



Appeal Decision

Site visit made on 28 January 2026

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2026

Appeal Ref: APP/T5150/C/24/3341708

51 Bridge Road, Wembley HA9 9AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Muhammad Zahid Abbasi against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 21 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a hot food takeaway. ("the unauthorised change of use").
 - The requirements of the notice are to:
STEP1 Permanently cease the unauthorised use of the premises as a hot food takeaway use.
STEP2 Remove all paraphernalia associated with the unauthorised use from the premises.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on grounds (b) and (c)

2. An appeal on ground (b) is that the matters alleged have not occurred as a matter of fact and (c) that those matters (if they occurred) do not constitute a breach of planning control. The burden of proof on both grounds is on the appellant, and the relevant test is the balance of probabilities.
3. In broad terms the appellant's case is that the premises is in use as a restaurant, for which planning permission has been granted, and the hot food takeaway is ancillary to the restaurant.
4. The Council visited the premises at a lunchtime in September 2021 following complaints received that the premises was operating as a hot food takeaway. They stated that the premises was in use as a hot food takeaway, with only one of the tables occupied. They made a further visit in June 2024 and monitored the comings and goings of customers for a period at lunchtime and in the mid-afternoon and observed that the majority of customers were taking food away.
5. At my visit I saw there is a service counter towards the back of the customer area, with the kitchen on view beyond, above the counter is an overhead display displaying the menu and prices of food. There is also a small counter for drinks on one side just inside the entrance. There are loose tables and chairs providing seating for around 13 customers.
6. The existence of tables and chairs within a hot food outlet does not, in itself, make the premises a restaurant, where the takeaway element is predominant. 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.

7. The appellant submitted a letter from their accountant which confirmed that during the period from April 2023 – March 2024, approximately 11% of the company's turnover was from the food delivery business with Just Eat, Deliveroo and Uber. An accompanying table was provided that shows the total of sales from those food delivery services including Deliveroo and Just Eat, and invoices from Just Eat. However, in the absence of explanation, it appears the evidence does not detail nor account for the percentage of sales from walk in takeaway customers and is therefore of limited weight.
8. The daily record of customers who eat in versus takeaway does indicate the majority of customers dined in. However, it concerns only a period of around one month from 21 May 2024 – 14 June 2024. As a handwritten list of names and given the short period of monitoring, this is a matter of little weight.
9. Finally, the Google reviews refer to the 'restaurant' and 'dining experience' but are limited in number and extent such that they add little to the appellant's case.
10. The style of signage and advertising on the premises, the display and content of the menu, and the opening hours all have the character of an establishment set up to provide takeaway hot food. Although there are tables and seating where customers may eat their meals, it appears to me that this use is very much ancillary to the main use. On the balance of probabilities, the use as a hot food takeaway and the alleged breach of planning control, has occurred as a matter of fact.
11. Turning to ground (c), 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.
12. The appeal site is the ground floor of 51 Bridge Road. For the purposes of this appeal, I am satisfied that the ground floor, subject of the notice, comprises a single unit of occupation (the planning unit) with a single lawful use. There is no dispute that the pre-existing and lawful primary use of the appeal site is as an estate agents.
13. In the absence of substantive contrary explanation, it seems to me that the estate agents would have had a modest number of walk-in customers and those they had would arrive, enter, and leave the premises in a quiet manner. Moreover, an estate agent's premises would generally only operate during regular daytime business hours, and it is probable that both daytime and evenings hereabouts would be undisturbed by activity from this premises.
14. In contrast the takeaway use is likely to have resulted in an increase in comings and goings, particularly in the evenings when people are more likely to be collecting takeaways, 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 likely have a greater impact on occupiers of dwellings above and close to the premises as a result of noise, disturbance, and odour. The associated activity is substantially different to that associated with the use as an estate agents.

15. The use is as a hot food takeaway, not a restaurant, and is not authorised by planning permission reference 20/2046¹.
16. The use has, on the balance of probabilities, resulted in a definable change in the character of the appeal site and the appellant has failed to demonstrate either that the matters alleged in the notice have not occurred or that those matters 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. The appeal fails on grounds (b) and (c).

The appeal on ground (f)

17. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
18. The notice requires that the use as a hot food takeaway is ceased and all paraphernalia associated with the unauthorised use is removed from the premises. Its purpose is therefore to remedy the breach of planning control.
19. The appellant argued that the requirements be varied so that the development complies with the terms and conditions of planning permission reference 20/2046.
20. A breach of planning control can be remedied by making any development comply with the terms of any planning permission which has been granted in respect of the land however, any such permission must be extant and must not have lapsed.
21. The planning permission for the proposed change of use of existing ground floor unit from estate agency (Use Class A2) to restaurant (Use Class A3); installation of external flue, replacement window to rear elevation and associated cycle storage to rear yard was granted on 26 November 2020 and would have expired on 26 November 2023 unless the development was lawfully begun.
22. The differences between the approved scheme are the use, as a hot food takeaway, as opposed to the approved restaurant. The physical differences include the entrance door being centrally located instead of to one side and the approved seating area included 14 covers located to one side of the restaurant, where the drinks counter has been positioned. The rear window has not been replaced, and the external flue has a stainless-steel finish, as opposed to matt black as indicated on the approved plans and is sited differently.
23. Although the kitchen and counter are broadly in the same position, and parts of the development may be useable in the previously approved development, given the deviations from the approved plans, particularly in terms of the use, it cannot be said that what has been carried out is comprised in the permission. Accordingly,

¹ Proposed change of use of existing ground floor unit from estate agency (Use Class A2) to restaurant (Use Class A3); installation of external flue, replacement window to rear elevation and associated cycle storage to rear yard.

since the planning permission was not lawfully begun, it has lapsed and is no longer extant and the requirements could not be varied as suggested by the appellant.

24. It is a well-established principle that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, which in effect is what the notice requires.
25. Since the requirements would do no more than seek to achieve the purpose of the notice, to remedy the breach of planning control, they are not excessive. The appeal on ground (f) fails.

Conclusion

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

Felicity Thompson

INSPECTOR