



Appeal Decision

Site visit made on 25 March 2026

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27th April 2026

Appeal Ref: APP/N5090/C/24/3352259

Land at 124 Ballards Lane, London N3 2PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Saffron Kitchen Limited against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 12 August 2024.
- The breach of planning control as alleged in the notice is 'without planning permission, the construction of 2no extractor flues on the roof of the existing single storey rear extension'.
- The requirements of the notice are
 1. Permanently remove the 2 no extractor flues (shown in image 1) including any fixtures and/or fittings, from the property.
 2. Permanently remove all constituent materials resulting from the works in 1 above from the property.
- The period for compliance with the requirements is 3 months
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (the Act)(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.

Decision

1. It is directed that the enforcement notice is varied by:
 - (i) the deletion of the words "3 months" as the period for compliance and its substitution with the words "6 months."
2. Subject to the 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.

Preliminary Matters

3. Since the appeal was made, the Council adopted the Barnet Local Plan 2021-2036 (the Local Plan) on the 4 March 2025. The policies contained within it supersede the references in the notice which refer to the Barnet Core Strategy 2012 and the Development Management Policies DPD 2012. I have had regard to the new policies in reaching my decision and the Council did refer to Policy TOW03 of the then Emerging Local Plan in the enforcement notice.

Planning History

4. The Council refused an application¹ for a change of use from Class E (Commercial, Business and Service) to Sui Generis (Hot Food Takeaway). Installation of Extractor flue (Retrospective Application) on 2 July 2024. The reason for refusal referred to a failure to demonstrate that the proposal would not cause excessive odour and noise to neighbouring occupiers.

¹ Ref 24/1474/RCU

The appeal under ground (a) and the Deemed Planning Application (DPA)

Main Issues

5. The main issues are the effect of the development upon (i) the character and appearance of the appeal property and the surrounding area and (ii) the living conditions of neighbouring occupiers.

Living Conditions

6. On Ballards Lane, there are a number of businesses and shops at ground floor level with residential accommodation above. To the rear of the buildings, there are extensions, outbuildings, refuse bins and garages used in association with the businesses and accessed from a service road.
7. The appeal property also consists of a hot food business on the ground floor and residential units on the upper floors. The two flues are located on the flat roof of a rear single storey extension, are made of silver aluminium style metal and are around 2.65 metres in height. The flues are very similar in appearance to each other apart from the top open part of one flue faces towards the service road and the other flue faces towards the residential element of the appeal building.
8. The appellant refers to the development being around 9.5 metres from the nearest flats and having minimal impact on residential occupiers on the upper floors. However, the flues are set at a lower height than the upper floor flats which have openable windows. The Council's Environmental Health advice is that having a flue of the same or a lower height than openable windows is very likely to result in odour nuisance.
9. The previous refusal referred to an absence of information with regard to odour and noise and the appellant states in his evidence that an impact assessment can be provided. However, there is no assessment. any Without a detailed assessment with regard to odour and noise, I am unable to conclude based upon distance alone that the development does not cause harm to living conditions. Whilst the appellant refers to the flues being required for the business to operate, no details are provided as to why two flues have been installed or why they need to be sited on the roof of the extension rather than any other location.
10. On the evidence before me, I cannot conclude that the development does not harm the living conditions of neighbouring occupants. The development is therefore contrary to Policy ECC02 of the Local Plan which, amongst other things, refers to flues for businesses such as restaurants being located and designed to take account of the amenity of nearby properties. It is also contrary to Policy TOW03 of the Local Plan which refers to hot food takeaways not having undue impact on residential amenity in terms of noise and odours.

Character and appearance

11. Whilst the flues are not located close to the main building, their location on top of an extension close to the service road emphasises the visual impact. The elevated location means that they are visually prominent both in views walking along the service road and in views looking down the service road from St Pauls Way. In views approaching the development from the other direction, the silver tube of piping which runs from the bottom of the vertical part of the flue to the rear

elevation of the appeal property adds to the incongruous appearance of the development.

12. Whilst some of the businesses located on Ballards Lane do have flues at the rear, they are largely located on the rear of the main buildings not extensions or outbuildings. Whilst some outbuildings and extensions do have visual clutter particularly air conditioning units, they are not comparable to two prominent flues with associated piping.
13. Under ground (f), the appellant has suggested additional noise suppression measures and minor aesthetic modifications to make sure that the flues would blend in with the surrounding environment. This is a matter to be addressed under ground (a) rather than ground (f) as the appellant is asking for planning permission to be granted subject to conditions. However, as no further information has been provided, I am unable to assess these suggestions as part of this appeal.
14. An occupier who lives next door has no issues with noise or odours from a single flue. However they are two flues in situ. The other comment is from an adjacent business operator who states that the development is not noisy or intrusive and the appellant has the right to install equipment. However, a business operator located at the front of Ballards Lane is very likely to have a different perception of noise and odour to residents living at the rear. The limited nature of the comments does not override the need for a formal assessment in view of the location of the development.
15. For the reasons given, I cannot conclude that the development does not harm the living conditions of neighbouring occupiers with particular regard to noise and odour.
16. The development is therefore contrary to Policy ECC02 of the Local Plan which, amongst other things, refers to flues for businesses such as restaurants being located and designed to take account of the character and appearance of the area. It is also in conflict with Policy CDH01 of the Local Plan which amongst other things refers to development mitigating adverse noise impacts on the surrounding environment and amenity through design, layout and insulation.

Conclusion on ground (a)

17. I cannot conclude that the development does not harm the living conditions of nearby residential occupiers. I have also found that the development does affect the character and appearance of the appeal property and the surrounding area. The appeal on ground (a) therefore fails.

The appeal under ground (f)

18. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
19. An appeal under ground (f) is limited to whether the requirements of the notice exceed what is necessary having regard to the purpose of the notice. As the requirements include the removal of the development, the purpose of the notice is to remedy the breach.

20. The matters referred to by the appellant under ground (f) which relate to noise measures and modifications to the flues have already been addressed under ground (a). A requirement to remove the development is not excessive when the purpose of the notice is to remedy the breach. The appeal under ground (f) fails.

The appeal under ground (g)

21. An appeal under ground (g) relates to the period of compliance in the notice which is 3 months. The appellant has asked for a period of 6 months. As the appellant has made an appeal on other grounds including ground (a), the appellant is entitled to assume success on those grounds. An assessment of ground (g) does not therefore include the amount of time that has passed since the notice would have taken effect if an appeal had not been made.
22. The appellant has referred to 6 months being required to make reasonable adjustments in line with Council requirements or appeal conditions whilst minimizing disruptions to the business. However, the requirement is removal and there are no conditions to comply with.
23. Nevertheless, as the appellant will need to explore alternative options, I do consider that a longer compliance period would be appropriate. An extended period would include time for the appellant to liaise with the Council and decide how best to proceed whilst complying with the notice. A further planning application may be required. In the circumstances, I do consider that six months is a reasonable compliance period when balancing the need for compliance and the appellants circumstances. The appeal under ground (g) succeeds and I will vary the notice accordingly.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a 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).

E Griffin

INSPECTOR