



Appeal Decision

Site visit made on 2 June 2026

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 4 August 2026

Appeal Ref: APP/E5900/C/25/3361455

Land at 106 Roman Road, London E2 0RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (The Act).
- The appeal is made by Mr Akidul Haasan Ali of White Shark Investments Ltd against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
- The notice was issued on 21 January 2025.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the ground floor commercial unit to a hot food take-away (Sui Generis) use and installation of an extractor flue system on the rear ground floor roof of the premises.
- The requirements of the notice are to:
 1. Cease the hot food takeaway (Sui Generis) use at ground floor of the Premises, as shown in the approximate location outlined in red on the attached plan in Appendix 1, and photograph 2B, in Appendix 2.
 2. Remove the low-level horizontal extractor flue system from the rear flat roof of the Premises, as shown in photograph 2A, in Appendix 2.
 3. Make good any damage arising from compliance with steps 1 and 2 and remove all debris from the front and rear of the Premises.
- The period for compliance with the requirements is: TWO (2) MONTHS from the date this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f), and (g) of the Town and Country Planning Act 1990 (as amended).

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

The Enforcement Notice

1. Section 176(1) of the Act states that, on appeal, the Secretary of State may (a) correct any defect, error or misdescription in the enforcement notice; or (b) vary the terms of the enforcement notice, if they are satisfied that the correction will not cause injustice to the appellant or the LPA.
2. Section 2 incorrectly identifies the land to which the notice relates as being shown outlined in red on a site plan in Appendix A. However, this is clearly a typographical error and should be corrected to refer to the site plan in Appendix 1.
3. The meaning of development in section 55 of the Act, includes “the making of a material change in the use of any buildings or other land”. I will correct the alleged breach of planning control by inserting the word “material” in front of “change of use” in section 3 of the notice. Such an amendment to the description will not cause any injustice because the evidence was clear from both parties that they understood the notice was directed at such a breach.
4. To ensure that the requirements are described in the same terms as the allegation, and for the purposes of consistency and clarity, the terms “rear ground floor roof of

the premises” in section 3 and “rear flat roof of the Premises” in section 5.2 of the notice should both be changed to “rear ground floor flat roof of the Premises”.

5. I am satisfied that I can make these corrections without causing injustice to the appellant or the Council.

Procedural Matters

6. Although the appeal has been made under the grounds (c), (f) and (g) heading, the appellant’s written submission raises points in respect of the planning merits of the case. Whilst this would usually be considered under ground (a) this has lapsed due to the required fee not being paid within the specified period.
7. As such, the appeal proceeds on grounds (c), (f) and (g) only.

Appeal on ground (c)

8. An appeal on ground (c) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters do not constitute a breach of planning control. The planning merits of the development are not relevant. The onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
9. S171A(1) of the Act states that, for the purposes of the Act (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
10. It is undisputed between the main parties that planning permission was granted for the change of use of No 106 to a tattoo parlour (Ref: PA/18/02947/NC) in 2018. The appellant asserts that a hot food take-away (HFT) and tattoo parlour both fall within the same ‘sui generis’ use classification, with the inference being that there has not been a material change of use.
11. However, the term ‘sui generis’ is a Latin expression, meaning ‘of its own kind’ where a use does not fall within any of the specified use classes in the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). Therefore, it is incorrect to interpret sui generis as an individual use class but is rather a term to describe a variety of unique uses that fall outside of those classes specified in the UCO.
12. Moreover, there is no substantive evidence before me to demonstrate that planning permission PA/18/02947/NC was ever implemented. Instead, the enforcement history of the site (ENF/20/00186), and the Council’s evidence indicates that the previous lawful use of No 106 was as a UCO Class E restaurant, and I have no substantive reason to disagree.
13. The appellant also contends that the premises is in use as a Chinese restaurant (UCO Class E), which prepares and sells food that can be eaten in the restaurant or taken away. It is argued that the healthy full course options on the menu and the indoor seating arrangements mean that it is not a HFT.
14. Nevertheless, the primary use of a restaurant is to serve food for consumption by customers on the premises. Occasional take-away sales (unless prohibited by a planning condition) or customers occasionally choosing to take rather than

complete the end of their meal, would not necessarily be incompatible with the primary restaurant use. The primary use of a HFT is for the sale of hot food where consumption of that food is mostly undertaken off the premises.

15. The degree to which the sale of HFT items is ancillary to a restaurant use is not defined, but I consider the sales from a genuinely ancillary takeaway business would be a smaller proportion of total sales. However, no evidence of sales data or details of online orders have been provided. This forms part of the takeaway service, as the advertisements on the shopfront window indicate that the business provides online orders (via UberEATS, Just Eat, thirtymins.com and Deliveroo).
16. At my visit I also saw that there is a service counter towards the back of the customer area, with the kitchen on view beyond. Above the counter is an overhead digital display listing the menu and prices of food. These are also provided within the glass top surface of the counter. Whilst the premises provides stools and seating for approximately 12 customers, no toilet facilities are available and all food on site is ordered and paid for at the counter. Therefore, all staff service is limited to taking orders/payment and the preparation of food, rather than table service.
17. All of the factors above, in addition to the style of the signage and advertising on the premises, and the uncontested opening hours suggested by the Council, have the character of an establishment set up to primarily provide takeaway hot food. The existence of tables and chairs inside, or the types of food on offer within a hot food outlet do not, in themselves, make the premises a restaurant, where the takeaway element is predominant. Based on the evidence before me, including what I saw during my site visit, the character of the premises is therefore materially different from what might reasonably be carried out as a restaurant use.
18. In the absence of precise and unambiguous evidence, I am therefore unable to find, on the balance of probabilities, that a material change of use to a HFT has not occurred. There is no compelling evidence before me to demonstrate that this material change of use, or the installation of the extractor flue system would not require planning permission. I have also not been informed of any planning permissions that are in place for these developments. They therefore amount to a breach of planning control under S171A(1)(a) and the appeal on ground (c) fails.

Appeal on ground (f)

19. The appeal on ground (f) is brought on the grounds 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 stated in the notice or, as the case may be, remedy any injury to amenity which has been caused by such breach.
20. Section 173(4) of the 1990 Act states that the purpose of an enforcement notice is to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach. The 1990 Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
21. In this case, the requirements of the notice are to cease the alleged unauthorised use of the HFT at ground floor level, to remove the extractor flue system and make

good any damage and remove all debris from the front and rear of the Premises. As such, the purpose is clearly to remedy the breach.

22. The appellant's ground (f) appeal is that the Council should have negotiated with them, and applied planning conditions to reach a mutually beneficial agreement. However, there is little before me to explain what could be negotiated or to set out any mitigating measures. In any case, in the absence of a ground (a) appeal, and a deemed planning application, I am unable to consider the merits of the development. These include any contribution to the retail offering in the locality, the need to support economic growth and productivity, and any public benefits or planning conditions which may be deemed appropriate.
23. As a result, I am satisfied that the notice deals with the breach in a fair and proportionate way, and its requirements are not excessive given its purpose. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
24. The appeal on ground (f) therefore fails.

Appeal on ground (g)

25. The appeal on ground (g) is made on the basis that the period specified in the notice falls short of what should reasonably be allowed. The period for compliance is two months as set out in the header of this decision.
26. The appellant is seeking a compliance period of six-to-nine months to secure a suitable alternative premises for the use and storage. Whilst I appreciate that two months may be an adequate period to cease the use, carrying out the physical works to remove the extraction system may well take longer to organise. The disruption to the lives of the owners of the business who will need to find alternative premises, will also be considerable.
27. Although I consider nine months to be an excessive period of compliance, given the circumstances, I agree that an extended six month period would be a reasonable and proportionate response. It would strike a fair balance between the competing interests of the wider public and the private interest bound up in the development subject to the notice. I shall therefore vary the requirements as indicated and, to this extent, the ground (g) appeal succeeds.

Conclusion

28. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Formal Decision

29. It is directed that the enforcement notice is corrected by:
- The deletion of the words "Appendix A" and the substitution of the words "Appendix 1" in section 2.
 - The addition of the words "the material" before the words "change of use" in section 3.

- The deletion of the words “rear ground floor roof of the premises” in section 3 and the substitution of the words “rear ground floor flat roof of the Premises”.
- The deletion of the words “rear flat roof of the Premises” in section 5.2 and the substitution of the words “rear ground floor flat roof of the Premises”.

30. It is directed that the enforcement notice is varied by:

- The deletion of section 6 in its entirety and the substitution of the following wording instead:

“6. TIME FOR COMPLIANCE

The period for compliance with the steps set out in paragraph 5 above is

- (i) SIX (6) MONTHS from the date this Notice takes effect.”

31. Subject to the corrections and variations, the enforcement notice is upheld.

Mark Caine

INSPECTOR