



Appeal Decisions

Site visit made on 10 June 2025

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 18 JULY 2025

Appeal A Ref: APP/N5660/C/24/3352086

Ground Floor, 280 Rosendale Road, LONDON, SE24 9DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Mohammed Uddin against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The notice was issued on 22 August 2024.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the premises from a dry cleaners (Use Class E(a)) to a hot food takeaway (Sui Generis) ('the hot food takeaway') - and the installation of an associated silver, cylindrical extractor flue at the rear of the property projecting up the east flank elevation wall to above eaves level facilitating the unauthorised use ('the extractor flue').
 - The requirements of the notice are: 1) Cease the hot food takeaway use of the premises; and 2) Remove the extractor flue (and all associated fittings/brackets etc) from the premises and make good the affected elevation with materials to match existing; and 3) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
 - The period for compliance with the requirements is: Four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/N5660/W/24/3348488

280 Ground Floor, Rosendale Road, Lambeth, London, SE24 9DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Mohammed Uddin against the decision of the Council of the London Borough of Lambeth.
 - The application Ref is 24/00412/FUL.
 - The development proposed is Change of use of existing ground floor from dry cleaners to a hot food takeaway.
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Appeal A Decision

1. It is directed that the enforcement notice is corrected and varied by:

In the heading of the notice after the words 'MATERIAL CHANGE OF USE' the insertion of the words 'AND OPERATIONAL DEVELOPMENT'; and

In paragraph 6 of the notice the deletion of the words 'Four months' and their substitution with the words 'six months'.

2. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Decision

3. The appeal is dismissed.

Appeal A - The Notice

4. The notice heading references a material change of use only whereas it is clear from the allegation, reasons and requirements that the notice also attacks operational development. I can correct the heading for clarity without injustice.

Appeal A: the appeal on ground (a) and the deemed planning application ('DPA') and Appeal B

Preliminary Matters

5. The revised National Planning Policy Framework 2024 ('Revised Framework') came into force during the course of the appeal. The parties were given an opportunity to comment on this as regards the Appeal ground (a) appeal and the Appeal B appeal. Submissions made have been considered.
6. The application form referred to the former use of the appeal premises as being a 'launderette' whereas the appellant's representations in this appeal indicate that the previous use was as a dry cleaners. I have therefore taken the description of development in my Appeal B banner heading from the decision notice.
7. A number of documents cross-referenced by the parties in written representations were not submitted with the appeals. Copies were requested and an opportunity given for comments, which have been taken into account.

Main Issues

8. The developments which are the subject of Appeals A and B namely material change of use to a hot food takeaway ('HFT') and installation of an extractor flue are effectively the same and so I deal with these together.
9. The main issues are:
 - (i) Whether the change of use is acceptable having regard to policies related to promotion of healthy lifestyles;
 - (ii) the effect on the vitality, viability and function of the Local Centre;
 - (iii) the effect on the living conditions of neighbouring residents; and
 - (iv) whether the development is acceptable in the absence of a planning obligation precluding business parking permits.

Reasons

Healthy lifestyles

10. Policy ED8 of the LP outlines the Council's intention to manage the location of hot food takeaways near schools so as to promote healthy lifestyles. To this end, paragraph E of this policy indicates that 'Proposals for hot food takeaways will not be permitted if proposed within 400 metres of the boundary of a primary or secondary school'. The appeal site is only some 216m from Rosendale Primary School and so the hot food takeaway use results in a direct policy conflict.

11. The appellant argues that as the affected school is a primary school, parents would be accompanying their children (with the implication presumably that parents can therefore control whether or not HFT purchases are made). I am mindful though that Policy ED8 makes no distinction between primary and secondary schools and in any event, it is likely that older primary school children could walk to school by themselves.
12. The proposed opening hours for the appeal premises on the Appeal B application form (16:30 – 23:00) fall outside the times when children would typically be walking to and from school/school lunch hours. However, the opening times proposed could well conflict with times of after-school clubs ending and Policy ED8 makes no exception related to opening hours.
13. While different opening hours could be secured by condition, there is a reasonable likelihood that the business would later seek to extend operating hours to the daytime and the Council may find it more difficult to resist such an application in the case of a lawfully established existing business. There is a possibility that healthy food choices could be offered on the menu of the HFT business but the appellant offers no valid mechanism for enforcement of this.
14. The appellant cites a number of research/analysis documents related to the causes of childhood obesity, including as regards proximity of schools to HFT premises. The appellant seeks to rely on these to demonstrate a lack of consistent evidence between ‘features of the food environment and adolescent weight status’; that schools’ policies including on leaving the premises at lunchtimes have a significant impact on pupils’ food behaviours; that a 400m buffer for schools is insufficient; and that newsagents and other retail uses also contribute to children’s unhealthy food choices.
15. While the 2018 Leeds longitudinal analysis¹ cited references inconsistencies in evidence on the association between the density of HFTs and childhood obesity, it concluded that policies directed at controlling environmental features may have limited effect when ‘implemented in isolation from other strategies’. The implication then is that such policies controlling HFTs are useful as part of a wider approach. This reflects findings in the 2011 Brighton and Hove impact study² that while a school’s lunchtime policies have an ‘overarching influence’ on pupils’ eating habits, the proximity of HFTs (and newsagents/supermarkets) also formed part of the ‘problem’.
16. While a 400m buffer may have been found to be insufficient, and while it is noted that newsagents and supermarkets also contribute to unhealthy eating of school pupils, it does not follow that a policy restricting HFTs within 400m of schools should be ignored as clearly this serves a useful purpose. The research/analysis cited is not then sufficient to challenge the premise of Policy ED8.
17. The appellant has also referenced an appeal decision³ where the Inspector commented that he had ‘been shown no evidence that the location of a single takeaway within walking distance of schools has a direct correlation with childhood obesity’. While I do not have full details of the circumstances leading to the 2011 Appeal Decision, clearly the Inspector was only commenting on the evidence

¹ Is adolescent body mass index and waist circumference associated with the food environments surrounding schools and homes? A longitudinal analysis (2018)

² Hot-food takeaways near schools; An impact study on takeaways near secondary schools in Brighton and Hove (2011)

³ Ref: APP/E5900/A/10/2141935 (‘2011 Appeal Decision’)

available to him at that time. Further, in that case there were ‘no adopted or emerging local policies that would support refusal’ of the proposed HFT in the proposed location.

18. As to the Revised Framework, paragraph 97 sets out that applications for HFTs should be refused a) within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or b) in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social behaviour. The Framework’s glossary states that a ‘town centre’ local centres, such as that where the appeal site is located.
19. In my view, Policy ED8 is broadly consistent with Government policy contained in paragraph 97. Although the Revised Framework offers some discretion as to proposals for HFTs near schools within town centres, plainly, paragraph 97 does not say that proposals for HFTs must be permitted when within a local centre and in walking distance of a school, or that proximity to a school is irrelevant to a proposal for a HFT within in local centre.
20. Indeed, paragraph 97 also indicates that in locations where there is evidence of a concentration of HFT uses having an adverse impact on local health, an application should be refused. The 2019 study⁴ referenced by the Council sets out the rate of HFTs per 100,000 of the population and raises concerns of a high density of HFTs in the borough, along with above-average rates of childhood obesity. Although the 2019 study accepts that a range of non-planning measures need to be taken to safeguard health of children in Lambeth, it also recognises the concentration of HFT uses in the borough as a contributory factor in adverse impacts on public health.
21. While the appellant seeks to challenge the Council’s evidence as to whether there is a direct correlation between childhood obesity and the presence of HFTs in close proximity to schools in Lambeth, the appellant’s own evidence accepts this as a contributory factor in other locations. Further, the correlation was considered sufficient to justify Policy ED8 when the LP was examined. I find then that per paragraph 97(b) of the Revised Framework, there is evidence of a concentration of HFT uses having an adverse impact on local health in Lambeth.
22. I find then on the first main issue that the change of use is not acceptable having regard to policies related to promotion of healthy lifestyles. There is conflict with Policy ED8 of the LP as explained above.

Effect on Local Centre

23. The appeal site is located within the Rosendale Road/Guernsey Road Local Centre where Policy ED11 of the Lambeth Local Plan (2021) (‘LP’) indicates that ‘The council will support and protect the role of local centres and local shops in meeting the day to day needs of communities’ and that ‘Active frontage uses, and particularly retail uses, will be encouraged and protected’.
24. It is stipulated that the change of use of ground floor units will be supported only where the proposed use is an active frontage use and an appropriate mix and balance of uses is retained. Policy ED11 also confirms that the requirements of

⁴ Promoting healthy eating in Lambeth – focusing on the impact on health of hot takeaway fast food outlets (September 2019)

Local Plan policy ED8 applies in this context. Paragraph C of Policy ED11 exceptionally permits loss of active frontage uses within local centres subject to evidence of marketing for an active frontage use and where the proposal would not detrimentally affect the character of the local centre. No marketing evidence has been submitted in this case.

25. The previous use as a dry cleaners represents an active frontage use qualifying for protection under Policy ED11. As regards the HFT use proposed, while there would be an active frontage during late afternoon and evening hours, there would be an inactive frontage for much of the day when the HFT is proposed to be closed. Daytime opening hours, if considered appropriate/viable by the appellant would in any event lead to a greater degree of conflict with Policy ED8 of the LP as detailed above.
26. The appellant argues that the HFT use would add to the variety on offer within the Local Centre, represent a 'vibrant re-use', would not result in an overconcentration of HFTs, and would encourage footfall in the Local Centre in the context of current challenges to the high street and local centres. These factors do not overcome the harm identified from the loss of an active frontage during much of usual daytime opening hours.
27. I conclude then on the second main issue that the appeal development has an adverse effect on the vitality, viability and function of the Local Centre. There is a moderate degree of conflict with Policy ED11 for the reasons outlined above.

Living conditions

28. The appeal development entailed the installation of a large flue on the side of the building which has been the subject of complaints from residential properties. The Officer's report on the Appeal B application assessed that the flue was acceptable subject to the imposition of conditions. However, the Council has in the notice and in appeal representations maintained an objection to the flue.
29. The appellant has produced technical specifications and details how the flue's installation, servicing and maintenance could mitigate against odour and noise impacts. The appellant identifies though that there is a high level of odour control requirement for the type of cooking entailed in the HFT use at the appeal premises. While it is possible that a flue system with appropriate servicing and maintenance plan could adequately control odour and fumes, in my view a flue offering a high level of odour control is likely to have a higher noise impact. As such, in the absence of independent noise assessment and given the close proximity of residential properties on upper floors, I cannot be satisfied that noise levels could be reduced to an acceptable level in the circumstances.
30. As such, and while I recognise that a certain level of noise might be expected in a local centre, I find then on the third main issue that on the available evidence, the appeal development has a harmful effect on the living conditions of neighbouring residents. There is conflict in this way with Policy Q2 of the LP which seeks to ensure that the adverse impact of noise is reduced to an acceptable level through the use of attenuation, distance, screening, or layout/orientation.

Business parking permits

31. Policy T6 of the LP encourages the use of sustainable modes of transport and paragraph D of the LP states that development should be permit-free where the development has a PTAL of 4-6 and/or where it falls within an existing or planned controlled parking zone. The Council indicates that the appeal development is not acceptable in the absence of a planning obligation preventing employees of the appeal premises from obtaining business parking permits given its location within a controlled parking zone.
32. The appellant submits that this is not justified given the previous business use of the appeal premises as a dry cleaners (without any such obligation in place for previous employees). The appellant suggests that the high accessibility rating of the appeal site (PTAL 5) means that numerous trips will likely be made by sustainable modes of transport.
33. In my view, without evidence related to the number of people employed in the previous and current businesses, it is not possible for me to conclude that the change of use does not warrant control of business parking permits. It could for example be that the numbers of employees in the HFT business could far exceed those employed previously.
34. While the PTAL rating of the appeal site means that more people are likely to use sustainable modes of transport when accessing the appeal premises, it is in more accessible locations where this is expected and thus restriction on parking permits is justifiable and practicable. Practical needs of businesses were no doubt taken into account in formulating development plan policy and there is nothing to suggest any exceptional practical needs in this case.
35. I find then on the fourth main issue that on the evidence before me, the development is not acceptable in the absence of a planning obligation precluding business parking permits being obtained by employees of the appeal premises. There is conflict with the aims of Policy T6 of the LP in encouraging use of sustainable forms of transport.

Other Matters

36. The appellant draws my attention to paragraph 85 of the Revised Framework which states that 'Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt' and that 'significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development'. While I have little detailed information on this, I recognise the economic benefits stemming from the appeal development including as regards job creation and by its contribution to the evening economy.
37. The Officer's report on the Appeal B application indicated that matters concerning waste storage, recycling and collection could be dealt with by condition. The Council has though raised these matters as concerns within the enforcement notice and appeal representations. However, I am mindful that these sorts of matters are commonly dealt with by condition and there is no substantive evidence here to indicate why this could not be the case in this instance.

Appeal A – ground (a) and the DPA and Appeal B Conclusion

38. The appeal development results in harm and conflict with development plan policy related to healthy lifestyles, protection of the vitality of local centres and living conditions, along with encouragement of sustainable modes of transport. I find then that it conflicts with the development plan, read as a whole. For the same reasons it does not represent the sustainable development in respect of which the Revised Framework creates a presumption in favour.
39. While the appeal development offers some economic benefits, these do not outweigh the development plan conflict and harm found. For these reasons, ground (a) and the DPA and Appeal B should be dismissed.

Appeal A - The appeal on ground (g)

40. The appeal on ground (g) is that the time for compliance (4 months) falls short of what is reasonable.
41. The appellant requests a compliance period of twelve months in order to be able to restore the premises and relocate the business without undue hardship to the business owner, citing the need for specialists to carry out the works, and to allow employees time to be 'deployed to alternative means of employment'.
42. The works stipulated by the requirements entail essentially the removal of the flue and making good of the affected elevation. While I note that the appellant will need to employ appropriate specialists to carry out these works, there is no substantive evidence to suggest that this could not be undertaken within the 4 month compliance period stated in the notice, nor that the works required would be structural in nature.
43. I recognise though that the appellant seeks additional time also so as to seek to relocate the business and to seek to allow employees to be deployed elsewhere. Taking into account the numerous steps typically involved in relocating a business of this kind, an extension of two months to the stated compliance period would strike a fair balance between bringing the ongoing harm to an end while allowing the appellant a reasonable period to seek alternative premises. The ground (g) appeal succeeds to this limited extent.

Appeal A Overall Conclusion

44. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Appeal B Overall Conclusion

45. For the reasons given above the appeal should be dismissed.

V Bond

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/N5660/C/24/3352086	Mr Mohammed Uddin
Appeal B	APP/N5660/W/24/3348488	Mr Mohammed Uddin