



Appeal Decision

Site visit made on 15 June 2026

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 June 2026

Appeal Ref: APP/X5990/C/24/3354192

**The buildings and associated land at basement and ground floor,
29 Strutton Ground, London SW1P 2HY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Mohamed Osman (Blanche Eatery) against an enforcement notice ("the Notice") issued by City of Westminster Council.
- The notice was issued on 6 September 2024.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last 10 years, the material change of use of the Property to a Sui Generis use, comprising material elements of hot food takeaway and restaurant uses at ground floor level, and an industrial kitchen use at basement level, and works undertaken to facilitate this use, which include
 - a) the installation of a replacement openable shopfront with customer hatch to take hot food takeaway orders,
 - b) the subdivision of the ground floor into 3 separate food stalls; and
 - c) the installation of a grille above the shopfront on the front elevation and the ducting connected to the grille behind the shopfront ("the Unauthorised Development").
- The requirements of the notice are:
 - 1) Cease the unauthorised Sui Generis use of the Property, comprising material elements of hot food takeaway use, restaurant use and an industrial kitchen use at basement level to provide a catering service;
 - 2) Remove all partitioned food stalls at ground floor level (as shown in attached Photograph A);
 - 3) Remove the unauthorised openable shopfront (as shown in attached Photograph B);
 - 4) Remove the grille above the shopfront and the ducting behind the shopfront connected to the grille (as shown in attached Photograph Set C);
 - 5) Reinstall a shopfront to match in design and materials the pre-existing shopfront (as shown in attached Photograph D)
 - 6) Following compliance with Steps 1) - 5), remove any resulting waste materials and detritus from the Property.
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (d), (f) and (g), of the Town and Country Planning Act 1990 (as amended) ("the Act").

Summary of decision: The appeal succeeds to the extent that the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal was originally made on grounds (f) and (g), but the appellant's submissions also raised other matters. Grounds (b) and (d) were later formally added by the appellant at an early stage in the appeal process, and the Council has been afforded opportunity to respond on all grounds.
2. In addition, the appellant's final comments state that the key issue is that there has been no change of use that would necessitate enforcement action. That argument goes beyond the scope of ground (b) and into matters for ground (c). As the Council have responded to the substantive matters at issue, and grounds (b) and (c) can sometimes be difficult to separate, I have considered the arguments made as appeals on grounds (b) and (c) together.

3. At my site visit I noted that alterations had taken place to the shopfront since the Notice was issued. I consider these changes below in relation to the appeal on ground (f).
4. I am empowered by Section 176(1) of the Act to correct any defect, error or misdescription in the Notice. Section 5.1) requires the use to cease but does so using different language to the description of the use specified in Section 3 of the Notice. For clarity, the description, 'comprising material elements of hot food takeaway use, restaurant use and an industrial kitchen use at basement level' should be corrected to, "comprising material elements of hot food takeaway and restaurant uses at ground floor level and an industrial kitchen use at basement level". And the additional words, "to provide a catering service" should be deleted. These changes would provide greater clarity without changing the meaning of the requirement, and neither party would be prejudiced were I to correct it in my Formal Decision.

The appeals on grounds (b) and (c)

5. Appeals on ground (b) are made on the basis that the matters alleged have not occurred. And appeals on ground (c) on the basis that the matters, if they occurred, do not constitute a breach of planning control.

Whether the use alleged had occurred

6. The alleged breach relates to a mixed use of the property, along with associated works. The use alleged is one comprising elements of hot food takeaway and restaurant on the ground floor and industrial kitchen in the basement.
7. Internally, the ground floor contains three separate serving counters, each providing a different food offering. Two were operating at the time of my site visit around midday. At least one of the three stalls was the same as that shown in the photographs in the Notice and served hot food. The evidence is that hot food was also served by the time the Notice was issued from another counter, and although the nature of the food may have changed since the Notice was issued, hot food was served at the time of my visit.
8. I note the appellant's claim that the dominant use is for the consumption of hot food and drinks on the premises, but the ground floor appeared to be set up and functioning primarily as a takeaway with only a small number of single seats facing one wall.
9. By the time the Notice was issued, at ground floor level, the use occurring was therefore one with elements of hot food takeaway, and on the appellant's evidence, restaurant.
10. The basement level was not in active use at the time of my visit, although it was equipped as a kitchen, contained food items, and appeared to have been used recently in some capacity.
11. Although disputed by the Council, the appellant's evidence is that the basement kitchen has always served the restaurant section on the ground floor, along with outside catering. That is, until the outside catering was relocated from the premises in October 2024.

12. The Council acknowledge that the basement level external catering use may have ceased by 5 March 2025, but its evidence demonstrates that a commercial kitchen was operating from the basement for external delivery by the time the Notice was issued. Even if, at times, the basement kitchen also served to facilitate some food preparation for ground floor food counters, the evidence suggests it was predominantly an independent operation, preparing food for delivery offsite.
13. The appellant's acknowledgment that this element of the use was relocated elsewhere after the Notice was issued, demonstrates that an industrial kitchen was a material element of the use which had occurred by the time the Notice was issued.
14. On the balance of probabilities, the use of the property as a sui generis use, comprising material elements of hot food takeaway and restaurant uses at ground floor level, and an industrial kitchen use at basement level, had therefore occurred. That the associated works were also carried out is not disputed by the appellant.
15. The breach of planning control alleged in the Notice had therefore occurred by the time the Notice was issued.

Whether there was a breach of planning control

16. The Notice alleges that the use occurred without planning permission and constituted a material change of use.
17. In 2013, a lawful development certificate ("LDC") was issued for 'Use of ground and basement as retail/delicatessen (Class A1)', and the appellant confirms that he operated a delicatessen from the premises.
18. Class A1 has now been subsumed into Class E of the Use Classes Order 1987, as amended, which relates to commercial, business and services.
19. The relevant parts of Class E are E.(a) which includes, "use, or part use, for the display or retail of goods, other than hot food, principally to visiting members of the public ...", and E.(b) which includes "use, or part use, for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises, 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".
20. Both the ground and basement elements of the use comprised the preparation of hot food. I am not persuaded by the appellant's claim that food prepared in the basement kitchen and cooled down (if it was) before it was delivered was not the sale of hot food; hot food was ordered and prepared at the premises, whether or not it remained hot by the time of delivery.
21. Neither does the evidence demonstrate that the consumption of the food and drink was mostly undertaken on the premises. The appellant has acknowledged that a significant part of the basement operation serviced external deliveries, until it moved elsewhere. And the internal installation of the three serving counters on the ground floor left very little space for customers to consume on the premises, and the presence of the serving hatch in the shopfront were indicative of sales for consumption off the premises.

22. Furthermore, independent cooking facilities on each food counter and the installation of a ventilation and filtration system, which the appellant described as state-of-the-art utilising carbon filters and electronic devices, indicates a use with significant potential to harm the amenity of a residential area by reason of smell. Extraction out of the shopfront, where there are residential flats above, supports that view. As does the evidence of one or more complaints and the absence of any technical evidence demonstrating no amenity issues are likely to occur or have occurred.
23. The evidence therefore demonstrates that the use which had occurred by the time the Notice was issued was a mixed *sui generis* use, not one within Class E. The change from a Class E use to the *sui generis* use was not permitted development, and was a material change in the use of the property.
24. For these reasons, the appeals on grounds (b) and (c) fail.

The appeal on ground (d)

25. Appeals on ground (d) are made on the basis that, on the date the notice was issued, no enforcement action could be taken against the breach of planning control.
26. Section 171B of the Act sets out time limits within which any enforcement action must be taken. The relevant part is 171B(3) which states that no action may be taken after the end of the period of 10 years beginning with the date of the breach.
27. Neither party have stated, or evidenced, when the use in the form identified in the Notice commenced. The Council advises its investigation commenced in January 2023 having received a complaint. And the appellant's statement that the use commenced in 2020 may in fact have referred to the date Class E of the Use Classes Order replaced Class A1.
28. The appellant's case is that he ran an outside catering business from the basement kitchen for over 11 years. That has not been evidenced but, even if it had been, as a mixed *sui generis* use, any material change would fall within a different class.
29. From the evidence, the change from a delicatessen to three food counters, and changes to the shopfront, appears to have occurred after market stalls were permitted to operate from the street in 2016. The change in the ground floor elements of the use therefore occurred within the 10 years preceding the issue of the Notice, even if the external catering element had operated for more than 10 years from the basement. The use therefore changed from one mixed use to another, materially different, mixed use within the last 10 years.
30. As a consequence, enforcement action could be taken against the use occurring at the time the Notice was issued. The appeal on ground (d) therefore fails.

The appeal on ground (f)

31. Appeals on ground (f) are made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.

32. In this case the purpose of the Notice is to remedy the breach of planning control. That requires there to be no remaining breach of planning control following compliance with the requirements.
33. The Notice imposes six requirements, and the appellant's case relates to the first five. I have considered each requirement in turn below.
34. Section 5(1) of the Notice requires the cessation of the unauthorised use. I found above that the use which had occurred was not one within Class E, no appeal has been made on ground (a), and no planning permission has been granted for the use. Cessation of the use is therefore necessary to remedy the breach of planning control.
35. Section 5(2) requires the removal of the partitioned food stalls on the ground floor. Neither party have claimed that the internal works are development in their own right. But the Notice alleges that these works were undertaken to facilitate the use, and the appellant has not demonstrated how the breach could be remedied without their removal. As incidental or ancillary works facilitating the unauthorised use, this requirement is necessary and there is no obvious alternative to their removal.
36. Sections 5(3), 5(4) and 5(5) require the removal of the 'openable shopfront', removal of the grille above the shopfront and the ducting connected to it, and the reinstatement of a shopfront to match the pre-existing shopfront, respectively.
37. The appellant has applied for, and been granted, planning permission for an alternative replacement shopfront. And the parties agree that the planning permission has been carried out. Compliance with that planning permission is a reasonable alternative to the installation of a shopfront to match the pre-existing one. The Council advise that, in these circumstances, requirements 5(3) and 5(5) can therefore be deleted.
38. However, under Section 173(11) of the Act, where a notice could have required any works to be removed but does not do so, and where all the requirements of the notice have been complied with, then, so far as the notice did not require their removal, planning permission shall be treated as having been granted for them. The effect of removal of the requirements would therefore be the grant of planning permission for the shopfront the Notice required to be removed and the ducting and grille connected to it.
39. However, it is open to me to add additional, alternative, requirements in relation to requirement 5(5), and to some extent requirement 5(4). That would allow the appellant to comply with the requirements or to carry out the planning permission. Doing so would provide the appellant with alternatives which would achieve the purposes of the Notice with less cost and disruption.
40. The internal ducting behind the shopfront, once connected to the grille, is not part of the planning permission granted. Therefore, the element of requirement 5(4) which addresses the internal ducting must therefore remain, even in the alternative.
41. These variations to the requirements of the Notice would provide lesser steps while remedying the breach of planning control, and I will therefore vary the Notice in my Formal Decision.
42. The appeal on ground (f) therefore succeeds in part.

The appeal on ground (g)

43. Appeals on ground (g) are made on the basis that the time period specified in the Notice falls short of what should reasonably be allowed.
44. The appellant's case is that additional time was required to relocate the external catering services and for a planning application for a replacement shopfront to be determined.
45. The appellant advises that the relocation has now taken place, and planning permission has been granted and carried out for the alternative shopfront.
46. The period of 4 months is a reasonable period to carry out the remaining requirements.
47. The appeal on ground (g) therefore fails.

Conclusion

48. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

Formal decision

49. It is directed that the enforcement notice is corrected by:

- In Section 5.1), the deletion of the words, "comprising material elements of hot food takeaway use, restaurant use and an industrial kitchen use at basement level", and their substitution with the words, "comprising material elements of hot food takeaway and restaurant uses at ground floor level and an industrial kitchen use at basement level"; and
- In Section 5.1), the deletion of the words, "to provide a catering service".

50. And varied by:

- In Section 5.4), the insertion of the following words after the words 'Photograph Set C)':
 - "OR, remove the ducting behind the shopfront (as shown in attached Photograph Set C) and comply with the terms of planning permission 24/05694/FULL dated 18/12/2024 including the conditions subject to which that permission was granted";
- In Section 5.5), the insertion of the following words after the words 'Photograph D)':
 - "OR, comply with the terms of the planning permission 24/05694/FULL dated 18/12/2024 including the conditions subject to which that permission was granted";

51. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Peter White

INSPECTOR