



Appeal Decision

Site visit made on 23 July 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2025

Appeal Ref: APP/Z4718/C/23/3324897

Land and Property at 2 Barr Street HD1 6PB and 333-335 Leeds Road, Huddersfield HD2 1YB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Jafer Abbas against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 17 May 2023.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use from retail to a mixed use retail, hot food takeaway and restaurant; and the construction of external ventilation extraction flue and external metal staircase to facilitate the use.
 - The requirements of the notice are to:
 - a) Cease the hot food takeaway and restaurant elements of the mixed use of the site.
 - b) Remove all internal fixtures and fittings associated with the hot food and restaurant elements of the mixed use.
 - c) Permanently dismantle the external ventilation flue at the site.
 - d) Permanently dismantle the external staircase at the site.
 - e) Remove all dismantled resulting material from the site.
 - The period for compliance with the requirements is 60 days.
 - The appeal was made on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1) Adding “:The ground floor and basement,” after “at” before “2” in section two.
 - 2) Deleting “and external metal staircase to facilitate the use” from section three.
 - 3) Deleting requirement d) from section five.
2. Subject to the corrections and variation, the appeal is dismissed, and the enforcement notice is upheld.

The Enforcement Notice

3. I wrote to the main parties with questions about the notice following my visit and review of the submissions. In broad terms my questions related to the identification of the planning unit and whether the allegation correctly described the mixed use. Both parties responded and confirmed that the lawful use of the ground floor of 2 Barr Street is for retail purposes.
4. The Council agreed that the metal staircase does not facilitate the alleged material change of use of the ground floor and basement and should be deleted from the allegation and requirements. I shall therefore make corrections and variations to the

allegation and requirements; doing so will cause no injustice to the appellant since in effect this reduces the scope of the notice and requirements.

5. The appellant's case on ground (d) was made in respect of the metal staircase and since that has been deleted from the notice, the appeal on ground (d) does not need to be considered.

The appeal on ground (c)

6. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged do not constitute a breach of planning control.
7. Whilst it was evident at my visit that the appellant has, since the notice was issued, complied with some requirements, namely the restaurant and takeaway use have ceased, the appropriate time period for the consideration of a ground (c) appeal is at the time when the notice was issued and when the appeal is determined.
8. Where there is a question about whether a material change of use has occurred, it is necessary to identify the 'planning unit,' and the present and previous primary (as opposed to incidental) uses of that unit. The planning unit is usually the unit of occupation, that is, the unit occupied for one or more primary uses, unless a smaller area of land can be identified which is physically and functionally separate and distinct. For there to be a material change of use, there needs to be some significant difference in the character of the activities taking place within the planning unit from what has gone on previously.
9. The appeal site is the ground floor and basement of 2 Barr Street and 333-335 Leeds Road. There is no dispute that the pre-existing and lawful use of the appeal site is for retail purposes, as a shop. For the purposes of this appeal, I am satisfied that the ground and basement floors, subject of the notice, comprises a single unit of occupation (the planning unit) with a single lawful use.
10. In broad terms the appellant's case is that there was no mixed use since the restaurant falls within class E of the UCO¹, the same as the shop, and those uses were separate, with the takeaway being ancillary to the restaurant.
11. The takeaway (ground floor kitchen – as described by the appellant) had the typical appearance of a takeaway, with counter and overhead displays displaying the menu and prices of food. The degree to which the sale of hot food takeaway items is ancillary to a restaurant use is not defined, but I consider the sales from a genuinely ancillary takeaway business would be a small proportion of total sales. At 32%, the takings from the takeaway made up almost a third of the takings for the restaurant and takeaway business combined which could not be described as a small proportion. Accordingly, I cannot conclude that the takeaway was ancillary to the restaurant use.
12. The uses all shared the same access from the street and there was no physical divide between the uses, with the restaurant in the basement being accessed via a staircase from the retail and takeaway areas. Moreover, it appears that the kitchen on the ground floor served both the takeaway and restaurant. Accordingly, given the physical, and functional connection – in respect of the takeaway and restaurant,

¹¹ The Town and Country Planning (Use Classes) Order 1987 as amended.

as a matter of fact and degree the site was in a mixed use as correctly identified by the allegation.

13. In the absence of substantive contrary explanation, it seems to me that customers of the pre-existing shop (retail use) would have come and gone reasonably quickly, and it is probable that evenings hereabouts would be relatively undisturbed by commercial activity.
14. In contrast the takeaway and restaurant elements of the use are likely to have resulted in an increase in comings and goings, particularly in the evenings when people are more likely to be collecting takeaways or dining out, along with additional traffic associated with deliveries. Such activity, along with customers congregating around the property whilst waiting for and eating takeaway food, and cooking smells, would have likely had a greater impact on occupiers of neighbouring dwellings as a result of noise, disturbance, and odour.
15. The use would have, on the balance of probabilities, resulted in a definable change in the character of the appeal site. Accordingly, as a matter of fact and degree, it is more likely than not that the change in the use from retail to the mixed use alleged was material. The appellant has not shown that the change in the character of the activities was not material or does not require planning permission.
16. For the reasons given, I conclude that the appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. On the balance of probabilities, planning permission is required but not granted for the alleged material change of use and operational development. The appeal fails on ground (c).

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR