

## DELEGATED DECISION CHECKLIST AND REPORT

| APPLICATION NO. | CASE OFFICER | DATE       |
|-----------------|--------------|------------|
| 24/00265/CPL    | Hamish Rigg  | 23/05/2024 |

**Address:** 1 Middleton Road, Heywood, OL10 2HS

**Proposal:** Certificate of lawfulness for proposed change of use from shop storage space (class E) into dessert bar (class E)

|           |                            |   |                       |     |
|-----------|----------------------------|---|-----------------------|-----|
| PUBLICITY | Weekly list expired?       | Y | Site notice expired?  | n/a |
|           | Neighbour letters expired? | Y | Press Notice expired? | n/a |

|            |                                                             |   |                                        |   |
|------------|-------------------------------------------------------------|---|----------------------------------------|---|
| DELEGATION | Significant departure from local plan?                      | N | Contrary to national policy?           | N |
|            | Applicant a Council Member or officer?                      | N | Contrary to previous decision?         | N |
|            | Major with 10 or more objections and recommending approval? | N | Called in or Planning Panel objection? | N |

|          |                                   |   |
|----------|-----------------------------------|---|
| COMMENTS | Planning Panel comments received? | N |
|          | Neighbour comments received?      | N |

|     |                                                  |     |
|-----|--------------------------------------------------|-----|
| EIA | Screening opinion completed and saved to Onbase? | n/a |
|-----|--------------------------------------------------|-----|

|            |                                                                      |   |
|------------|----------------------------------------------------------------------|---|
| CONDITIONS | Pre-commencement conditions proposed?                                | N |
|            | Pre-commencement conditions agreed (or notification period expired)? | N |

|                |                       |
|----------------|-----------------------|
| RECOMMENDATION | Grant unconditionally |
|----------------|-----------------------|

CHECKED AND SIGNED OFF BY: RK

DATE: 11/06/2024

## **SITE**

The application relates to 1 Middleton Road, Heywood, a single-storey shop storage space attached to the existing Village Convenience Store. The store sits on the corner between Middleton Road and Withington Street in an isolated position away from surrounding buildings. The shop faces north-west with the storage space situated to the south. The storage space can be accessed from Middleton Road via a door in the yard.

## **PROPOSAL**

Permission is sought for a Certificate of lawfulness for the proposed change of use from shop storage space (class E) into dessert bar (class E). The dessert bar would be accessible to the public via a door from the yard on Middleton Road and the adjoining shop.

## **RELEVANT PLANNING POLICY**

Town and Country Planning Act 1990 (as amended)

The Town and Country Planning (Use Classes) Order 1987 (as amended)

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("the UCO Amendment Regulations")

## **RELEVANT SITE HISTORY**

None

## **CONSULTATION RESPONSES**

N/A

## **REPRESENTATIONS**

In accordance with the Council's Code of Publicity, this application has not been publicised.

## **ANALYSIS**

S.55 of the Town and Country Planning Act 1990 sets out:

Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

In respect of changes of use, Article 3(1) of the Town and Country Planning (Use Classes) Order 1987 sets out "where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land."

It should also be noted that National Planning Practice Guidance states that planning permission may not be required where the use of any newly formed units after a

building has been sub-divided falls within the same use class as the building's existing primary use before it was sub-divided.

It is therefore necessary to establish the existing lawful use class of the subject building and its proposed use class.

The Use Classes Order was updated and amended on the 1<sup>st</sup> September 2021 and the former A1 Class (along with a number of other use classes) has been replaced by a new use class, Class E. This new use includes;

- ☐ *E(a) Display or retail sale of goods, other than hot food*
- ☐ *E(b) Sale of food and drink for consumption (mostly) on the premises*
- ☐ *E(c) Provision of:*
  - o *E(c)(i) Financial services,*
  - o *E(c)(ii) Professional services (other than health or medical services), or*
  - o *E(c)(iii) Other appropriate services in a commercial, business or service locality*
- ☐ *E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,)*
- ☐ *E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)*
- ☐ *E(f) Creche, day nursery or day centre (not including a residential use)*
- ☐ *E(g) Uses which can be carried out in a residential area without detriment to its amenity:*
  - o *E(g)(i) Offices to carry out any operational or administrative functions,*
  - o *E(g)(ii) Research and development of products or processes*
  - o *E(g)(iii) Industrial processes*

The site is presently used as a shop storage space which falls under the new Use Class E. The application states that the proposed use would be as a dessert bar, which falls under Use Class E as an establishment in which food and drink is sold and consumed on the premises.

Accordingly, a change of use to a dessert bar would not comprise an act of development that would require planning permission.

## **RECOMMENDATION**

**Grant unconditionally**

## **Reason**

Both the existing use as a shop storage space and the proposed use as a dessert bar fall within Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) and as such the proposals do not meet the definition of

development as set out in Section 55 of the Town and Country Planning Act (1990) and therefore do not require planning permission.

**Notes for Applicant:**

This application relates to the following plans:

- Proposed plans: 2111/2
- Location Plan

Report Author Hamish Rigg