



Appeal Decision

Site visit made on 21 April 2026

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2026

Appeal Ref: APP/E5900/X/24/3342822

2A Libra Road, Tower Hamlets, London, E3 2HD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr. Rayan Farhan against the decision of the Council of the London Borough of Tower Hamlets.
 - The application ref PA/24/00093, dated 23 January 2024, was refused by notice dated 13 February 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is described as 'Lawful development certificate is being sought for existing E(a) use at 2A Libra Road'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note the appellant's arguments relating to economic benefits, improving consumer choice, suitability of the premises, its accessibility and his view that the use would not be harmful to the living conditions of occupants of surrounding residential properties. However, an application made under s191(1)(a) of the 1990 Act seeks to establish whether, at the time of the application, any existing use of buildings or other land is lawful. Such applications are determined in light of the facts and the law, which means that planning merits can form no part of my assessment as to whether an LDC should be granted.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded.

Reasons

4. The LDC sought is for the existing use of the appeal premises for Use Class E(a), which is defined in the UCO¹ as use for the display or retail sale of goods, other than hot food, principally to visiting members of the public.
5. The appellant states that the premises was previously a small café but that has been closed since 2014. A café use where food and drink are mostly consumed on the premises would fall within Use Class E(b).

¹ The Town and Country Planning (Use Classes) Order 1987 as amended

6. Taken at face value therefore, a change of use within the same use class, from Class E(b) to Class E(a), would not amount to development requiring planning permission by virtue of s55(2)(f) of the 1990 Act² and Article 3(1A) of the UCO.
7. However, the LDC is sought for an existing use, rather than proposed, so must be based on what is actually being carried out. In that regard the dispute is whether the existing use as a falafel bar falls within Use Class E(a), as per the appellant's case, or whether, as per the Council's case, that amounts to a sui generis takeaway use, which requires planning permission.
8. Although, as noted, the sale of hot food is explicitly excluded from the definition of a Class E(a) retail use, a limited and ancillary amount of hot food sales may be permissible before a material change of use to a sui generis hot food takeaway is deemed to have occurred. The determination of whether hot food sales constitute a primary use or an ancillary one is a matter of fact and degree
9. The pictures provided in the planning statement accompanying the application show a kitchen/preparation area with a relatively large extractor hood over a surface area accommodating a fryer and flat-top toaster. It is explained that the commercial extractor system and canopy originally installed was not required for the amount of cooking on site, so has been replaced by a domestic type extractor hood.
10. The appellant says that the only food items cooked on site is falafel in a domestic fryer and the toasting of pitta bread, on a flat-top toaster. It is explained that all other items are cold salads and sauces. Those salad type items are described as making up the vast majority of ingredients in the falafel bar's menu. Accordingly, it is submitted that falafel would constitute less than 10% of the food prepared and served on-site.
11. However, the use is described as a falafel bar, thereby indicating that is the primary product being sold, and which is traditionally served hot. In the absence of an explanation to the contrary, the cold salad items are likely to be an accompaniment to the hot falafel, potentially within toasted (therefore hot) pitta bread.
12. Consequently, even if the majority of ingredients in a particular menu item/dish are made up from salads and sauces which are cold, in the absence of evidence to show otherwise, such as a menu, the majority of that offered, and therefore the majority of sales, are likely to include hot falafel, as well as potentially toasted pitta bread. That would distinguish the use from a typical sandwich bar, as referred to by the appellant, which may occasionally serve warmed up items such as a sausage roll.
13. Therefore, based on the information before me, I find it unlikely that hot food sales would be ancillary to the main retail function of the premises. Rather, the sale of hot food (falafel) is more likely to be a significant, if not primary, part of the business.
14. It follows that the use does not fall within Class E(a), on the balance of probabilities, so would not be excluded from being development by changing from

² The Town and Country Planning Act 1990 (as amended)

Class E(b). Rather, the use would be more akin to a hot food takeaway, for which planning permission would be required.

Conclusion

15. For the reasons given above, I conclude that the Council's refusal to grant an LDC is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Richard S Jones

INSPECTOR