



Appeal Decision

Site visit made on 15 July 2026

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

an Inspector appointed by the Secretary of State

Decision date: 20 July 2026

Appeal Ref: APP/X5210/X/25/3359832

60 Theobalds Road, Camden, London WC1X 8SF

- 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 Nevzat Altan against the decision of the Council of the London Borough of Camden.
- The application ref 2024/4401/P, dated 09 October 2024, was refused by notice dated 13 December 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) ("the Act").
- The use for which a certificate of lawful use or development is sought was originally described as: The premises has been operating as a restaurant and takeaway since 2002. The planning application for the installation of extraction fan and use was granted on 30th January 2004. We have enclosed copy of the application form and planning statement to this application which clearly states in the description section that the application is for "Change of use from Class A1 to Class A3 use of Ground Floor & Basement, for restaurant & take away". We do not know why the existing planning permission does not reflect the application form or statements. The premises is continues to operate as a restaurant & takeaway. There are no changes other than what the premises offers as food.

Summary of decision: The appeal is dismissed.

Preliminary Matters

1. Section 191 of the Act enables any person who wishes to ascertain whether any existing use of buildings or other land is lawful to make an application. Any such application, and any subsequent appeal, is limited to whether that use is lawful. The planning merits (including any impacts of the use) are not for consideration.
2. The original description of the use for which a certificate of lawful use or development is sought is complex and lacks clarity. In its decision notice the Council described the use in shorter form, and the appellant has adopted the same shorter description in the appeal form and in his appeal statement. I have therefore considered the appeal on the same basis, that the LDC sought is for, "Existing use of the property as restaurant and takeaway (Sui Generis)".
3. 60 Theobalds Road ("No 60" or "the Land") is part of a larger building with ground floor units offering services and food uses and an entrance to residential flats on the upper floors. The upper floor uses have a separate postal address, and No 60 comprises only the ground and basement floors. It currently operates under the name 'Chicken Valley', and previously as 'Caffe Capital'.

Main Issue

4. The main issue is whether the decision of the Council to refuse the application was well founded.

Reasons

The legal framework

5. The relevant matter is whether, on the date on which the application was made, the use was lawful. The onus is on the appellant to demonstrate that, and the test is the balance of probabilities.
6. Section 191(2) of the Act states that uses and operations are lawful at any time if:
 - (a) 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
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
7. No party has advised that any enforcement notice was in force on the date on which the application was made.
8. Section 171B sets out time limits within which any enforcement action must be taken. In respect of a use of land, other than a change of use of any building to use as a single dwelling house, Section 171B(3) states that no action may be taken after the end of the period of 10 years beginning with the date of the breach.
9. The appellant's case is that the Land has been in a mixed use as a restaurant and takeaway for more than 10 years.

Use of the land

10. On the application form, the appellant states that the use has been operating as a restaurant and takeaway since 2002. Elsewhere on the application form he also states that the use began on 1 March 2003. In either case, those dates significantly exceed a period of 10 years prior to the date the application was made.
11. The appellant's evidence starts with the retrospective conditional grant of planning permission in 2004 for A3 use of the Land as a restaurant and the erection of an extraction flue. A condition restricted hours of operation to 7am-5pm Mon-Fri and 7am-1pm Sat. The application, made by the appellant, sought Class A3 use of the ground floor and basement as a restaurant and takeaway.
12. At that time the application statement made clear that those advising the applicant considered the use occurring to be within Class A1, but felt compelled to apply for an A3 use to continue the then existing use as a takeaway sandwich shop and snack bar with hot food as an ancillary activity, and small in proportion to the total number of customers.

13. At the time the ground floor comprised a display counter and seating for 22 covers. And the application covering letter referred to “cooking and serving light meals and snacks for consumption on and off the premises”.
14. Local residents advise that it was a small neighbourhood café and sandwich shop which catered to the local community and office workers, serving mainly sandwiches and salads and hot and cold drinks in the daytime, and was shut in the evenings and at weekends. They also state there was very little cooking, mainly for an hour or two in the mornings. The Council advise that later both floors were used for seating.
15. A number of statutory declarations, following a similar pattern, are also provided from regular customers. In summary, those declarations described being customers over periods of time ranging from 9 – 15 years. They describe using the premises, operating as Caffè Capital, for takeaway or sit-down breakfasts and lunches.
16. The Council advises that operation as ‘Chicken Valley’ commenced at some point between 2023 and 2024, operating with five tables or less and no seating on the basement level. The Council and other parties also advise the business is advertised online as a fast-food takeaway with delivery service and as a fast-food restaurant. Residents of upper floors state that frying occurs until close to midnight and operates seven days a week, with a significant flow of delivery riders.

Whether enforcement action may be taken:

17. The evidence suggests that the use from 2002/2003 to around 2023/2024 was a restaurant/café with limited hot food service, and takeaway of hot or cold food and drinks. That use may have been one latterly falling within Class E of the Use Classes Order 1987 or, depending on the extent of the takeaway function, a *sui generis* use (in a class of its own). In either case, the evidence suggests it was one which operated in the daytime, with no evening or Sunday use, and limited Saturday operation.
18. A transition appears to have occurred from the previous use as a restaurant/café offering a takeaway service to the existing use as a hot food takeaway selling fried food with limited internal seating and operating longer hours, including late into the evening and at weekends. The existing use is a *sui generis* use, but is materially different to the previous one.
19. On the balance of probabilities, the evidence also demonstrates that the use existing at the time the application was made was a takeaway use, with ancillary seating, rather than a restaurant and takeaway.
20. But even if the existing use could be described as a restaurant and takeaway use (*sui generis*), it is one that is materially different from the previous use (whether that was a Class E use or a different *sui generis* use).
21. Section 55 of the Act describes the making of any material change in the use of buildings or land as development, and Section 57 states that planning permission is required for the carrying out of any development of land.

22. The material change of use from one Class E or *sui generis* use to the existing (materially different) *sui generis* use therefore involved development and required planning permission. The ten year time period for enforcement action had not expired, and I have seen no other reason why the use would have been lawful on the date the application was made. Enforcement action may therefore have been taken in respect of the use on the date the application was made.
23. It has therefore not been demonstrated, on the balance of probabilities, that the use described as the 'existing use of the property as restaurant and takeaway (*Sui Generis*)' was lawful on the date the application was made. The Council's decision to refuse the application was therefore well founded.

Conclusion

24. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for existing use of the property as restaurant and takeaway (*Sui Generis*) is well-founded and that the appeal should fail. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Decision

25. The appeal is dismissed.

Peter White

INSPECTOR