



Appeal Decisions

Site visit made on 27 February 2023

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Appeal A Ref: APP/B4215/C/22/3306236

Alibaba Turkish Grill, 1176 Rochdale Road, Manchester, M9 6ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ali Can Erdogan against an enforcement notice issued by Manchester City Council.
 - The notice was issued on 5 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the ground floor to a hot-food takeaway (sui generis).
 - The requirement of the notice is to cease the use as a hot-food takeaway (sui generis).
 - The period for compliance with the requirement is: two months.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/B4215/W/22/3306249

1176 Rochdale Road, Manchester, M9 6ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ali Can Erdogan against the decision of Manchester City Council.
 - The application Ref 133584/FO/2022, dated 20 April 2022, was refused by notice dated 9 August 2022.
 - The development proposed is change of use of ground floor to hot food takeaway (sui generis).
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Formal Decisions

1. **Appeal A:** The appeal is dismissed and the enforcement notice is upheld.
2. **Appeal B:** The appeal is dismissed.

Application for costs

3. An application for costs was made by the Council against Mr Ali Can Erdogan. This application is the subject of a separate Decision.

Preliminary Matters

4. Appeal A initially included an appeal on ground (a). However, on 2 September 2022, the appellant was notified by PINS that, by virtue of S.174(2A) of the 1990 Act (as amended), such an appeal was not permitted where an application for planning permission for the development had been made and the period for its determination had not yet expired, as was the case here. The planning merits of the case fall to be considered under Appeal B, which I shall go on to consider first.

Appeal B

5. The main issue in this case is the impact of an additional hot food takeaway on the vitality and viability of the Victoria Avenue/Rochdale Road Local Centre.
6. The Victoria Avenue/Rochdale Road Local Centre is identified in Policy C1 of the Core Strategy (2012). The appeal site lies within this centre, in a terrace of primarily commercial properties fronting Rochdale Road, close to its junction with Victoria Avenue. Immediately to the south, fronting Rochdale Road, are two further terraces of primarily commercial properties.
7. Core Strategy Policy C10 indicates that local centres can be appropriate locations in principle for hot food takeaways. However, the policy seeks to achieve a balanced range of uses that support both evening and daytime activity. This entails taking account of the existing number of hot food takeaways and their proximity to each other, the number of shops remaining to serve the local community, the existence of vacant shop units and the character of the area. Such an approach appears consistent with the National Planning Policy Framework's aim to achieve a high quality built environment reflecting the community's needs.
8. The Council has adopted a *Hot Food Takeaway SPD* [2017]. In this, Policy 1 seeks to avoid development which would be detrimental to the vitality and viability of a centre and would affect the balance between the day time and night time economy and the health of the population. To achieve this aim, a proposal will be considered to be harmful to the vitality and viability of a centre if it increases the concentration of hot food takeaway ground floor frontages in a centre to more than 10% of all non-residential ground floor frontages, or creates a cluster of more than two hot food takeaways together. Applications will not normally be permitted if the 10% proportion is exceeded in a particular part of the centre concerned.
9. The Council points to the fact that, in the particular part of this centre in which the appeal site lies, 4 of the 18 commercial units on the Rochdale Road frontage are already takeaways and that the addition of the appeal property as a 5th takeaway would raise the proportion to 28%, very significantly more than the normal 10% threshold. Furthermore, it appears that this would result in there being 3 takeaways in consecutive units.
10. In centres where vacancy levels are more than 10% (or 25% in centres with less than 20 units) hot food takeaways could be considered favourably even if this would increase the proportion of hot food takeaways to above 10% of ground floor frontages. However, only 1 of the 18 units here appears to be vacant such that this exception would not apply.
11. The property was previously in use as a café and had planning permission granted in 2021 for a commercial extractor flue (LPA ref: 130230/FO/2021). The appellant indicates that there was a small element of takeaway use then and he has retained a small number of tables and chairs to allow some consumption on the premises. He points to the range of uses that could lawfully occupy the premises within Class E of the Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 (UCO). However, there are discernible differences in character between the former and present uses which are recognised in the UCO and which the development plan seeks to resist.

12. The appellant further submits that the proliferation of delivery companies has rendered the policy background outdated. However, I have little information as to the extent of their operation in this local centre and it is a matter for the Local Planning Authority to review the policy background where circumstances might have changed.
13. I note that there are no objections in relation to residential amenity, traffic generation or waste disposal. However, the addition of a further hot food takeaway use in this commercial parade appears to me to be detrimental to the vitality and viability of the local centre and to conflict with the provisions of the development plan. Section 38(6) of the 2004 Act states that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. I have seen no material considerations in this case to lead me to a different conclusion.

Appeal A, ground (g)

14. The original compliance period of two months was extended to six months by the Council in a formal variation of the notice in September 2022. This directly met the first of the appellant's three suggested variations of the notice. Indeed, because of the passage of time, a six month compliance period would now meet the second of these suggested variations, which was to extend it to 12 August 2023, the date of the break clause in the appellant's lease agreement.
15. The appellant's third suggestion is to extend the compliance period to 11 August 2026, the end date of his lease agreement. However, having regard to my conclusion in Appeal B that the use harms the vitality and viability of the local centre, it would not be acceptable for the use to continue for a further three years. Accordingly, the appeal on ground (g) fails.

B S Rogers

INSPECTOR