



Appeal Decision

Site visit made on 7 July 2026

by Grahame J Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2026

Appeal Ref: APP/M4510/X/25/3375430

Bede House, 20 Stanhope Street, Arthurs Hill, Newcastle-Upon-Tyne NE4 6BH

- 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 BAZ AND COMPANY against the decision of Newcastle Upon Tyne City Council.
 - The application ref 2025/0866/01/LDC, dated 9 June 2025, was refused by notice dated 30 October 2025.
 - 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: hot food takeaway.
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Decision

1. The appeal is dismissed.

Main issue and reasons

2. Section 191(2) of the 1990 Act states that a use is lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and it does not constitute a contravention of the requirements of any enforcement notice then in force.
3. The main issue is whether the Council's refusal to grant an LDC was well-founded, irrespective of the reasons they gave. Planning merits are not relevant. The onus of proof is on the appellant on the balance of probabilities.
4. The Council's case is that the appeal relies on the existence of planning permission ref 2011/0667/01/DET (2011 permission) granted on 11 July 2011 for the use of the appeal premises as a hot food takeaway. Conditions were attached that required discharge, whilst others required the development to be in accordance with approved details. Whilst a hot food takeaway did operate at the premises, the relevant conditions were not discharged and the development varied from the approved plans such that the 2011 permission was not lawfully implemented.
5. The case for the appellant is that the 2011 permission was granted, and the approved use commenced within the time limits of that permission, ie by 12 July 2014, however certain conditions were not complied with and those conditions have now been breached for a period in excess of ten years.
6. Four of the attached conditions required information to be submitted or works to be carried out prior to the unit being brought into use. Condition 2 required submission and approval of a scheme of extraction prior to commencement; Condition 3 required submission and approval of a hard and soft landscaping

scheme for the frontage; Condition 4 required elevation improvements shown on drawing 2011.005 A to be implemented; and Condition 5 required implementation of the bin storage arrangements shown on drawing 2011.005 A.

7. Conditions 2 and 3 relating to extraction and landscaping schemes, appear not to have been discharged. The extraction flue installed differed from the approved plan, and that referred to by the appellant is said to relate to a different unit on a different part of the building, so did not address the condition on the 2011 permission. Based on Google Street View images submitted, the shop frontage and bin store were different to those shown on drawing 2011.005 A, which indicated that the related Conditions 4 and 5 were not complied with.
8. It appeared that the takeaway use started between August 2012 and August 2014 and a social media account for the business had a first post in February 2013. The Google images showed two occasions where the takeaway was open, August 2014 and June 2015. By October 2016, the shutters were down as in subsequent images wherein the frontage was shown as increasingly overgrown and graffiti not removed from the shutter, suggesting that the business no longer traded. Company records show that the company that ran the business was dissolved in December 2016. On that basis the use operated for c5 years from 2012 to 2016, a period considerably short of the 10 years' continuous use required to demonstrate the lawfulness of the use through passage of time.
9. In his final comments the appellant (through his agent) clarified that the use commenced in 2013 and "*ran for some years*". He does not see the sense of contending that the use was not commenced, maintaining that the breaches were of conditions and not of the "*whole consent*". In my view this assertion does not adequately recognise the purport of the conditions that were not complied with. Given the wording "*shall not be brought into use*", it is arguable, especially in relation to the important condition relating to the requirement for a properly approved flue extraction system to be in place prior to commencement of the use, that the conditions are conditions precedent. Condition 2 is a significant requirement for a hot food takeaway use. The lack of persuasive evidence that this condition was discharged prior to the expiry of the time limits on commencement of the use, weighs against the appeal.
10. Therefore, whilst it is common ground that the use did operate from the premises, I agree with the Council that, based on the information submitted by both parties, it is unlikely that the 2011 permission was lawfully implemented. Reviewing all the information submitted in this appeal, I agree with the Council's conclusion that the appellant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that the site is lawfully in use as a hot food takeaway.

Conclusion

11. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development 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).

Grahame J Kean

INSPECTOR