

# Planning Appeals Update

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## **Planning Committee**

### **Report of Head of Planning and Infrastructure**

#### **DATE OF COMMITTEE**

**September 2020**

#### **PLANNING APPEALS**

#### **WRITTEN REPRESENTATION**

#### **HEARINGS**

#### **HOUSE HOLDER**

#### **ADVERTISEMENTS**

AD/344285/19	217-219 Manchester Road, Oldham, OL8 4QY
AD/344390/20	Junction Trade Park, Manchester Road, Oldham, OL8 4RG
AD/344807/20	The Motor Finance Group, Shaw Road, Oldham, OL1 3HZ

#### **APPEAL DECISIONS**

AD/344011/19	7 Elk Mill central Retail Park, Royton, OL2 5HX – Allowed
AD/344825/20	59-61 George Street, Oldham, OL1 1JF – Dismissed
PRCU/344567/20	420 Ashton Road, Oldham, OL8 3HF – Allowed

**RECOMMENDATION -** That the report be noted.

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The following is a list of background papers on which this report is based in accordance with the requirements of Section 100D (1) of the Local Government Act 1972. It does not include documents, which would disclose exempt or confidential information as defined by that Act.

Files held in the Development Control Section





## Appeal Decision

Site visit made on 21 July 2020

by **Mr W Johnson BA(Hons) DipTP DipUDR MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 19 August 2020**

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**Appeal Ref: APP/W4223/W/20/3251602**

**420 Ashton Road, Oldham, OL8 3HF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Part 3, Schedule 2, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
  - The appeal is made by Ms Shabana Shaikh against the decision of Oldham Metropolitan Borough Council.
  - The application Ref PRCU/344567/20, dated 18 February 2020, was refused by notice dated 23 April 2020.
  - The development proposed is described as: 'It's already A1 shop and I just need A3 permission for sell hot food'.
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### Decision

1. The appeal is allowed and prior approval is granted for the change of use of a shop (A1) to a café/restaurant (A3) at 420 Ashton Road, Oldham, OL8 3HF in accordance with the terms of the application, Ref PRCU/344567/20, dated 18 February 2020, subject to the conditions set out below:
  - 1) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
  - 2) Before the use hereby permitted takes place, details indicating how waste will be stored and handled at the premises, shall be first submitted to and approved in writing by the local planning authority. All measures for the storage and handling of waste to the approved scheme shall thereafter be maintained in accordance with that approval and retained for so long as the use continues.
  - 3) The use hereby permitted shall only take place between the following hours: 08:00hrs – 23:00hrs Monday - Saturday; 10:00hrs to 12:00hrs on Sundays.

### Procedural Matters

2. For clarity, I have taken the description in the banner heading above from the application form. However, in my decision, I have taken the description of the development from the Council's decision notice, since this accurately and more succinctly describes the proposal.

3. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the amended UCO) will come into force on 1 September 2020, amending the Town and Country Planning (Use Classes) Order 1987 (as amended). Both main parties were given the opportunity to comment on any relevant implications for the appeal, but only the appellant has replied. I have had regard to the comments received and to the amended UCO in reaching my decision.
4. Section 4. of the amended UCO states 'If prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that application must be determined by reference to those uses or use classes'. I have dealt with the appeal on this basis.

### **Background and Main Issue**

5. Schedule 2, Part 3, Class C of the GPDO permits, amongst other things, development consisting of a change of use of a building from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order to a use falling within Class A3 (restaurants and cafés). This is a qualified right in that exceptions apply whereby development is not permitted by Class C if the cumulative floorspace of the existing building changing use under Class C exceeds 150 square metres. Other conditions also apply however these are only applicable if the development is able to comply with the floorspace requirements.
6. There is no dispute that the appeal site currently constitutes a Class A1 use and the proposed change of use does not exceed the floorspace. As such it is not disputed that the appeal proposal constitutes permitted development.
7. Under the provisions of the GPDO, development is permitted under Part 3, Schedule 2, Class C subject to Condition C.2 (1) that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to a range of potential impacts. In this case, it relates to (b) odour impacts of the development and (c) impacts of storage and handling of waste in relation to the development.
8. Having regard to the GPDO and the reason for refusal for the Prior Approval the main issue of this appeal is whether the proposed development for odour, noise and storage and handling of waste would be acceptable.

### **Reasons**

9. With regard to the storage and handling of waste in relation to the development, I consider that having regard to the size and capacity of the unit, and the existing use, the existing provision for waste handling is likely to be similar to the proposed use and therefore sufficient. The development would likely introduce the cooking of food within the existing unit and the appellant has not submitted any details of the likely extraction equipment that would be required as part of the proposed development or any existing equipment currently installed at the unit.

10. It is generally expected that details would be submitted with the application. However, whilst I have little details before me, I am mindful of paragraph 54 of the National Planning Policy Framework, which requires consideration as to whether otherwise unacceptable development could be made acceptable through the use of conditions. From my findings during my visit, I consider that suitably worded planning conditions could be attached to the proposed development, to ensure that suitable methods of storage/waste handling and method of ventilation, could be attached to my decision to ensure that no significant adverse effects would occur to the living conditions of neighbouring occupiers.
11. Part W(13) of the GPDO notes that prior approval may be granted subject to conditions reasonably related to the subject matter. I am content that these matters could be adequately controlled by the conditions attached to this decision and as suggested by the Council within their appeal statement. I also note that the Council's Environmental Health Department did not comment on the proposal, and this adds to my consideration that these matters could be satisfactorily controlled by condition.
12. Therefore, neither of the matters set out at Paragraph C.2(1)(a), (b) or (c) in the context of this appeal indicate that prior approval should be withheld. Additionally, I am also mindful of the amended UCO, which I consider to be a material consideration of significant weight in the determination of this appeal.

### **Conditions**

13. In addition to the standard 3-year time limit for commencement<sup>1</sup>, I have imposed additional conditions for details to be submitted regarding the method of ventilation/extraction and storage/handling of waste. I have also restricted the opening hours of the property. In all instances the conditions are reasonable and necessary in the interest of living conditions of neighbouring residential properties.

### **Conclusion**

14. Taking all matters into consideration, I conclude that the appeal is allowed.

*W Johnson*

INSPECTOR

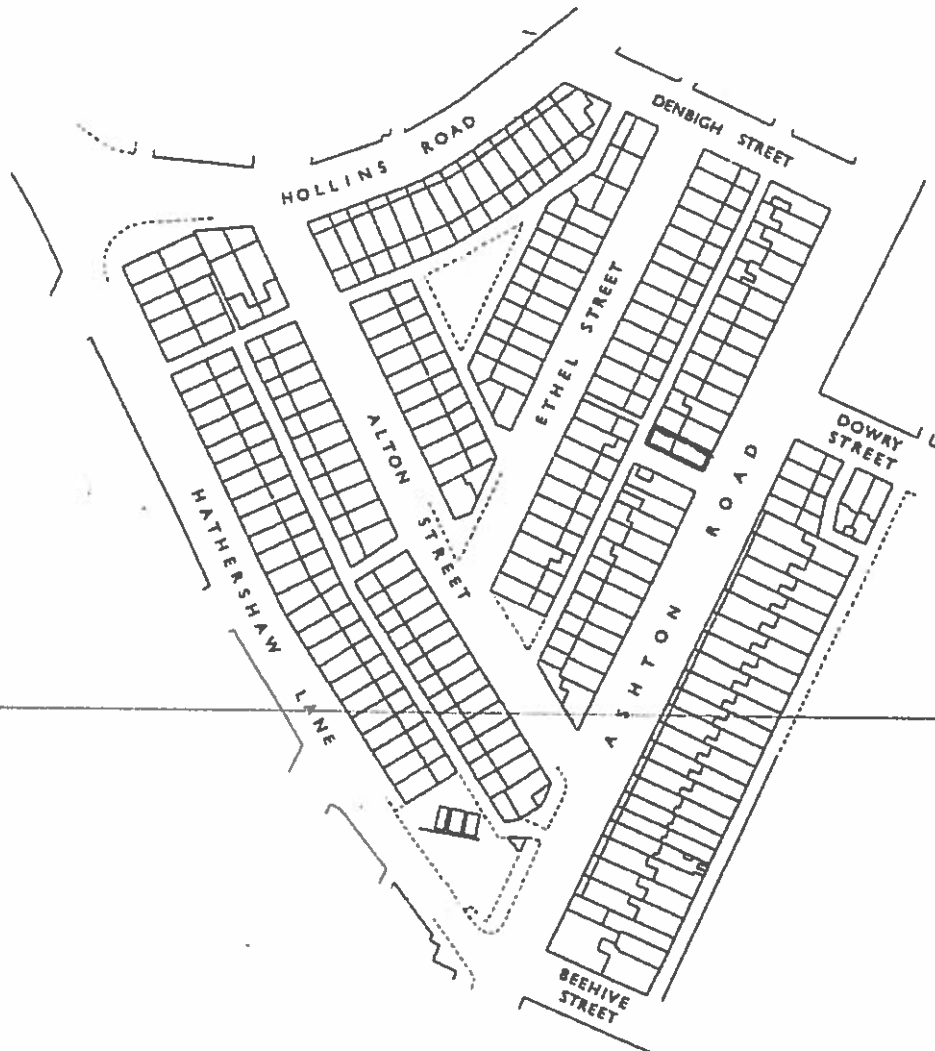
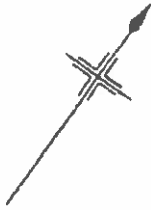
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<sup>1</sup> Class C2(3), Part 3, Schedule 2 of the GPDO



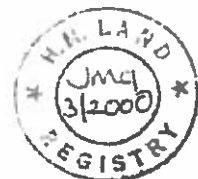
# H. M. LAND REGISTRY

NATIONAL GRID PLAN SD 9203 SECTION Y  
GREATER MANCHESTER  
OLDHAM DISTRICT Scale 1/1250



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## TITLE No. GM 832536









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## Appeal Decision

Site visit made on 3 August 2020 by L Wilson BA (Hons) MA MRTPI

**Decision by Chris Preston BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 18 August 2020**

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**Appeal Ref: APP/W4223/Z/20/3255593**

**59-61 George Street, Oldham OL1 1JF**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Mr Zaib Hussain against the decision of Oldham Metropolitan Borough Council.
  - The application Ref AD/344825/20, dated 1 May 2020, was refused by notice dated 3 July 2020.
  - The development proposed is illuminated fascia sign.
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### Decision

1. The appeal is dismissed.

### Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### Preliminary Matters

3. For clarity, I have taken the site address from the Council's decision notice and the appeal form as it is more precise than that given on the application form.
4. On the application form the appellant confirms that the advertisement is already in place. I noted on my site visit that the sign had been erected. From the evidence before me, it is clear that the proposal is to retain the advertisement, and I have dealt with it on that basis.

### Main Issue

5. The effect of the advertisement on the visual amenity of the area, including the setting of a Grade II listed building.

### Reasons for the Recommendation

6. The National Planning Policy Framework (the Framework) states that, the quality and character of places can suffer when advertisements are poorly sited and designed<sup>1</sup>. It also states that advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative

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<sup>1</sup> Paragraph 132

impacts. Planning Practice Guidance states that, in assessing amenity, regard should be had to the local characteristics of the neighbourhood<sup>2</sup>.

7. The appeal building relates to a retail unit located within the central shopping core of Oldham. From the evidence before me, I understand that the sign has been in place for a number of years. No information has been submitted to demonstrate the character and appearance of the previous shopfront, and associated signage.
8. The appeal site is within the setting of a Grade II listed building; George Street Chapel (LB). The LB makes a positive contribution to the area. From the evidence before me, the Chapel was constructed in approximately 1815 and is constructed of brick with a slate roof. Facing George Street, the Chapel has four tall windows with stone sills and flat-arched brick heads. Underneath these openings are basement windows. It also has panelled doors set within a stone pedimented architrave. On my site visit it appeared that the Chapel has been modernised over the years, for example through the use of roof lights. The setting of the Chapel has evolved and many of the surrounding buildings have been modernised with shop frontages which do not positively contribute to the setting of the LB.
9. The advertisement before me is visually dominant due to a combination of its size, siting and design. The eye is naturally drawn to the appeal site as the retail unit is considerably larger than the other units on this side of George Street. On the opposite side of George Street is a further large retail unit occupied by 'Bargains 4 less Superstore' which contained a prominent fascia side. However, I observed that, in general, other signs were less dominant because of the colours used, size of the text and discrete projections of both the sign and letters.
10. The appeal building has a front projection to the ground floor which has been largely screened by the advertisement. The sign has been awkwardly attached to the principal elevation of the building with fifteen prominent supporting arms which results in the sign appearing disjointed to the appeal building. That contrasts awkwardly with the established pattern of shopfront adverts which are generally flush with the outer façade of the building. The sign also includes projecting letters and the colour of the letters adds to its prominence.
11. The appellant's submission includes pictures of the sign illuminated. The pictures show that in the hours of darkness the sign also draws the eye due to its size and pink coloured letters. Accordingly, the scheme is visually intrusive and harms the visual amenity of the area.
12. The appellant recognises that the sign is not fully compliant with the Vibrant Centres Supplementary Planning Document (SPD). He considers that in order to be compliant with the SPD the sign would have to be in three parts which, in his view, would appear dysfunctional. It is difficult to assess whether an alternative arrangement could be configured given that the existing signage has covered over the majority of the original shopfront. However, I note that the adjacent signage (Lees Heginbotham) contains more modest advert which is in two distinct parts to reflect the vertical alignment of the building. Nothing has been presented to demonstrate that a similarly sympathetic frontage could not be achieved at the appeal site.

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<sup>2</sup> Paragraph: 079 Reference ID: 18b-079-20140306

13. I recognise that there are a variety of shop signs in the surrounding area, some of which have a harmful visual impact on account of their size and proportion in relation to their respective shop fronts. However, little information is before me as to how other advertisements gained consent, if at all, or how long they have been in situ. Consequently, whilst I noted a variety of signage in the local area, the presence of some unsympathetic signage should not set a precedent for further harmful additions that would degrade the character of the area.
14. Framework paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Framework paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Where there is less than substantial harm, this harm should be weighed against the public benefits of the proposal, where appropriate, securing its optimum viable use.
15. The appellant's Heritage Statement found that the scheme does not impact the setting of the Chapel. However, I do not agree with this conclusion. The appeal site is opposite the Chapel. The poor design of the sign results in an intrusive feature that draws the eye and detracts from the ability to appreciate the listed building, particularly in the hours of darkness when the sign is illuminated. Consequently, the scheme fails to preserve the setting of the LB.
16. The harm arising is less than substantial given the other signs within the vicinity of the Chapel, nonetheless it is of considerable importance and weight. This harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The appellant has not put forward any public benefits within the appeal statement. The proposal therefore causes harm that is not justified or outweighed, as required by the Framework.
17. For the reasons given above, I find that the advertisement harms the visual amenity of the area and the setting of the Grade II listed building. The provisions of the development plan, so far as they are relevant, have been considered. Since the advertisement causes visual harm to the area and the setting of the LB, the scheme does not meet with the aims of Policies 9, 20 and 24 of the Oldham Local Development Framework: Development Plan Document- Joint Core Strategy and Development Management Policies (2011), or paragraph 132 of the Framework.

### **Conclusion and Recommendation**

18. For the reasons given above I recommend that the appeal should be dismissed.

*L M Wilson*

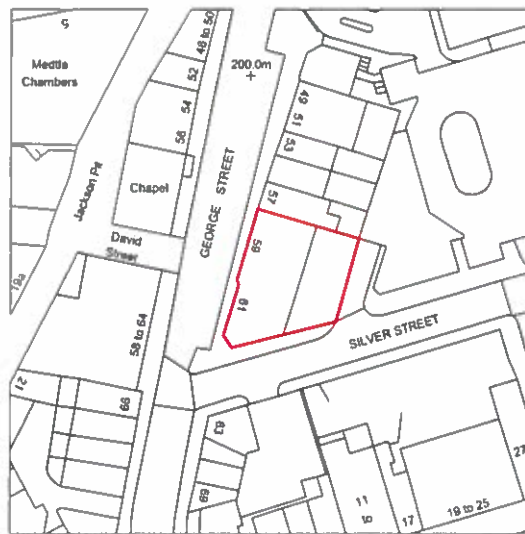
APPEALS PLANNING OFFICER

### **Inspector's Decision**

19. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be dismissed.

*Chris Preston*

INSPECTOR



Location Plan

Rev - 1999-mms-dd Initial Revision Notes

NOTE: Do not build anything shown to future alterations. This drawing has been prepared for planning purposes only and is to be read in conjunction with all other relevant planning drawings, details and specifications. All works are to be carried out in accordance with the latest edition of the Building Regulations and any amendments, together with all relevant British Standards and codes of practice. All dimensions unless noted otherwise are in millimetres. All dimensions and levels are to be obtained by the contractor at the time of construction or commencement of work on site. Contractors shall, and without removal of the possibility of all existing building, structures, walls, fences, etc. and ground level. All materials and products used are to be first (or better) quality of similar specification with the supplier's technical specifications. At all stages of work the contractor will be required to provide and retain under the control of all buildings, structures and equipment etc. a full record. During the construction period all existing drawings shall be kept up to date to show any variations and correct those variations.

**Issue Purpose : Planning Application**

Client	N/A	Drawn	SH
Project	Proposed shop fronts	Des	17-10-2016
Address	59-61 George Street, Oldham, OL1 1JF	Scale	1:1250 @ A4
Title	Location Plan	Stage Identification	
Design	0	Sketch Scheme	SK
Drawing Number	16096 - P - 01	Planning	P Construction - C

Faun Architecture  
 Studio 17  
 Bradford Chamber Business Park,  
 New Lane, Listerdyke  
 Bradford, BD4 8BX  
 01274 928259

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## Appeal Decision

Site visit made on 3 August 2020 by L Wilson BA (Hons) MA MRTPI

**Decision by Chris Preston BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 18 August 2020**

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**Appeal Ref: APP/W4223/Z/20/3255362**

**7 Elk Mill Central Retail Park, Broadway, Royton OL2 5HX**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Mr L Knaggs, on behalf of Wren Kitchens, against the decision of Oldham Metropolitan Borough Council.
  - The application Ref AD/344011/19, dated 7 October 2019, was refused by notice dated 15 June 2020.
  - The development proposed is Scanlite Digital Electronic LED Full Colour Ticker Display to advertise special offers, sales etc. Full colour, variable text, images.
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### Decision

1. The appeal is allowed and express consent is granted for the display of advertisement as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

### Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### Main Issue

3. The effect of the proposed advertisement on highway safety.

### Reasons for the Recommendation

4. The Planning Practice Guidance (PPG) states that all advertisements are intended to attract attention but proposed advertisements at points where drivers need to take more care are more likely to affect public safety. For example, at junctions, roundabouts, pedestrian crossings, on the approach to a low bridge or level crossing or other places where local conditions present traffic hazards. There are less likely to be road safety problems if the advertisement is on a site within a commercial or industrial locality, if it is a shop fascia sign, name-board, trade or business sign, or a normal poster panel, and if the advertisement is not on the skyline<sup>1</sup>.
5. The appeal site is located within an established retail park. The proposed advertisement would be attached to the front elevation of the retail unit and would be used to advertise special offers in store. The retail park is adjacent to

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<sup>1</sup> Paragraph: 067 Reference ID: 18b-067-20140306

a slip road associated with the A627M. The highway is part of the Boroughs strategic network with high traffic flows and links to the M60 and M62 motorways.

6. Highways England did not object to the application. In contrast, the Council's Highways Officer recommended that the application should be refused as they considered that the signage would pose a distraction to drivers and have a detrimental impact upon highway safety. The appellant has referred to research, and TFL guidance, in support of the appeal to demonstrate that advertising displays do not unduly distract drivers.
7. Paragraph 109 of the National Planning Policy Framework (the 'Framework') states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
8. I noted on my site visit that the advertisement would not be visible from the motorway given the siting of the retail unit but would to a degree be seen from the slip road. Although drivers could be travelling at speeds of up to 70mph at this location it is likely that they would be driving slower due to the warning sign associated with the traffic lights and roundabout sign. Drivers would naturally be slowing down on the approach to the signalised roundabout.
9. The Council states that they have taken measures to ensure that the number of accidents on this strategic route are low. However, they have not detailed what these measures include. The appellant has submitted evidence demonstrating that in the last 10 years there has been no accidents along the stretch of the slip road from where the signage would be visible. The accidents shown on the map relate to the roundabout. By the time vehicles reach the roundabout the sign would already be behind them and it would not be conspicuous at the approach to the junction.
10. The appellant has highlighted that at the point where the sign would be first visible it would be located approximately 130 metres away at an angle of 42 degrees from the road line and direction of travel. They go on to state that at its closest, it would be 90m away and at an angle of 90 degrees. Thus, although the retail unit faces towards the slip road, drivers would not naturally look towards the sign given the direction of travel and they would be primarily focusing on the roundabout. Additionally, there would be a large gap between the proposed advertisement and the slip road.
11. The retail park contains many other advertisements which are visible from the slip road. The proposed advertisement display would appear modest in comparison to the established signs. The retail park also contains large warehouse style buildings and is also characterised by trees, grass verges, fencing, lighting and parked cars. Thus, there are already many elements which could draw the eye. The sign would appear relatively subservient from the slip road because it would not be seen in isolation and would be seen in the context of numerous features.
12. Accordingly, as a result of the advertisement's relationship with the slip road, its size and other features within the context of the site, I find that the scheme would not distract drivers or increase the risk of accidents.



13. The Highways Officer has referred to an appeal dismissed a number of years ago. The information regarding the dismissed appeal is extremely limited, therefore it is difficult to compare it to the proposal before me. In any event, I have determined the appeal scheme on its own individual planning merits.
14. For the reasons given above, I find that the proposed advertisement would not have an unacceptable impact upon highway safety. The provisions of the development plan, so far as they are relevant, have been considered. Since the proposed advertisement would not have unacceptable impact upon highway safety, the scheme would meet with the aims of Policy 9 of the Oldham Local Development Framework: Development Plan Document- Joint Core Strategy and Development Management Policies (2011) and the Framework.

### **Conditions**

15. The Council has indicated on the appeal questionnaire that they do not consider that any conditions other than the five standard conditions set out in Schedule 2 of the 2007 Regulations should be imposed in the event that the appeal is allowed and express consent as applied for is granted. The appellant also has not suggested any further conditions. Therefore, based on the evidence presented, I consider that no further conditions are necessary.

### **Conclusion and Recommendation**

16. For the reasons given above I recommend that the appeal should be allowed.

*L M Wilson*

APPEALS PLANNING OFFICER

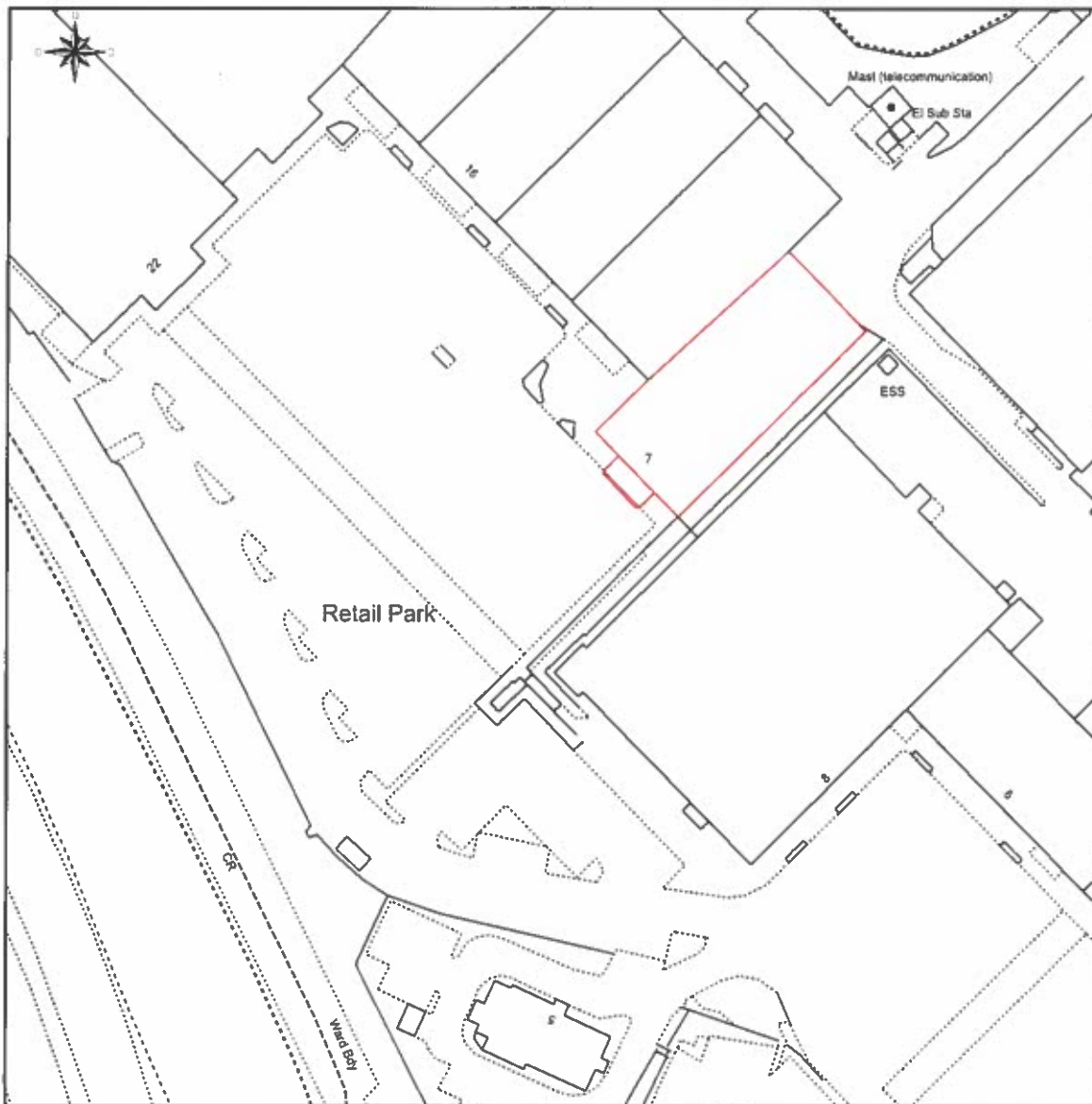
### **Inspector's Decision**

17. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be allowed subject to the five standard conditions.

*Chris Preston*

INSPECTOR





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0m 20m 40m 60m 80m 100m

Scale: 1:1250, paper size: A4



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Prepared by: Faye Rowbottom, 04-10-2019

