



Appeal Decision

Site visit made on 7 January 2026

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th February 2026

Appeal Ref: APP/U5360/C/24/3341174

Arch 402 Mentmore Terrace, Hackney, London E8 3PH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
- The appeal is made by Cricket Delivery Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 14 February 2024.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the Property to a commercial kitchen and delivery centre (Sui Generis Use) and associated operational development consisting of the installation of an extraction flue.
- The requirements of the notice are: 1. Cease the use as a commercial kitchen and delivery centre; 2. Remove the extractor (as shown in attachment 5) on the west facade; 3. Remove all fixtures and fittings and equipment facilitating the use of the Property as a production kitchen; 4. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above; 5. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the Property and its premises.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Act. 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.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the development already carried out, namely the material change of use of the Property to a commercial kitchen and delivery centre (Sui Generis Use) and associated operational development consisting of the installation of an extraction flue at Arch 402 Mentmore Terrace, Hackney, London E8 3PH as shown on the plan attached to the notice and subject to the attached Schedule of Conditions.

Ground (c)

2. To succeed under this ground of appeal the appellant needs to show, on the balance of probabilities, that the material change of use of the site to a commercial kitchen and delivery centre (the MCU) and associated flue do not constitute a breach of planning control.
3. The appellant's case under this ground relies on the existing use falling within the Class E use class (as defined by The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO)), and the site previously being used for purposes falling within Class E continuously for more than ten years before the MCU took place. There is no dispute that the previous lawful use of the site was for purposes falling within Class E. However, it is disputed whether the existing use falls within Class E, or whether it is a *sui generis* use, which does not fall within any use class.

4. It is not essential for the notice to state the former use. If the site had been in use consistently, without significant interruption, for purposes falling within Class E for at least ten years before the MCU is said to have taken place, and if the existing use falls within Class E, then the MCU would not have constituted development requiring planning permission under the provisions of section 55(2)(f) of the Act.
5. Class E is defined at Part A of Schedule 2 of the UCO as the use, or part use, for all or any of various purposes, including: (c) for the provision of the following kinds of services principally to visiting members of the public – (i) financial services, (ii) professional services (other than health or medical services), or (iii) any other services which it is appropriate to provide in a commercial, business or service locality; and (g) for – (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. It also needs to be borne in mind that Article 3(6)(r) of the UCO states that no class specified in Schedule 2 includes ‘use as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises’.
6. Hot food, sold in individual orders through an online platform, is taken away from the site by delivery ‘riders’, for consumption elsewhere. There is no provision for food to be consumed on the premises or for public collection of food orders. As a matter of fact and degree, this is a use consistent with the description provided at Article 3(6)(r) of the UCO, and as such the existing use does not fall within any specific use class, and constitutes a *sui generis* use.
7. There is limited precise and unambiguous evidence as to how the site was previously used. The photographs provided offer little more than undetailed snapshots in time which appear to show retail and food preparation/sales uses over some periods since 2008. It remains unclear whether any of those uses were permitted, remained continuous, or gained any lawfulness through the provisions of section 171B of the Act. However, even if I were to accept that the site can be lawfully used for purposes falling within Class E, it has not been shown, on the balance of probabilities, that no material change of use requiring planning permission has taken place.
8. The appeal under ground (c) therefore fails.

Ground (a) and the deemed application for planning permission

9. The main issues are: the effect of the development on the character and appearance of the area; the effect of the development on the living conditions of neighbouring residents, with particular regard to odour and noise; and whether appropriate waste management measures could be put in place.

Character and Appearance

10. The site is a railway arch facing onto Mentmore Terrace, with a servicing yard to the rear, accessed off London Lane. An air intake vent is flush with the front elevation and air extract ducting is fitted to the rear elevation. Gardens and rear facing windows of residential properties on Martello Street are located nearby, backing onto the rear of the site, while residential windows on the opposite side of Mentmore Terrace face the front of the site. The wider urban area is mainly residential in character, but there is a notable abundance of commercial/industrial

uses locally, including within neighbouring railway arches. Another prominent feature is the railway with associated infrastructure and activity above the arches.

11. The existing air intake vent is industrial in character, which contrasts with the modern developments on the opposite side of Mentmore Terrace. However, this is entirely consistent with the appearance of the row of railway arches, where blank roller-shutters and security doors are commonplace.
12. The existing air extract system comprises ducting on the rear elevation which runs above brickwork to terminate above the bottom of solid metal barriers, which are painted blue and enclose the railway lines. The ducting protrudes out from the brickwork elevation in two sections to avoid the blue barriers. Tall palisade fencing, also painted blue, prevents public access to the rear servicing area.
13. I have been referred to plant/ducting claimed to have been fitted to other railway arches locally, but the extract ducting at the site was the only plant visible under the railway in views from London Lane during my visit. Even in the absence of other plant, the rear elevation of this section of railway arches is distinctly industrial in character on account of the unavoidable presence of railway infrastructure, including tall metal barriers and columns, and the fencing enclosing the rear servicing yard where commercial waste bins are stored.
14. The proximity of residential buildings and other commercial premises, including a public house on Martello Street, create a pocket between the railway and London Fields open space which is mixed in character and appearance. In this context, while the existing ducting is a tall and shiny feature close to houses and visible from London Lane and Martello Street, it does not harm the character or appearance of the area within which it is seen and experienced. The development is not therefore awkward or alien to its mixed surroundings, even if it is not of the highest architectural and urban design quality or harmonious with the architecture of the arches. It is a metal flue to a commercial unit below a railway, facing onto a fenced-off servicing yard, in an area where such infrastructure is not out of the ordinary.
15. Proposed changes to the intake system would be internal and would not have any effect on the external appearance of the building. Proposed alternative extract ducting would not project out as far from the rear elevation and would be lower in height compared to the existing ducting. It would therefore be less obvious within its mixed surroundings. As the proposed amendments to the intake and extract systems would be associated with the use, the end development would comprise part of the matters stated in the notice as being in breach of planning control.
16. I therefore find that the existing and the proposed intake and extract systems associated with the MCU do not, and would not, harm the character or appearance of the area or conflict with the broad aims of Policy LP1 of the Hackney Local Plan 2033 (2020) (HLP) and Policy D3 of the London Plan (2021) (LP). These seek to ensure development is compatible with, and respects and responds to, local character, amongst other things.

Living Conditions

Odour

17. The Council has received complaints regarding odour associated with the MCU. As the extract system is located on the rear elevation, on account of their proximity to

- each other, I consider residents of properties on Martello Street with rear windows and/or gardens facing the site to be those most likely to experience odour associated with the use. That said, residents further away could also be affected.
18. The appellant has proposed alterations to the extract system, which include the addition of internal filters to control odour, as set out in a Risk Assessment for Odour (RAO). The RAO provides a scoring system for identifying the type of odour control needed at the site, to suit the existing operation based on the dispersion of cooking smells, proximity to receptors, size of kitchen, and cooking type. It advises that a high level of odour control is required in this case.
 19. The RAO and the appellant's Statement of Case refer to the reheating of Indian food, rather than cooking from fresh. However, the tables provided in the RAO show that even if the scoring calculations were amended to account for the cooking of Indian food from fresh, the overall score for the operation would remain within the same high level of odour control requirement category, rather than the 'very high' category.
 20. The filters proposed would constitute the high level of odour control specified in the RAO. The RAO explains that these would filter out oil and grease particles and remove malodorous gases, subject to appropriate maintenance and replacement of filters. The Council has not disputed this and there is nothing before me to suggest this is incorrect or not achievable.
 21. A plan titled 'odour control' has been provided which shows a different external arrangement proposed for the extract system, omitting an atmospheric side attenuator. However, it is clear that the details pertinent to odour control shown in that plan have been incorporated into the later plan titled 'proposed floor plan & elevations'¹. The odour control plan should not therefore be taken to show the full extent of the proposed amendments.

Noise

22. Notwithstanding the fact that the site is immediately below active railway lines which provide an intermittent source of noise, it is not in dispute that the existing air intake and extract systems on the front and rear elevations do not meet the Council's plant noise emissions criteria. The appellant's Noise Impact Assessment (NIA) confirms this and demonstrates that alterations to the intake and extract systems would achieve compliance with those criteria. Specifically, new attenuators are proposed to the intake and extract systems, and a new fan and flue are proposed to the extract system.
23. The attenuator proposed to the intake system would be installed internally, resulting in no alteration to the building externally. The attenuator proposed to the extract system would form part of new external ducting on the rear elevation. The Council has not disputed the recommendations of the NIA and there is nothing before me to suggest that the NIA is incorrect in finding that the proposed plant would not cause any harm to the living conditions of nearby residents by way of noise, assuming it is only operated between the hours of 0700 and 2300 and appropriately maintained.
24. It is stated that 95% of delivery riders collecting orders use e-bikes, which are parked on the street. Comprehensive data has not been provided to support this,

¹ Drwg. No. 030_DWG_01_010 Rev A dated 16 February 2024

but there is no evidence to dispute it and, as a matter of fact and degree, I consider it likely that the vast majority of orders will be collected by delivery riders using e-bikes as claimed. I therefore see little merit in the Council's unsupported claims that the MCU causes an unacceptable increase in noise/nuisance on account of orders being collected by noise generating vehicles, especially if the hours of operation were restricted to 2300 in an urban area such as this, where an active railway and other commercial uses are present.

25. The rear servicing yard is more contained than the Mentmore Terrace entrance, and is close to rear gardens and elevations of residential properties. The Council has not provided evidence of, or raised any detailed concerns relating to, noise which may be caused by deliveries to the servicing yard. I see no reasons to find otherwise, subject to a condition restricting delivery hours.

Conclusion on living conditions

26. The existing air intake and extract systems associated with the MCU cause unacceptable harm to the living conditions of nearby residents by way of odour and noise. However, the undisputed RAO and NIA show that subject to conditions requiring amendments to the air intake and extract systems, and controlling hours of use and maintenance, the development would not cause unacceptable harm to the living conditions of neighbouring residents by way of odour or noise.
27. For the above reasons, subject to conditions, the development is capable of complying with Policy LP2 of the HLP and Policies D13 and D14 of the LP. These require, amongst other things, noise and odour generating development close to residential uses to put in place measures to mitigate and manage impacts and avoid significant adverse effects on the amenities of neighbours.

Waste Management

28. Waste is stored in three wheelie bins within the rear servicing yard, with provision for recycling. On the information provided, I have no reason to doubt that a suitable waste management plan could be agreed with the Council, if required by condition.
29. I therefore find that subject to a condition, the development is capable of complying with Policy LP57 of the HLP. This requires, amongst other things, developments to provide clear details of the needs for the storage and collection of waste.

Other Matters

30. I have been referred to various policies by the Council which are either not relevant to the development, or where no information has been provided to suggest there may be any conflict. Policy LP43 of the HLP and Policy T4 of the LP relate to transport effects. There is no evidence that the development would affect transport access, capability, connectivity, or highway safety. Policy LP38 of the HLP, refers to the evening and night-time economy. Although the use of the site is said to operate up until 2200, the supporting text to Policy LP38 refers to restaurants, drinking establishments, cinemas, dance and concert halls, music venues and nightclubs which contribute to the vitality and vibrancy of town centres, and which are all quite different to commercial kitchen and delivery centres/hot food takeaways. Policy SI 8 of the LP refers to waste capacity and net waste self-sufficiency in respect of waste management sites. Although there is a need for

waste to be managed at the site, it is not a waste management site. I do not therefore find any conflict with these policies.

31. The site is within the Mare Street Priority Office Area. This is not mentioned in the notice and there is no information before me as to how this may be relevant to the development. I therefore find no conflict with the development plan in this regard.

Conditions

32. Various conditions have been suggested by the appellant, and the Council has not raised any objection to these. It is necessary to control the hours of operation, including those of the air intake and extract systems, and the hours of deliveries to protect the living conditions of nearby residents. I see no reasons to disagree with the hours suggested in these regards.
33. A condition requiring the completion of appropriate amendments to the air intake and extract systems described in the RAO and NIA is necessary and reasonable to protect the living conditions of nearby residents. I have also been advised that planning permission exists for 'part retention and part replacement of the existing extraction flue/duct'.
34. As the deemed planning application is in respect of the development as carried out, there is no mechanism for me to incorporate revised or previously approved plans into any deemed planning permission granted. Alongside the RAO and the NIA, the proposed floor plan and elevations referred to above show that a satisfactory scheme is achievable to control odour and noise at appropriate levels, without harming the character or appearance of the area. The existence of planning permission for another form of extraction duct also supports this. To require any such amendments to be made in an enforceable manner, as the MCU has already taken place, it is necessary to attach a condition requiring the submission of details for approval by the Council, together with full information as to how and when the air intake and extract systems will be amended and thereafter maintained.
35. Condition 4 therefore has strict implications where specific timescales are not complied with. It requires the submission and approval of details relating to the air intake and extract systems and waste management. If those details (which could include those said to have been previously approved by the Council) are not submitted within two months, the use must cease. If those details are submitted and are not approved, an appeal will need to be lodged within six months, otherwise the use will need to cease. If an appeal is not made, or is subsequently dismissed, the use will need to cease. These strict requirements are reasonable and necessary to make the development acceptable considering the otherwise harmful effects on the living conditions of neighbouring residents, and to ensure the condition is enforceable.
36. It has been suggested that additional conditions relating to odour and noise emitted from the site and detectable at the site boundary or 1 metre from sensitive properties would be necessary. However, these would not be enforceable because it is unlikely that odour or noise could be accurately attributable to the site for the purposes of monitoring compliance with those conditions. Moreover, such conditions would not be necessary if condition 4 is complied with, considering the other powers available to the Council for the purposes of controlling nuisance.

37. The Council has put forward, as an uninvited late submission, a suggested condition requiring the submission and approval of a Traffic Management Plan to include: *'measures to minimise the number, frequency and timing of deliveries and dispatches to and from the site; assess and mitigate the impact of such movements on the local highway network and traffic conditions; incorporate measures to reduce associated carbon emissions, including the use of low-emission vehicles where reasonably practicable; and set out procedures to prevent disturbance to residential occupiers and other users of the surrounding area'*. It is claimed this would be necessary to ensure that the impacts of the use on the local highway network, residential amenity, and carbon emissions are appropriately managed. However, there is no evidence to suggest that the development is likely to have adverse effects in these regards, subject to the other conditions being complied with. On the evidence, it would therefore be unnecessary and unreasonable to require the submission and approval of a Traffic Management Plan.

Conclusion on ground (a) and the deemed application for planning permission

38. The development accords with the development plan taken as a whole, and there are no other considerations which indicate planning permission should not be granted.
39. The appeal on ground (a) therefore succeeds and the deemed application for planning permission should be approved.

Overall Conclusion

40. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.

L Douglas

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall only take place between 0900 to 2300.
- 2) The air intake and extract systems associated with the use hereby permitted shall only be operated between 1000 to 2300.
- 3) Deliveries into the site shall only be taken between 0800 to 1800 Mondays to Fridays and 0800 to 1300 Saturdays, and not at any time on Sundays.
- 4) The use as a commercial kitchen and delivery centre hereby permitted shall cease and all flues, plant, equipment and materials brought onto the land for the purposes of such use shall be removed within six months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within two months of the date of this decision schemes for:
 - (a) amendments to the air intake and extract systems, including full details of how and when those systems shall be maintained, to control noise and odour emissions as set out in the Plant Noise Impact Assessment by Noise Solutions Limited, Document reference 92076/PNIA, dated 9 February 2024, and the Risk Assessment for Odour by Fan Rescue Ltd, Report number OD6576398, dated 4 July 2024, or as otherwise approved by the Local Planning Authority; and
 - (b) waste management measures including capacities and locations of binsshall have been submitted for the written approval of the local planning authority and the schemes shall include timetables for their implementation and completion.
 - ii) If within six months of the date of this decision the local planning authority refuse to approve the schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted schemes shall have been approved by the Secretary of State.
 - iv) The approved schemes shall have been carried out and completed in accordance with the approved timetables.

Upon implementation of the approved air intake and extract systems and waste management measures specified in this condition, those schemes shall thereafter be retained and maintained in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.