

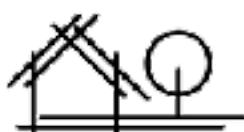
Planning Appeal Statement

Site: 31 Holyrood Crescent, Wrexham

Description: Change Of Use From A1 Shop To A3 Food

Purpose: S78 Appeal against the refusal by Wrexham County Borough Council of planning permission.

FOR: Birch Heath Development.



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Contents

Purpose	2
Grounds of appeal.	2
Case of the Appellant.	3

Purpose

1. This Statement is prepared by Mr PG Lloyd, BA (Hons) MRTPI. Chartered Town Planner. I have 25+ years post qualification experience as a professional town planner in roles including 14 years as Development Manager officer and Team Leader, managing the planning function of developer/house-builders and for the last 12 years representing a variety of private and public sector clients in planning matters including land and development promotion, planning applications and in appeals.
2. This appeal is against the decision of Wrexham County Borough Council to refuse planning permission for development comprising the Change Of Use From A1 Shop To A3 Food.
3. The appeal site is a small (55sqm or thereabouts) shop sites on the Right hand (eastern) end of a parade of shops at Holyrood Crescent sitting the the rear of of a minor service road serving just the parade (of 4 units in total) near to junction of Holyrood Crescent and East Avenue, Wrexham. It is vacant and was most recently used as an Auto Parts shop. (Express Autoparts). The inspector will note the immediate area is mixed commercial in character with residential uses located beyond the side service roads to the commercial parade. The small parade serves a local function. The Inspector will also note how this small parade of shops has its own dedicated frontage access road serving just the four units set behind East Avenue and off Holyrood Avenue.
4. The inspector will also note there are no other A3 uses nearby. The rear yard of the parade backs onto the playing field of Rhosddu Primary School. It would however be a 270 metre walk form the school access onto Wynn Avenue (to the south-west) to the appeal site.

Grounds of appeal.

5. The ground of appeal are set out below:

The proposal for this A3 use would not give rise to the alleged conflicts set out in refusal reason no 1 on the evidence of the size of the unit and subsequent likely scale of use of the premises for purposes falling within Class A3. In any event any event it would have been possible to discuss the imposition of suitable conditions to mitigate alleged harms consistent with national policy

and and local planning guidance were they likely as a matter of fact to occur.

The proposed use due to its location, likely scale of nature of use would be attractive to a local A3 market or small scale delivery type operation which would not give rise to significant levels of parking pressure, and the which occurs could in any event be accommodated on the parade service road without harm to national policy for car parking management.

The social and economic benefits of finding alternative and viable use for the premises are material considerations that should carry significant weight in the determination of the appeal and no benefit is secured by a vacant premises.

6. Having regard to the grounds of appeal, I will deal with my clients case on the basis of what i identify as the main issues, namely:

- the effect of the proposal on the living conditions of nearby residents in relation to noise and disturbance and,
- the effect of the proposal on highway safety.

Case of the Appellant.

7. In the interests of simplicity and brevity, the appellants case is set out in commentary to the following sections based on the two main issues and cross referencing *inter alia* PPW, the time expired Wrexham Local Development Plan and Local Planning Guidance Notes as quoted.

8. I note a number of key points relating to the currency of the policy documents quoted by the Council and their relationship with existing national planning policy.

- i. Planning Policy Wales v10 was published in 2018.
- ii. The Wrexham UDP is time expired
- iii. The Local Planning guidance notes quoted in the refusal reasons predate both PPW and in the case of Hot food Takeaway uses TAN 4.

Issue 1: The effect of the proposal on the living conditions of nearby residents in relation to noise and disturbance.

9. The application sought (as does the appeal) a change of use to all purposes falling within Class A3. This encompasses *use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises* as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended). The application does not solely seek “hot food take-away” sub-use within Class A3 -a point which may potentially be inferred from the alleged conflict with Local Planning Guidance Note 09. Irrespective of that, the application sought full flexibility within the use class, be that a small tea room, cafe, craft ale bar or any other form of use A3 use.
10. It is for the Council to show how the harm the refusal reasons cites from all uses within the A3 Class (including one single element of sub-use such as hot-food takeaway) will, as a matter of fact both occur and conflict with the Development Plan. It is also for the Council to demonstrate the regard given to Welsh Government guidance that “used properly, conditions can.... enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission”¹ If its sole objection relates therefore to hot-food takeaway use, it should have considered and explored the use of conditions to allow non hot food takeaway elements within class A3.
11. It is commonplace that A3 uses - whether they involve cooking processes or not, can be accommodated in close proximity to residential development. The premises has some 55smq of floorspace and can be reasonably be described a small or minor in scale. This very minor size of the unit limits the scale of activity and potential impacts. The appellant therefore raises no objection to the imposition of a planning condition that would required the prior submission and approval of details of extraction and odour control measure prior to any process that require their installation, The following condition is suggested :

No food cooking process shall commence until a scheme for an extraction system to control the emission of fumes and odour from the premises and the noise rating generated by the equipment relative to background noise levels at nearby noise sensitive premises have been submitted to, and approved in writing by the local planning authority. The extraction system shall be implemented as approved prior to the first use of the development and all

¹ The Use of Planning Conditions for Development Management WGC 016/2014. par 1.2

equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the approved details for as long as the use continues.

12. The existing class A1 use is a 24 hour permission unfettered by any condition controlling its hours of operation or the scope of A1 uses. The premises could lawfully be operated as for any *Shop* use falling within class A1, including say as a local convenience store, off-licence, hairdressers, undertakers/funeral director or sandwich bars without a new planning permission. The ability of some of these to operate from early morning until late at night, or indeed 24 hours a day is a fallback position. A new A1 user could indeed chose to do so.
13. Noise from movements associated with A3 use would not be markedly increased compared to previous movements or indeed those which a modest local convenience store might generate under the fallback position. In any event it is probable that car movements and associated open and closing of doors would take place on the service road in front of the parade of shops rather than outside any nearby residential property. Local people walking to the site are unlikely to create mantis impacts. To use a hot-food takeaway as an example the increasing use of web based apps (such as *Just Eat*) enables food to be pre-ordered from home with allocated collection times. Food is often paid for in advance and this method of ordering assists in managing kitchen and parking/movement demand. It also reduces waiting and collection times whilst at site. If a hot-food takeaway were the A3 user and where web based apps are used, it will in many cases offer home delivery. This would further reduce the need for customer trips to the site. Deliveries also tend to be managed efficiently to allow multiple trips each time. This agains aids reduced trip activity and limits the potential occurrence of noise. Further there is an existing lawful use as say a local convenience store or off-licence which might generate at least equivalent levels of movement.
14. There is no evidence to suggest that, levels of antisocial behaviour in the locality are high. The postcode sector LL11 2EN is currently ranked 28.6 (postcode centroid, ll112en, matched to LSOA: [W01000422](https://www.ukcrimestats.com/Postcode/LL112en) - where 0 equals lowest and 100 equals highest ranked crime rate)². The postcode is ranked 40.1 for All crime plus anti social behaviour. This suggests strongly that anti-social behaviour occurs less than other crimes in the community.

² <https://www.ukcrimestats.com/Postcode/LL112en>

15. There is no other A3 user in the parade. Cumulative impacts of those occurring from a concentration of single uses³ such as those TAN 4 discusses cannot be alleged.
16. Local Planning Guidance Note (LPGN) 09 (which deals solely with hot food takeaway of course) does note that *hot food takeaway outlets can provide a popular service and source of employment to local communities* a point confirmed by the expected level of employment in the application forms. It does note also that hot food takeaways **can have** "a detrimental impact on the retail character and function of shopping centres, residential amenity and community health. Such harmful impacts can include litter, odour, anti-social behaviour, noise and general disturbance, parking and traffic problems and longer term health impacts" However that a specific use can have impacts does not of course mean those impacts **will** occur on each and every occasion, Each case must be judged on its merits.
17. Whilst I note the LPGN seeks to restrict the provision of hot food take-aways in predominantly residential areas (and within 400 metre of the boundary of a school) it also tells use they will may be acceptable in "other local mixed residential/commercial areas". I am in little doubt that this parade of units give the immediate area a mixed residential/commercial character. I have already set out that the unit is by the shortest route some 270metres walking distance from Rhosddu Primary School. Again I have little doubt that primary school children would not be allowed to walk to the unit doing school hours without adult supervision. The prospect of primary school children using the unit in conflict with the objective of the LPGN † reduce obesity and improve wellbeing are low.
18. It appears to me therefore, the Council has applied the statement of potential impacts its LPGN on Hot food Takeaways as matters of fact rather than as guidance. Indeed the council appears *not on its face at least* to have considered the broader nature of uses within the A3 category.
19. My client is minded to suggest, notwithstanding the 24 hours use potential under a fallback position, that any A3 use is not permitted to operate outside the hours of 0830 in the morning or after 2300 hours on any day. This would provide

³ TAN 4 0 Retail and Commercial Development November 2016 Para 9.7

sufficient scope for most uses to operate within class A3 and to enable the unit to be marketed to its full and reasonable use and employment potential.

Issue 2. The effect of the proposal on highway safety.

20. Planning Policy Wales advises (para 4.153) that *Local authorities will need to ensure that their parking standards reflect local transport provision, are adopted by individual authorities as supplementary planning guidance, and are kept under review.* I note the parking standards were reviewed in July 2018 and are yet to be further reviewed in the light of current PPW guidance. PPW also requires that *Parking standards should be applied flexibly and allow for the provision of lower levels of parking parking standards.* Applying the current parking standards (1 car space per 15sqm for A1 use) would require 3 or so spaces maximum. The maximum standard for A3 use (1 car space per 4sqm) rounded up would be 14 spaces.

21. LPGN 16 tells us however that *Changes of use will be judged on their own merits. Additional spaces may be required where the demand for parking arising from a new use is likely to be greater than that from the existing use.* There is no current parking space for the existing use although there would be scope for the service area to the rear to be used for staff parking and deliveries. The unit would only be able to offer a small number of tables as a cafe or small local bar. The LPGN also tells us that the standards are maxima and that the Council has no minimum standards. It seems to me therefore to be entirely appropriate to have regard to:

- the potential fallback and traffic generation the existing use might reasonably generate and
- the likelihood that a cafe-restaurant or craft ale bar use would have an almost entirely *local* clientele who would generally walk to the unit or
- a hot food take-away would adopt modern technology such as *just eat* App food ordering and management systems to both generate business and manage kitchen demand as well as offer delivery.
- car borne customers would in all likelihood use the small service road directly in front of the unit for parking for short stay parking.

22. It would in my experience be a rare occasion where car parking occurred in an uncontrolled zone to the extent that the maximum requirement LPGN16 discusses (14 spaces) would ever occur at any time. The size and scale of the premises restricts the scale of the use such that movement and parking would

not in my view cause significant harm to highway safety such that planning permission would have to be withheld for a change of use.

Concluions

23. The appeal seeks use within Class A3. The evidence provided is the that the appeal premises is vacant unit in a small parade of shops serving a ,local community. It would offer a not insignificant amount of local employment opportunity in context. It is of a size and scale that would by virtue of its modest size limit amenity impacts and the appellant is willing to accept conditions which would mitigate impacts of cooking hot food, odour control, ventilation and noise as well as on the hours of opening. There is no evidence of excessive levels of anti-social behaviour in the locality and a cumulation of other A3 uses that might lead to unusual amounts of noise or late night activity would not occur. It is my evidence that the Council could have granted planning permission subject to these conditions and that it has focussed, unreasonably, on guidance in a Hot Food Takeaway Local Planning Guidance Note rather than the actual impacts of a development mitigated by the suggested conditions.
24. The size of the unit limits the likely scale of movement to and from it and there is a *fallback*. The likely use of web-App technology for food ordering, collections management and/or delivery would aid in mitigating any impacts from specific hot food takeaway uses particular parking demand. Where parking demand would occur it would be normal customer behaviour to park in the service road off Holyrood Crescent/East Avenue which is the very intention of this road. Parking on Holyrood Crescent and East Avenue would be unlikely to occur. The Inspector will be able to form a judgement about the capacity of the service road, the potential from any fallback and will note what that when cars are parked along it vehicles can still comfortably pass.
25. The appeal propose therefore raises no direct conflict with the Development Plan, would support new employment and mixed use development consistent with the objectives of PPW and is in all regards considered to be acceptable. The appeal should be allowed with conditions.