



Appeal Decision

Site visit made on 11 November 2025

by E Fawcett BA (Jt Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th December 2025

Appeal Ref: APP/W4223/W/25/3372883 317 Abbey Hills Road, Oldham OL4 5LX

- 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 Gulfam Khan of Pride Hire & Storage Ltd against the decision of Oldham Council.
 - The application Ref is FUL/353859/24.
 - The development proposed is change of use to the ground floor to a hot food takeaway.
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Decision

1. The appeal is allowed and planning permission is granted for change of use to the ground floor to a hot food takeaway at 317 Abbey Hills Road, Oldham OL4 5LX in accordance with the terms of the application, Ref FUL/353859/24, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. Although the Council's decision cites only one reason for refusal, there is disagreement between the parties regarding the proposed opening hours of the hot food takeaway. The Council seeks shorter hours to safeguard the amenity of the adjoining premises and the wider area. Accordingly, I have identified the effect of the proposal on the living conditions of occupants of neighbouring residential properties as a main issue.

Main Issues

3. The main issues are:
 - whether the site is in a suitable location for a hot food takeaway, having regard to its proximity to schools; and
 - the effect of the proposed opening hours on the living conditions of the occupants of neighbouring residential properties.

Reasons

Location in Relation to Schools

4. The appeal site is located within a row of properties with commercial uses at ground floor. The surrounding area is predominantly residential in character, with some other commercial premises along Abbey Hills Road. The Council has identified 3 schools in relation to the proposed development. These are Roundthorn Primary Academy, St Hugh's CofE Primary School and Oasis Academy Secondary School.

5. In accordance with planning law, the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. No development plan policy has been referenced within the Council's reason for refusal. It instead relies on the National Planning Policy Framework (the Framework) which is a material consideration in planning decisions and should be afforded significant weight.
6. The Framework sets out that decisions should enable and support healthy lives, through promoting good health and preventing ill-health (paragraph 96). In relation to proposals for hot food takeaways, paragraph 97 states that applications should be refused where they are within walking distance of schools and other places where children and young people congregate, unless located within a designated town centre. Walking distance is not defined within the Framework.
7. Two schools identified by the Council are primary schools. These are both slightly detached from the site, being separated by open areas containing no housing. Whilst there is the potential for pupils to walk between these schools and the proposed hot food takeaway, this is likely to be limited given the distance and that these will be primary age children who are likely to be with adults.
8. Oasis Academy is a secondary school and would be around a 10 to 15 minute walk from the appeal site. Secondary age pupils are generally more independent than those at primary school and are likely to walk greater distances. The quickest walking route from the school to the appeal property involves an unlit footpath through Lees Brook Nature Park. The path's secluded location and absence of lighting would likely deter some pupils, particularly during winter months.
9. Nevertheless, it is likely that only pupils residing in the immediate residential area close to the appeal site would make the journey to the hot food takeaway. The length and nature of the walk would likely discourage those not living to the south of the school, and for the majority of pupils the site would not lie on their homeward route. This reduces the likelihood that a significant number of school age children would frequent the takeaway. Furthermore, an afternoon opening time of 1600, which has been suggested by the appellant, would limit its availability immediately after the school day. I therefore find that the proposed takeaway would not be within a reasonable walking distance for most pupils and I have not been provided with substantive evidence to demonstrate that the proposed takeaway would result in adverse health impacts.
10. I conclude that the site is in a suitable location for a hot food takeaway, having regard to its proximity to schools. For the reasons set out above, I find that the proposal would not prejudice the health and well-being of the local community or their ability to live a healthy lifestyle and therefore would not conflict with the aims or objectives of the Framework.

Living Conditions

11. There are a number of residential properties in the vicinity of the site, including above the appeal property and the adjoining commercial units, properties opposite and adjacent to this row of units on Abbey Hills Road, and dwellings located towards the western end of Manor Road. The row of properties in which the appeal site is contained, also includes a takeaway and an off-licence. There are also shops and a public house on the opposite side of Abbey Hills Road.

12. The Council has suggested a condition restricting opening hours to between 1100 and 1700. As this differs substantially from the times set out in the planning application of 1000 to 2300 Monday to Saturday and 1100 to 2000 on Sundays and bank holidays, this would not be reasonable. Nearby uses and traffic along Abbey Hills Road already generate evening disturbance and the Council has not provided substantive evidence that the proposed use would give rise to adverse effects on living conditions sufficient to warrant refusal.
13. Based on the case put to me, I conclude there would be no harmful effect of the proposed opening hours on the living conditions of the occupants of neighbouring residential properties. The proposal would therefore comply with Policy 9 of the Oldham Joint Core Strategy and Development Management Policies Development Plan Document (November 2011) which seeks to ensure that, amongst other things, development does not have an unacceptable impact on the environment or human health and does not cause significant harm to neighbouring occupants.

Conditions

14. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty. The Council's suggested condition requires the scheme to be fully implemented, although the reason for this has not been made clear. As such, I am not convinced that this is reasonable or necessary, and I have therefore not included this wording.
15. A condition is also necessary in relation to the hours of opening. In their final comments, the appellant has suggested opening hours of 1100 to 1400 and 1600 to 2300 Monday to Thursday (school days), with a later opening until 2330 on Friday and 1100 to 2330 on Saturday and Sunday. Having considered this, I find that extending the hours beyond those assessed at the application stage could prejudice interested parties. An afternoon opening time of 1600 would help to limit pupils visiting directly after school, and I therefore consider such a restriction both reasonable and necessary. For clarity, and in the interests of enforceability, I have not distinguished between days when schools may be open or closed.
16. The Council has suggested a condition to limit noise levels from the proposed extraction equipment. As the application includes details of this equipment, and it relates directly to the proposed use, I consider it reasonable to impose a condition restricting noise levels in order to safeguard the living conditions of neighbouring occupiers. I have amended the wording of the suggested condition to clarify its purpose and to ensure that it is reasonable.

Conclusion

17. The proposal accords with the development plan and, whilst the Framework is a material consideration that is afforded significant weight, for the reasons given above I do not find conflict with it. I therefore conclude that the appeal should be allowed.

E Fawcett

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 the following approved plans: Location Plan (unreferenced); AHR 317 21; AHR 317 23; and SG24-104 M100.
- 3) The level of noise emitted from the extraction system shall not exceed 50db LAeq (5 minutes) at any time, as measured at a distance of 3 metres from the cowl serving the extraction system.
- 4) The premises shall only be open for customers between the following hours:
1100 - 1400 and 1600 - 2300 Mondays - Fridays
1100 - 2300 Saturdays
1100 - 2000 Sundays and on Bank or Public Holidays.