenings, there is little to suggest that this situation would not arise.
32. Parking on the limited unrestricted length of road in front of the business units is not reserved for business use. Outside peak hours, the churn of vehicles arriving and leaving is unlikely, in my view, to result in significant adverse impacts on highway safety because incidents of inconsiderate or dangerous parking are likely to be limited.
33. However, the busiest times for traffic visiting the takeaway would most likely be during evening hours. This would coincide with when most people are at home and parking pressure in the locality is at its greatest.
34. Along with staff parking, callers, including delivery drivers, would likely be limited in options for parking at or close to the site. Unlike facilities in the local centre, no dedicated parking facilities exist. Patrons or food delivery operatives are unlikely, in my view, to park at distance to pick up hot food. The propensity for inconsiderate parking, pavement parking, waiting close to the nearby junctions (including a signalised junction at Bond Street/Moss Road) is significant and likely to elevate highway safety concerns in the locality. This would arise through obstruction to visibility and/or deflecting vehicle paths in close proximity to junctions on a main route. Impeded pavement users may also be forced into the main carriageway.
35. I recognise the appellant's efforts to prevent inconsiderate parking by callers by erecting signage, however, such measures are unlikely, in my view, to resolve concerns generated by parking demand and local parking pressure.
36. The appellant highlights that a café/restaurant fallback use would generate its own parking and traffic requirements. Even if that were demonstrated as a viable use, the submitted Transport Statement acknowledges that the propensity for illegal parking for longer stays associated with alternative uses of the premises is less likely due to the associated risk of being caught compared to shorter fast-food calls. Furthermore, to my mind, such a use would probably generate more limited trips and parking demand. Contrary to the appellant's findings based on trip generation assessment, the takeaway use would be more likely, in my view, to generate higher evening traffic than the other business types referred to as being present (or previously occupying the unit).
37. The appellant's assessment of parking requirement does not include staff parking. The appellant's claim that there is sufficient parking available for the use of the premises as a takeaway is not supported in evidence. It fails to take account of local conditions or qualify the extent of local parking pressure and availability of

parking at times when demand associated with the use of the site and surrounding residential properties is likely to be greatest.

38. The assessment that the site would generate 3 vehicle visits per hour during peak periods does not seem to correspond to any assessed output capacity of the unit, including its potential for on-site collections or off-site deliveries. The appellant's reference to the local crash record is of limited weight given it mostly pre-dates the installation of the unauthorised use.
39. For the reasons above, I find the traffic and parking effects are likely to cause a material elevated risk to highway safety. The development thereby conflicts with Policy STRAT10 of the LP1 and Policy T5 of the LP2 as they require development to make provision to accommodate associated traffic and preserve the safety of all road users.

Other Matters

40. I acknowledge that the proposal could employ up to 5 people as a result of the takeaway use of the premises. This is an economic benefit in favour of the development.
41. I note other concerns raised by nearby residents in relation to the condition of local drains, fire risks, bin storage and the effects of a tree at the site, for example. However, as aspects of the development that could be controlled by condition or by other regulatory regimes, my decision does not turn on those matters.

Planning Balance and Conclusion on Appeal A Ground (a) and Appeal B

42. I have found in favour of the appellant with regard to the principle of a commercial use of the premises within an established parade of ground-floor units with flats above. The use would also provide economic benefits in the locality through the provision of jobs. Nevertheless, I do not consider those matters to outweigh the identified harm in relation to the Council's policies for the protection of nearby residents' living conditions or highway safety. I therefore conclude that the development conflicts with the development plan read as a whole and there are no other considerations, including the Framework, that outweigh this conflict. For those reasons, I conclude that the appeals made under s174(2)(a) and s78 of the Act should be dismissed and the deemed application for planning permission refused.

Appeal A Ground (f)

43. An appeal on this ground is that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
44. In this case, by requiring the use to cease the Notice seeks to remedy the breach of planning control. Moreover, I have considered the planning merits of the use via ground (a) and concluded that permission should not be granted even subject to mitigating conditions. For those two reasons, I cannot rehearse questions of amenity and ground (f) could only succeed if the appellant shows that something less than ceasing the use would remedy the breach.

45. The appellant asserts that cooking equipment installed inside the building does not constitute 'development' for the purposes of s55 of the Act and could be utilised for a lawful Class E restaurant or café use of the premises. However, there is little to demonstrate that those works were undertaken for any other purpose than to facilitate the unauthorised use and were integral to it.
46. Following the settled caselaw of *Murfitt* and *Somak Travel*¹ an enforcement notice directed at an alleged material change of use can require the removal of ancillary operational development and works that facilitated the change of use. This applies even if those do not constitute 'development' for the purposes of s55 of the TCPA 1990.
47. If the claimed fallback use exists, then it is open to the appellant to seek confirmation via an application under s192 of the Act. The appellant has not done so, and so I find that the requirements of the Notice are therefore necessary and proportionate to remedy the breach. The appeal on ground (f) therefore fails.

Appeal A Ground (g)

48. An appeal on ground (g) is that the period for compliance specified in the notice falls short of what should reasonably be allowed. My task in the ground (g) appeal is to balance the public interest in securing expeditious compliance with the enforcement notice against the private interest bound up in the development subject of it.
49. The appellant contends that the timescale for compliance with the Notice requirements should be extended to source the necessary trades persons to carry out the removal of the external flue. However, a period of 3 months would, to my mind, be a reasonable and sufficient time to arrange and complete the removal of the flue. For those reasons, I find the appeal on ground (g) should not succeed.

Conclusion

50. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) or the s78 appeal.

R Hitchcock

INSPECTOR

¹ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598 and *Somak Travel v SSE & Brent LBC* [1987] JPL 630