



Appeal Decision

Site visit made on 3 February 2026

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2026

Appeal Ref: APP/P2365/W/25/3373719

Unit 11, The Hattersley Centre, Hattersley Way, Ormskirk, Lancashire L39 2RN

- 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 Hattersley Centre S.A.R.L. against the decision of West Lancashire Borough Council.
 - The application Ref is 2024/0446/FUL.
 - The development proposed is change of use from tile merchant to a restaurant/takeaway ('sui generis') and associated alterations to the external elevations of the building.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from tile merchant to a restaurant/takeaway ('sui generis') and associated alterations to the external elevations of the building at Unit 11, The Hattersley Centre, Ormskirk, Lancashire L39 2RN in accordance with the terms of the application, Ref 2024/0446/FUL, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are:
 - the effect of the proposal on the living conditions of the occupants of properties on Atkinson Road, having particular regard to noise and disturbance; and
 - whether the site is a suitable location for the proposal, having particular regard to the health and well-being of local school children.

Reasons

Living conditions

3. The appeal site is a vacant unit within the Hattersley Centre, a Strategic Employment Site allocated in the development plan. It contains several units that are in retail and commercial use, including a Pure Gym which operates 24 hours and a Lidl store which opens to 10pm other than on Sundays. The Hattersley Centre is accessed off a roundabout junction with Burscough Road and Burscough Street, which form a busy route into the nearby Ormskirk Town Centre.
4. Access to the appeal site is gained from Atkinson Road, a predominantly residential street. Further residential properties opposite on Burscough Road and Burscough Street lie close to the site.

5. I noted on my visit that the level of background noise was moderate around the site, largely due to traffic and Burscough Road and Burscough Street and vehicles accessing the Hattersley Centre. It can be anticipated that noise from vehicular traffic will be at its greatest during the daytime. However, whilst background noise will reduce, given the opening hours of Lidl and Pure Gym and that the site adjoins a main route to the town centre, it is also reasonable to anticipate that noise will continue to be noticeable in the evening and at night.
6. Reference is made to a Noise Impact Assessment (NIA) that was submitted in support of the planning application and amended during the application process. Based on the information before me, it is apparent that the NIA addressed the potential noise impact from fixed mechanical plant and equipment associated with the proposal. In response to the amended NIA the Council's Environmental Protection advisors (EP) confirmed that its methodology was agreed and that there is a low likelihood of an adverse impact if the recommended mitigation measures were implemented. Such measures could be secured by a planning condition.
7. However, the Council's concerns relate to the late evening operation of the proposed use and the associated customer activity and delivery movements which, according to the evidence before me, is not addressed in the NIA. I note that EP acknowledged the potential impact of the proposal on the occupants of residential properties through general activity but, nonetheless, advised that this could be controlled through suitably worded conditions. As such, the Council did not agree with its technical advisor.
8. The proposed hours of opening are 10am to 10pm each day. Therefore, the proposal would operate within the hours when there are background noise levels generated by vehicular movements on the public highway. In addition, there would be noise within the Hattersley Centre in connection with the Lidl store and Pure Gym, although I acknowledge this would be further away from the nearest residential properties than the appeal site.
9. Whilst there is no doubt that, when compared to the previous use, there would be an increase in activity at the appeal site in the evening, unacceptable disturbance is not an automatic consequence of the proposal. The appellant seeks to address such matters and has set out pro-active measures to control crime and antisocial behaviour within the submitted Operational Management Plan (OMP), which includes use of Closed-Circuit Television Systems (CCTV), conflict management training, and the management of litter, parking and delivery drivers. A condition could be imposed to ensure the implementation of the OMP, and I am satisfied that this would address these matters.
10. Although I acknowledge the concerns that have been raised by the Council and interested parties regarding noise, disturbance, crime and antisocial behaviour, in the absence of robust evidence to the contrary, I find that the proposal would not be unacceptable in such respects for the above reasons.
11. Whilst not specifically referred to in the reason for refusal, within its statement of case the Council has raised concerns regarding the adequacy of on-site parking to meet the needs of the proposed use. As the submitted floor plan shows that approximately 54 covers will be provided, it is reasonable to assume that parking for six vehicles will not be sufficient. There are, however, other large parking areas within the Hattersley Centre that are within a short walking distance from the

appeal premises. Noting that the proposal includes provision of pedestrian crossings on Hattersley Way and Atkinson Road, I find that such additional parking facilities would be convenient and safe to use in connection with the proposal. It is therefore likely that such car parks would be utilised if no on-site parking were available.

12. If on-street parking generated by the proposal were to occur, it would, most likely, be on Atkinson Road or on Hattersley Way as that would be at the closest point of entry into the building. On my visit I noted that the properties on Atkinson Road have off-road parking provision, that there are no parking restrictions near to the site, and there remained capacity to park on the street. I acknowledge that my visit was a snapshot in time, and not representative of on-street parking levels in the evening or at the weekend when pressure would be at its greatest. Nonetheless, it is reasonable to consider that there would be some capacity to safely accommodate additional parking on Atkinson Road and Hattersley Way should that take place.
13. Accordingly, there is nothing before me that suggests that any insufficiency of on-site parking provision would lead to unsafe, illegal or antisocial parking. I therefore find that any increased demand for parking arising from the appeal proposal would not be to such an extent that it would have a detrimental impact on the living conditions of nearby occupants.
14. I have taken account of concerns about odour raised by interested parties. I note that having taken account of relevant supporting information and the comments of EP, the Council found that, subject to the imposition of suitably worded conditions, the proposal would not unacceptably harm the living conditions of neighbouring occupiers in this respect. There is no compelling evidence before me that would lead me to disagree with that conclusion.
15. I conclude that the proposed development would not cause unacceptable harm to the living conditions of the occupants of properties on Atkinson Road, with particular regard to noise and disturbance. Consequently, it would comply with Policy GN3 of the West Lancashire Local Plan, adopted October 2013, which amongst other things, requires development to retain reasonable levels of amenity for the occupiers of neighbouring properties.

Health and well-being

16. Paragraph 97 of the National Planning Policy Framework (the Framework) states that local planning authorities should refuse applications for hot food takeaways and fast food outlets which are a) within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre or b) in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social behaviour. There is nothing within the wording of the Framework that indicates that this does not apply if hot food takeaways are combined with restaurants to form a mixed use.
17. The Hot Food Takeaways and Spatial Planning Public Health Advisory Note (the Advisory Note), July 2024, aims to assist local planning authorities in developing policies that restrict new sui generis hot food takeaways in defined areas, contributing to the development of environments that promote healthy weight. To date no such policies have been developed by the Council.

18. The submitted floor plan suggests that a significant component of the proposal would be the consumption of food on the appeal premises. The appellant, however, acknowledges that the use would include a takeaway. Additionally, the needs of delivery drivers, who would collect food to deliver to customers for their consumption elsewhere, are addressed within the proposal, which suggests that this is expected to be a consequential aspect of the business.
19. It is reasonable, therefore, to consider that takeaway food will be more than a minor or ancillary element of the business, even without a drive-through. The omission of 'takeaway' from the description of development, as the appellant suggests would have happened had the application been submitted after the Framework was amended, does not alter that it is part of the intended use of the appeal premises.
20. I acknowledge that the proposal does not specifically seek consent for a KFC, but as a restaurant/takeaway which could be operated by any business. Nevertheless, in the absence of any mechanism before me that would restrict the type of food sold from the appeal premises, there would be nothing to prevent it becoming a fast-food outlet.
21. As such, for the above reasons, I find that it is appropriate to consider the proposal against paragraph 97 of the Framework. Additionally, as the Advisory Note is broadly consistent with the Framework it is a material consideration to which I give weight in my decision on this appeal.
22. The Framework does not define 'walking distance' for the purposes of paragraph 97a). The Advisory Note, however, recommends that new sui generis hot food takeaways should be refused where they fall within a 400-metre radius of entry points to secondary schools, which provides a 5-minute walking distance around a school. The appeal site is around a 21- to 25-minute walk from the two nearest secondary schools and is, therefore, not in a location where the Advisory Note advocates that planning permission should be withheld.
23. Even if I were to agree that the distance is comfortably walkable for secondary school pupils, the time that it would take would not encourage regular visits during limited lunch breaks. Furthermore, there is no robust evidence to suggest that the appeal premises is on a route that a significant proportion of the pupils would use when travelling to and from school. I am not, therefore, persuaded that the appeal site is within 'walking distance' of any secondary school. I note that the nearest primary schools are a 16-to-17-minute walking distance from the appeal premises, and so the proposal would not conflict with the Advisory Note if it applied to all schools. Accordingly, neither paragraph 97a) of the Framework, nor the Advisory Note, support the dismissal of the appeal due to the site being within walking distance of schools.
24. In reaching this conclusion, I have had regard to the appeal decisions¹ that have been drawn to my attention by the Council. I note, in each case the site was found to be within walking distance of the identified school. Consequently, they are not directly comparable to the case that is before me and, therefore, those decisions do not alter my conclusion in this regard.

¹ APP/X1355/W/24/3354227, APP/B5480/W/24/3350708 & APP/A4520/W/24/3356308

25. The Advisory Note also recommends refusal of hot food takeaways within wards where the most recently published data classifies 10% or more of reception pupils or 15% or more of year 6 pupils as obese. It is not disputed that the appeal premises is located within the former Scott Ward where, according to the latest figures, the obesity rate among year 6 pupils is 25%, therefore, significantly above the Advisory Note threshold.
26. However, unless there is evidence that the level of obesity, and the consequent adverse impact on local health, is due to the concentration of hot food takeaways in that ward, the Advisory Note is not fully consistent with, and more onerous than, the provisions of paragraph 97b) of the Framework. No robust evidence has been presented to demonstrate that there is a concentration of similar premises within the former Scott Ward or that suggests that there is direct correlation between the number of hot food takeaways and the level of childhood obesity. Accordingly, it has not been demonstrated that the proposal would have an adverse impact on local health.
27. In conclusion, although the proposal does not fully comply with the recommendations of the Advisory Note, there is no convincing evidence to suggest that it would cause harm to the health and well-being of local school children. As such, I find that the site is a suitable location for the proposal. Furthermore, there is no conflict with paragraph 97 of the Framework.

Other Matters

28. I have had regard to the other concerns raised by interested parties, including the adverse impact the proposed use would have on the town centre, that no fast-food outlets were proposed at the Hattersley Centre when it was initially developed, the absence of need for another takeaway, air pollution and vermin. However, I have been presented with no substantive evidence that would lead me to disagree with the Council's conclusions on these matters and determine that the proposal would result in material harm sufficient to justify dismissing this appeal.

Conditions

29. The Council have suggested conditions in the event that I am minded to allow the appeal, which I have reviewed and amended in line with guidance and best practice to ensure clarity and consistency.
30. I have, in the interests of certainty, imposed a condition that specifies that the development is carried out in accordance with the approved plans. However, rather than include Revision A of plan reference 0000/2024/P121, I have referenced Revision B as that is the only version of the proposed site plan provided with the appeal documents, and there is nothing before me to suggest that the previous iteration of that plan should be the one that is approved.
31. Conditions requiring the provision of pedestrian crossings and a new pedestrian access to the site have been imposed to ensure safe access to the on- and off-site parking areas. As such works involve land that is outside of the applicant's control, such provision would require a negatively worded 'Grampian' planning condition that would prohibit development from taking place until the approved works have been carried out. I have amended the wording of such conditions accordingly.

32. I have imposed a range of conditions relating to the operation of the premises to protect the living conditions of neighbouring occupiers, namely, to control opening and delivery hours, odours, lighting, and litter management, and to secure an OMP. In the interests of clarity, I have amended the wording of the opening hours condition so that it specifies when the premises can open rather than when it should be closed. For the same reason, the delivery hours condition is amended to specify when such activity can take place. It is necessary that the details of odour control are agreed pre-commencement of development to ensure that measures are agreed and put in place prior to the operation of the permitted use.
33. To safeguard against undue noise and disturbance, I have imposed conditions relating to noise levels, implementation of the recommendations of the submitted NIA, and to control amplified music. A condition relating to the provision of a CCTV system has been imposed in the interests of public safety and the prevention of crime and anti-social behaviour.
34. It is the responsibility of the Council to carry out any consultations that are required to assess the acceptability of details submitted pursuant to planning conditions. Therefore, it is not necessary for the OMP condition and the condition securing highway safety improvements to specify that it will be approved in consultation with external bodies. I have amended the wording of these conditions accordingly.

Conclusion

35. For the reasons given above the appeal should be allowed.

Elaine Moulton

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 12182/THPM/XX/XX/DR/A/0910; 0000/2024/P121 Revision B; 0000/2024/P211; 0000/2024/G212; and 0000/2024/P100 Rev A.
- 3) The development hereby permitted shall not commence until a scheme to control the emission of fumes and odours from the premises including:
 - i) the provision of odour filters;
 - ii) the siting of any external ventilation stack; and
 - iii) details of any measures which are necessary to attenuate noise from the ventilation stack;

has been submitted to and approved in writing by the local planning authority. The approved scheme shall be fully installed and operating prior to the first use of the restaurant/takeaway. It shall thereafter be retained, maintained and operated to the approved specification.

- 4) No development shall commence until highway safety improvements have been implemented in accordance with a Scheme that shall have been submitted to and approved in writing by the local planning authority. The Scheme shall include (but shall not be restricted to) provision of formal pedestrian crossing points on Hattersley Way and Atkinson Road, together with pedestrian guard rails to be installed along the footway edge of Hattersley Way between the Atkinson Road and Burscough Road junctions (with appropriate gaps at the new and existing pedestrian crossing points).
- 5) No development shall commence until the new footpath link, involving the removal of one parking space, has been in accordance with the approved plan 0000/2024/P121 Revision B. The footpath shall thereafter be retained for the lifetime of the use.
- 6) The development hereby permitted shall not be operated in a manner which gives rise to background noise levels greater than 48dB LA90 15mins during daytime hours (1000 to 2200) and shall not exceed 31dB LA90 15 mins during nighttime hours (2200 to 1000) when measured 1m from the window of the nearest noise sensitive room.
- 7) The development hereby permitted shall proceed in accordance with the Noise Assessment prepared by Nova Acoustics Ref NP-011361, dated 12 August 2024, and any of the plant or equipment installed at the proposed unit, which shall be within the plant room and will be ducted to service the relevant areas, shall not deviate from that stated in the report. For the avoidance of doubt, the plant and equipment approved is as follows:
 - 1 No Mitsubishi PUHZ-SRP250YKA3 (CU1)
 - 1 No Mitsubishi PUHZ-SRP140YKA2 (CU2)
 - 1 No Mitsubishi PUHZ-SRP35VKA3 (CU3)
 - 2 No Duet RangeEco DCU2-1H ECO (Chiller & Veg Chiller Rooms)
 - 1 No Duet RangeEco DCU2-3L ECO (Freezer Room)
 - 1 No System Air MUB/T 062 560D4 Air Supply Fan (SF1)
 - 1 No System Air MUB/T 062 630D4 Extract Fan (EF1)

In addition, in accordance with the Noise Assessment, the following shall be installed prior to the first use of the premises to ensure that the design considerations and specifications are duly implemented:

 - i) A 630mm silencer to the Kitchen Extract (EF1) and Kitchen Supply (SF1) fans, capable of reducing the sound level by 10dB.
 - ii) A new external door to the plant roof, which shall have a minimum acoustic performance of 30dB RW.
 - iii) Acoustic louvres (minimum depth 15mm) to service the plantroom
- 8) No amplified music shall be played that is audible at the site boundary at any time.
- 9) Prior to the first use of the restaurant/takeaway hereby permitted, a lighting scheme (including all floodlighting, external building lights, illuminated signage and car park lighting) has been submitted to and approved in writing by the local planning

authority. All external lighting shall be installed and maintained in accordance with the agreed scheme.

- 10) Prior to the first use of the restaurant/takeaway hereby permitted, an Operational Management Plan shall be submitted to and approved in writing by the local planning authority. The approved Plan shall be implemented in full thereafter.
- 11) Prior to the first use of the restaurant/takeaway hereby permitted, a Litter Management Plan shall be submitted to and approved in writing by the local planning authority. The approved Plan shall be implemented in full thereafter.
- 12) Prior to the first use of the restaurant/takeaway hereby permitted, full details of a CCTV system to be installed at the premises shall be submitted to and approved in writing by the local planning authority. The submitted details shall include the number, type, and location of cameras; areas to be monitored; data storage and retention protocols; and measures to ensure compliance with relevant privacy and data protection legislation. The CCTV system shall be installed in accordance with the approved details prior to the first use of the restaurant/takeaway and shall be retained and maintained in full working order thereafter for the lifetime of the use.
- 13) The premises shall only be open, and customers permitted on the premises, between the hours of 1000 and 2200 on any day.
- 14) The loading/unloading of vehicles shall take place, and deliveries shall be taken at or dispatched from the site, only between 0800 and 2200 on Monday to Saturday, and between 1000 and 1800 on Sundays and on Bank or Public Holidays.