

Appeal Decision

Site Visit made on 9 December 2025

by **J Whitfield BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th March 2026

Appeal Ref: APP/Z5060/C/24/3340354

197 Broad Street, Dagenham RM10 9JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by KSS Healthy Foods Ltd against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The notice was issued on 9 February 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised change of use to a hot food takeaway (Sui Generis).
 - The requirements of the notice are:
 - Cease the use as a hot food takeaway (Sui Generis).
 - Remove all alterations and fixtures enabling the use as a hot food takeaway (Sui Generis).
 - Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is: 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (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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Decision

1. It is directed that the enforcement notice is corrected by:
 - the insertion of the word “material” between the words “unauthorised” and “change” in section 3 of the notice.
2. Subject to the correction, 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.

Applications for Costs

3. An application for costs was made by KSS Healthy Foods Ltd against the Council of the London Borough of Barking and Dagenham. The application is subject of a separate Decision.

Enforcement Notice

4. The notice alleges a breach of planning control of a change of use to a hot food takeaway. However, Section 55(1) of the Act defines development as the material change of use. I will correct the notice accordingly to reflect the terminology in statute and can do so without injustice to the appellant or LPA.

Appeal on ground (b)

5. An appeal on ground (b) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters have not occurred.

6. The LPA indicates that it conducted a site visit on 7 March 2024 and confirmed that the alleged use had ceased. However, at the time of my site visit, deliveries of what appeared to be catering products were being delivered to the premises. In any event, what matters is whether the alleged development had occurred by the time the enforcement notice was issued.
7. The appellant's case is that there is no evidence the Land has been in use as a hot food takeaway. It is stated that the premises is in use as a restaurant with an ancillary takeaway element within in it. The appellant states that there is no evidence that the business promotes itself as a takeaway. However, the appellant has provided a menu for the business which shows multiple offers for "collection only" and advertises for orders through the business' "app". This points towards a business primarily serving food for consumption off the premises rather than restaurant where customers would order their meal upon arrival and consume the meal there. On that basis, it would likely have appeared to the LPA that the alleged breach had occurred.
8. Whilst there is little evidence from either party, ultimately the onus of proof falls on the appellant and it has not been demonstrated that the alleged breach of planning control has not occurred.
9. The appeal on ground (b) therefore fails.

Appeal on ground (c)

10. An appeal on ground (c) is brought on the basis, that those matters (if they occurred) do not constitute a breach of planning control.
11. Planning permission was granted for the change of use of the ground floor of the property from tuition centre (Class F1) use to a restaurant (Class E) on 18 January 2021¹. The approved plans show the restaurant use would have been relatively small, with three tables accommodating around 12 customers in total. The appellant states that, although the internal layout of the premises is slightly different, the unit provides the same amount of seating as approved and has been brought into use as a restaurant. It is also said that the use has utilised the same extraction equipment as approved by the 2021 permission.
12. However, the alleged breach of planning control comprises the material change of use of the premises to a hot food takeaway, not a restaurant. There is no evidence that planning permission has been granted for a hot food takeaway. To that end, the material change of use of the premises to a hot food takeaway amounts to development without planning permission and a breach of planning control.
13. The appeal on ground (c) therefore fails.

Appeal on ground (a)

14. An appeal on ground (a) is brought on the basis that planning permission ought to be granted for the breach of planning control as stated in the notice. Where an appeal on ground (a) is duly brought, an application for planning permission is deemed to have been made.

¹ LPA Ref: 21/00096/FULL

Preliminary Matters

15. The appellant's case on ground (a) is made on the basis that planning permission should be granted for a mixed use of the Land as a restaurant and takeaway. However, it is only open to me to grant planning permission for the matters stated in the notice as constituting a breach of planning control, either in whole or in part. The breach in this case is the material change of use of the Land to a hot food takeaway. It is not open to me therefore to consider granting permission for the mixed use of the Land as a restaurant and takeaway.
16. The enforcement notice refers to Policies CM5, CE1 and CP3 of the Planning for the future of Barking and Dagenham Core Strategy 2010 and Policies BC8, BC10 and BP9 of the Planning for the Future of Barking and Dagenham Borough Wide Development Policies Development Plan Document March 2011. However, those policies no longer form part of the development plan since the adoption of the London Borough of Barking and Dagenham Local Plan 2020-2037 (2024) (the LP). I will consider the appeal on the basis of the relevant development plan policies accordingly.

Main Issues

17. The main issues are:

- the effect of the material change of use of the Land to a hot food takeaway on public health;
- the effect of the material change of use of the Land to a hot food takeaway on the living conditions of neighbouring occupiers with particular regard to noise and odour.

Reasons

Public Health

18. Policy E9(D) of the London Plan 2021 states that development proposals containing hot food takeaway uses should not be permitted where these are within 400m walking distance from the entrances and exits of an existing or proposed primary or secondary school. Neither party has provided specific evidence regarding the distance to the closest schools. I was able to see from my site visit that the Land is a short walk to Dagenham Park school and appeared to me to be less than 400m walking distance.
19. The LPA's Saturation Point: Addressing the health impacts of hot food takeaways Supplementary Planning Document 2010 (SPD) sets out that planning permission for new hot food takeaways will not be granted in the hot food takeaway exclusions zone, which is where proposals fall within 400m of the boundary of a school. The exclusion zone is set out in Figure 1 of the document. It is apparent from the map that the Land is located within the Takeaway Exclusionary Zone with Dagenham Park school appearing to be the closest.
20. To that end, in the absence of substantive evidence from the appellant to the contrary, I conclude that the Land lies within 400m walking distance to an existing school, in conflict with Policy E9 of the London Plan and the guidance in the SPD.

21. Policy E9(D) of the London Plan goes on to state that the Boroughs should also carefully manage the over-concentration of hot food takeaway uses within town centres and other areas through the use of locally-defined thresholds in Development Plans.
22. There is no such threshold defined in the LP. The appellant argues that there is only one other hot food takeaway in the immediate parade at 189 Broad Street. However, even if that is the case, I was able to see from my site visit that there are several hot food takeaways nearby on Broad Street to the north of the junction with School Road. Moreover, the uncontested evidence of the LPA is that the Borough is saturated with hot food takeaways. As a result, the evidence indicates there is an over-concentration of hot food takeaway uses within the area which needs to be carefully managed.
23. I note that the appellant is committed to providing healthy food. However, the menu is clear that the primary product served by the premises is pizza, which the SPD identifies as a type of hot food takeaway to which its guidance should apply. As a result, I find that the material change of use of the Land to a hot food takeaway will further intensify the overconcentration of such uses in the area, and result in harm to the objectives of promoting healthy lifestyles and reducing health inequalities.
24. I conclude, therefore, that the development will have a harmful effect on public health. As such, there is conflict with London Plan Policy E9 as well as LP Policies SPDG1 and SP2 which seek to take positive approaches and promote high-quality design which provides safe environments. There is also conflict with LP Policy DME3 which states that development proposals for new hot food takeaways within designated town centres must secure high quality design and be supported by a cumulative impact assessment of uses of hot food takeaway and a health impact assessment to demonstrate how the proposal mitigates its impacts to acceptable levels.
25. The LPA cites LP Policy SP5 which relates to promoting inclusive economic growth and LP Policy DME4 regarding visitor accommodation which are not relevant to the main issue before me.

Living Conditions

26. I saw from my site visit that there are residential uses on the upper floors of properties on Broad Street, as well as dwellinghouses opposite and nearby.
27. There is therefore the potential for noise to arise to neighbouring residents from the raised voices of people congregating, as well as noise from vehicles arising from deliveries and from odour extract equipment, at times on evenings and weekends when residents would have reasonable expectations for quieter background noise levels. However, I am satisfied that a condition could be imposed to ensure opening hours are restricted thus they do not result to such harm at unsociable hours.
28. In terms of odour impacts, the appellant indicates that an existing flue and extract system is in place and has provided details of the system. The LPA has had opportunity to assess this and has not raised any concern regarding it in their submissions. To that end, a condition could be imposed requiring compliance with

the submitted details, which would overcome any odour harm arising from the development.

29. I conclude, therefore, that the development will not have a harmful effect on the living conditions of neighbouring residents with regard to noise and odours. The development will therefore comply with Policy DME5 of the LP which states that proposed uses should not create an unacceptable impact on neighbouring uses in terms of noise and disturbance.

Other Matters

30. The Land has planning permission for use as a restaurant. However, there is no evidence before me as to whether that permission is extant or capable of lawful implementation. In any event, I see no reason why such use would result in greater harm than the material change of use of the Land to a hot food takeaway. As such, it is not a fallback position that would justify the development before me.

Conclusion

31. I have found that the development will not result in harm to the living conditions of neighbouring residents. However, I have found the development results in harm to public health. That is the prevailing consideration. As such, for the reasons given above, I conclude that the appeal on ground (a) should not succeed and the deemed planning application should be refused.

Appeal on ground (f)

32. An appeal on ground (f) is brought on the basis that the steps required by the notice to be taken exceed what is necessary to either remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach.
33. Since the notice as corrected is directed against the material change of use of the Land to a hot food takeaway and requires the cessation of that use, I am satisfied the purpose of the notice is to remedy the breach of planning control. As such, any lesser steps than ceasing the use would not remedy the breach.
34. The appellant argues that the requirement to cease the use is excessive because the lawful restaurant use of the Land could contain ancillary hot food takeaway. However, it has not been demonstrated that the permission is extant or can be lawfully implemented. In any event, an ancillary use is part and parcel of the primary use. If the use of the Land as a restaurant is lawful, the notice cannot require the cessation of ancillary uses associated with it. Thus, the requirement is not excessive.
35. The appellant argues that the flue and other fixtures and fittings are associated with what is said to be the lawful use of the Land as a restaurant. However, the notice seeks to remove all alterations and fixtures which have enabled the use of the Land as a hot food takeaway. It is not excessive for it do so and, indeed, is necessary to ensure the breach of planning control is remedied.
36. For the same reasons, the requirement to remove any subsequent waste material arising from compliance is not excessive.
37. The appeal on ground (f) therefore fails.

Overall Conclusion

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

J Whitfield

INSPECTOR