



Appeal Decision

Site visit made on 2 June 2026

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2026

Appeal Ref: APP/D4635/C/25/3364454

1D Clark Road, Wolverhampton WV3 9NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Rashad Malik against an enforcement notice issued by Wolverhampton City Council.
 - The notice was issued on 25 March 2025.
 - The breach of planning control as alleged in the notice is the material change of use from a restaurant (Class E) to a mixed use including a restaurant, hot food takeaway and hot food delivery service.
 - The requirement of the notice is to permanently cease using the land for the purposes of a hot food take away and hot food delivery service.
 - The period for compliance with the requirement is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use from a restaurant (Class E) to a mixed use including a restaurant, hot food takeaway and hot food delivery service at 1D Clark Road, Wolverhampton as shown on the plan attached to the notice and subject to the following conditions:

1. The premises shall only be open to customers, and for deliveries and collections, between 1230 and 2300 hours.
2. Within one month of the date of this decision a scheme for air extraction and odour control of cooking operations, including the location and appearance of any external ducting and flues, shall be submitted to the local planning authority for their written approval, and if the approved scheme is not installed and thereafter operated and maintained in accordance with the manufacturer's instructions within two months of the local planning authority's approval, the use of the premises shall cease until the scheme is brought into use.
3. Within one month of the date of this decision a scheme for managing litter associated with the use (which shall include provision of a suitable litter bin at the premises and measures for the regular collection of litter in the immediate surrounding area) shall be submitted to the local planning authority for their written approval, and if the approved scheme is not implemented, and thereafter maintained, within one month of the local planning authority's approval, the use of the premises shall cease until the scheme is brought into use.

Procedural matter

2. The appeal was made on grounds (a), (b) and (g). In the Appellant's appeal statement is a section relating to ground (c) and though the Council commented on this ground in their final comments they did not have the opportunity to fully address this ground in their appeal statement. This was procedurally unfair and has caused injustice to the Council. The ground (c) matters mentioned shall be disregarded.

Reasons

The appeal property and its location

3. The mid-terraced single-storey appeal property is in a parade of five retail units on the north-west side of Clark Road close to its junction with Tettenhall Road, part of the A41. The parade of units is in a mainly residential suburb of Wolverhampton to the north-west of the city centre. Between the parade of units and the pavement to Clark Road is a parking forecourt and the largest of the five units is a convenience store that is open every day until 2200 hours. On the opposite side of the road is a petrol filling station with shop that is open 24 hours a day seven days a week.

The ground (b) appeal

4. The Appellant maintains that the alleged breach of planning control has not occurred because the original restaurant use, established before the Appellant first occupied the premises in 2024, included a take-away element. He has provided evidence of takeaway use over a few years prior to issue of the enforcement notice but other evidence indicates that the original restaurant/café use, operated by previous occupants of the premises, subsisted only on that basis, and that any takeaway activity was on a *de minimis* basis. The Appellant has not sought to claim that the breach of planning control has become immune from enforcement action through the passage of time, by making a ground (d) appeal, and there can be no doubt that the breach has occurred, as a matter of fact. The ground (b) appeal thus fails.

The ground (a) appeal

5. The main issues are the effect of the use of the premises as a hot food takeaway incorporating a delivery service, in addition to its lawful restaurant use, on; first, the living conditions of residents of the area; and second, highway and pedestrian safety.

The first issue – living conditions

6. 2 Clark Road, which is located to the rear of the petrol station, is the closest dwelling to the appeal premises, and there are other dwellings further away on Clark Road and Rupert Street. Evidence indicates that the takeaway use of the appeal premises generates traffic movements associated with the delivery and collection of meals. This vehicular activity occurs during the evening when other units in the parade are closed and when background noise is less than during daytime hours. The activity will be generating noise which, the Council claims, causes disturbance to residents.

7. The Council has suggested a condition that would require the premises to be closed after 2100 hours. This is an unreasonable suggestion because such a condition would negate the benefit of the permission. The Appellant is agreeable to a condition that would establish a closing time of 2300 hours. For a hot food takeaway use this is a reasonable closing time and would result in there being no activity associated with the use in the hour before midnight and in the early hours of the day.

8. The Council and a local resident have commented, in general terms, on noise in the area at unsocial hours but have not identified any regular activity associated with the hot food takeaway use that is causing significance disturbance in itself. In this regard the area is subject to noise and disturbance associated with the convenience store and the petrol station and shop. It is unlikely that activity, including vehicular movements, associated with the hot food takeaway on its own, or collectively with activity associated with other existing uses, is or would cause significant disturbance before 2300 hours.

9. Comments have been made about odours emanating from the premises and about litter associated with its use. The Council has suggested conditions that would require the submission and implementation of schemes, after written approval by the Local Planning Authority and within specified timeframes, to control odours and litter. The resulting controls over odours and litter, which do not exist at present, would prevent these consequences of the hot food takeaway use from causing significant harm.

10. The proposed continuing use of the premises as a hot food takeaway incorporating a delivery service would not have any significant adverse effect on the living conditions of local residents. The proposed continuing use does not conflict with saved policies D6 and SH14 of the Wolverhampton Unitary Development Plan or policy ENV3 of the Black Country Core Strategy.

The second issue – highway and pedestrian safety

11. The Highway Authority has commented that "...vehicles (generated by the shops, cash point at garage and local residents) already park on the double yellow lines on both sides of Clark Road or on the tarmac area in front of the shops...". Parking restrictions are in place to secure the free flow of traffic and thus highway safety but the Authority has not suggested that parking in contravention of parking restrictions on Clark Road is preventing the free flow of traffic or is undermining highway safety.

12. Furthermore, vehicular activity associated with the hot food takeaway use will be concentrated in evening hours when the shops in the parade, other than the convenience store, are closed. Nothing seen of the area at the site visit would indicate that vehicular activity associated with the hot food takeaway during evening hours, including that associated with an associated delivery service, would cause any significant concerns for highway safety.

13. Drivers park vehicles on the tarmac forecourt between the shops and the pavement and this involves crossing the pavement. No one has produced any evidence of such manoeuvres resulting in conflict with pedestrians and, given that there is clear all round visibility between the parade of shops and the petrol station, it is unlikely that the continuing use of the premises as a hot food takeaway incorporating a delivery service would have any significant adverse effect on pedestrian safety.

14. The proposed continuing use of the premises as a hot food takeaway incorporating a delivery service would not have any significant adverse effect on highway or pedestrian safety. The proposed continuing use does not conflict with saved policies AM12 and AM15 of the Wolverhampton Unitary Development Plan or policy CSP4 of the Black Country Core Strategy.

Conditions

15. The three conditions suggested by the Council are those mentioned above. The condition limiting opening hours is necessary to prevent noise and disturbance in the

quieter last and early hours of each day, and the conditions requiring the implementation of approved schemes for the control of odour and litter are in the interests of the living conditions of local residents. The suggested conditions have been amended, where necessary, in the interests of clarity and precision.

Conclusion on the ground (a) appeal

16. The continuing use of the premises as a hot food takeaway incorporating a delivery service would not have any significant adverse effect on the living conditions of local residents or on highway or pedestrian safety. The ground (a) appeal thus succeeds and planning permission has been granted, subject to conditions, for the material change of use from a restaurant (Class E) to a mixed use including a restaurant, hot food takeaway and hot food delivery service at 1D Clark Road, Wolverhampton. The ground (g) appeal does not need to be considered.

John Braithwaite

Inspector