



Appeal Decision

Site visit made on 25 August 2026

by **R Bartlett PGDip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 September 2026

Appeal Ref: APP/U5360/C/25/3360724

2B Woodberry Down, Hackney, London, N4 2TG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Ayyaz Rana against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 13 January 2025.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the property to a hot food takeaway (sui generis) and the installation of an extraction unit to the rear of the property.
- The requirements of the notice are to:
 1. Cease the use of the property as a hot food takeaway;
 2. Remove all fixtures and fittings and equipment facilitating the use of the property as a hot food takeaway;
 3. Remove the extraction flue installed on the rear elevation of the property;
 4. Make good all damage to the property resulting from the removal of the unauthorised works as listed above;
 5. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is: 5 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed and the notice is upheld as varied in the terms set out below in the Formal Decision.

The Notice

1. Section 173 of the Act requires an enforcement notice to specify the steps to be taken, or the activities to cease, in order to remedy the breach of planning control or any injury to amenity, as the case may be. Consequently, the steps set out in Section 5 of the notice must align precisely with the alleged breach of planning control. In this case, the allegation refers to the installation of an extraction unit to the rear of the property, but step 3 of the notice requires the removal of the extraction flue installed on the rear elevation of the property. Having regard to the details provided and my own observations, I consider the allegation to more accurately describe the extraction unit, which projects out through and beyond the rear wall, but does not include a flue. Accordingly, step 3 is deleted and replaced with a requirement to remove the extraction unit to the rear of the property.
2. This variation would not result in injustice to either party, as it merely clarifies the steps necessary to remedy the breach of planning control and does not change the effect of the notice or the issues in dispute.

Background and Preliminary Matters

3. Prior to the alleged breach of planning control taking place, the property was used as a bakery selling hot drinks, sandwiches, cakes and savoury treats. This bakery business was relocated into the neighbouring unit, 2A Woodberry Down, following the refusal of multiple planning applications for the change of use of the non-food retail shop at 2A to a hot food takeaway business. The latest application to change the use of 2A was made by the appellant and was refused on 26 May 2021. As such the appellant was aware that such a use would not be supported in this area. However, he believed that no material change of use would occur by changing the use of the bakery at 2B to a hot food takeaway/restaurant.
4. I was advised at the time of my visit that the shop layout had been altered, since the notice was issued, to increase the level of customer seating. The increased seating does not remove the takeaway element of the business. However, for the avoidance of doubt, my decision relates only to the matters alleged at the time the notice was issued.
5. Only ground (b) was ticked on the original appeal form, with grounds (a) and (c) subsequently being added. The issues raised within the appellant's statement also relate to matters usually pleaded under grounds (d) and (f) and the Council has responded to these points accordingly. As such, no party would be caused injustice by my consideration of these matters.
6. The revised National Planning Policy Framework 2026 (the Framework) was published during the course of the appeal. I have taken this into account in so far as it is relevant to the appeal on ground (a), and I do not consider it to affect the cases put forward. Any reference to the Framework in this decision is to the 2026 version.

The appeal on grounds b and c

7. To succeed on ground (b) the appellant must demonstrate that the matters alleged in the notice have not occurred, and to succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. These are legal grounds and the burden of proof is on the appellant. I have dealt with these grounds together given the overlapping arguments they raise.
8. Section 55(1) of the Town and Country Planning Act 1990 (the Act) sets out the meaning of development, which includes the carrying out of building or other operations and the making of any material change in the use of any building. Section 55(1A) (d) confirms that building operations include operations normally undertaken by a person carrying on business as a builder.
9. Section 55(2) of the Act lists some exceptions, which include at (a) the carrying out of improvement works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building; and at (f) *"in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class"*.

10. It is a matter of common ground that prior to the alleged breaches of planning control taking place, the premises were occupied by a bakery falling within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). The appellant states that no breach of planning control has occurred as a matter of fact. This is on the basis that he is firmly of the view that the current use is a restaurant, not a takeaway, and that it therefore falls within Class E(b) of the UCO, which relates to the sale of food and drink for consumption (mostly) on the premises, and that as such, no material change of use has occurred. The appellant also states that the installation of the extraction unit was not development as it was a replacement unit, it was a necessary improvement to ensure proper ventilation and compliance with health and safety standards, and its presence is consistent with the building's historical use as a bakery.
11. Whether there has been a material change of use is a matter of fact and degree to be assessed in relation to the specific circumstances of each case. The test to be applied in determining whether a material change of use has occurred is whether the overall definable character of the planning unit has changed. This will include considering matters such as any notable increases in disturbances to neighbours.
12. There is no substantive evidence before me that the former bakery was a restaurant with indoor customer seating, that it included the sale of hot food that was prepared and cooked on the premises, or that it opened late into the evening and early hours of the morning. It is evident from the information before me that since opening the current business in 2022, complaints of noise and odour have been received that were not generated by the previous use of the premises as a bakery. This is a clear indicator that there has been a material change in the character of the use, regardless of the use class it falls into.
13. Although the internal shop layout has been altered since the notice was issued, it is evident based upon photographs provided and what I saw, that customer seating is very limited and that there are no customer toilets and hand-washing facilities. Despite the option to eat in, it appears to me more likely that the customer seating is incidental to the takeaway use, enabling some customers to eat food ordered and collected from the counter on the premises should they wish to do so. Even if I had seen evidence of the availability of reusable crockery and cutlery for customers eating in, it would not alter my view on this matter.
14. It has not been disputed that the business involves an element of takeaway use, and third parties have submitted evidence of this in the form of online business advertising and photographs of delivery company bags. The size and nature of the dining area and the lack of customer facilities do not indicate that 'most' customers purchase food and drink for consumption on the premises as they would in a café or restaurant. There is no substantive evidence before me to demonstrate that the majority of business generated is derived from dine in customers, or that the takeaway element of the business is ancillary to this. It appears more likely that a significant proportion of the business involves the sale of hot food being purchased to be taken away or delivered for consumption mostly off the premises. Moreover, a mixed-use hot food restaurant and takeaway would be *Sui Generis*, as opposed to a use falling solely in Class E(b).
15. With regard to the extraction unit, the appellant's own photographs, showing the old and new systems side by side, provide clear evidence that the units are in different locations and are different in appearance, with the old system being flush

to the rear elevation and the new system projecting from it. Technical details of the new extraction unit provided by the appellant also suggest that it would need to be installed by a person carrying out work as a builder or similar professional tradesman.

16. The new extraction unit would therefore constitute development and would only benefit from deemed consent under Part 7 (Non-domestic extensions and alterations) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), if it was only to be used as part of, or for a purpose incidental to, the use of the commercial, business service establishment. As the new extraction unit was installed to facilitate the cooking of hot food, as opposed to facilitate the lawful use of the premises as a bakery that only heated up baked goods, the conditions of the GPDO would not be met.
17. Based upon the evidence before me, it is not clear that the sale of hot food prepared, cooked and sold from the shop is mostly for consumption on the premises. I also concur with the Council that the new extraction unit is operational development requiring planning permission.
18. I therefore conclude, on the balance of probability, that the matters stated in the notice have both occurred and each constitutes a breach of planning control. Accordingly, the appeals on grounds (b) and (c) fail.

The appeal on ground (d)

19. An appeal on ground (d) is that at the date when the notice was served, no enforcement action could be taken. To succeed on this ground, it would be necessary to show that the development in question was substantially completed four years before the notice was issued.
20. The notice was issued 13 January 2025. The Council say that the extraction unit was installed in Sept 2022 and as such it was not immune from enforcement action at the time the notice was issued. The appellant argues that the extraction system was present in 2018 and has simply been improved.
21. Photographs showing the rear of the premises with and without the new extractor have been provided by a local resident, and although these are undated, I have no reason to doubt the dates they are stated as being taken, as these correspond closely to the dated email correspondence raising concerns about noise from the new business and its new extractor unit. Furthermore, the appellant's own photographs of the old and new external wall vents and equipment, identify two distinctly different units. Whilst I have no reason to doubt that the 2022 installation was intended to be an improvement, which was necessary to facilitate the change from a bakery to a hot food takeaway, it is nevertheless a new and separate system to the one that previously existed and remains in situ.
22. In the absence of any evidence to the contrary being supplied by the appellant, on the balance of probabilities, a new extraction system was installed less than 4 years before the notice was issued.
23. Accordingly, this development was not immune from enforcement action at the time the notice was issued, and the appeal on ground (d) therefore fails.

The appeal on ground (a)

24. An appeal on ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issues

25. The main issues, having regard to the Council's reasons for issuing the notice, are the effect of the development on i) the living conditions of occupiers of nearby residential properties with regard to noise and odour; and ii) the concentration of hot food takeaways in the area and in close proximity to schools.

Reasons

Living conditions

26. The appeal site forms part of a large four storey building block, located on a busy crossroads, with commercial premises at ground floor level and residential flats above. There is a service yard to the rear, and the flats are accessed via external rear stairs and rear corridors that double up as balconies.
27. It was evident from my visit that many of the ground floor commercial premises have external plant equipment to the rear, including vents, fans, air conditioning units and extractors. I have not been advised of the planning status of any of the equipment related to other units, but even if these do benefit from planning permission, I must also be mindful of the cumulative effect of granting additional sources of noise and/or odour.
28. During my visit I stood at the rear of the appeal premises and noticed an audible difference in sound when the extractor unit in question was turned on and off. I also noted that the noise from the adjacent laundrette extractor was louder than that of the takeaway extractor. However, when standing on the first-floor balcony directly above the appeal site, I was unable to hear a notable difference in noise when the appeal extractor was turned on and off, above the noise from the adjacent laundrette extraction equipment. I accept that this may well be different when the laundrette extractor is not operating.
29. As no food was being cooked at the time of my visit, I did not detect any cooking odours. However, I have no reason to doubt the complaints made by residents regarding the increased noise and odour that has persisted since the hot food takeaway restaurant opened. As there are no other hot food units within the building block, and there is no evidence of complaints regarding the long-standing bakery business, it is reasonable to assume that the strong chicken and cooking odours reported by local residents as being experienced from their rear balconies and windows, is rising up from the external kitchen door and extraction equipment at the rear of the appeal premises. The ongoing complaints indicate that either the replacement extractor is not effectively reducing cooking odours omitted from the premises or the rear door is not being kept closed. No professional noise or odour assessments have been submitted to demonstrate that these issues could be resolved by the imposition of conditions.
30. I am advised that the opening hours permitted by the business license are 11am to 11pm Sunday to Thursday and 11am to 1am on Fridays and Saturdays. Although different opening hours could be restricted by a planning condition, this would only

address the issue of late-night noise and odour. It would not address the fact that occupiers wish to have their rear windows and doors open, and to utilise their outdoor rear balcony space for sitting outside or drying laundry, during the daytime and early evening, without the noise and smell. This is particularly the case as residents opening their front windows instead would be subject to traffic noise. Moreover, reducing the opening and operating hours would be likely to have significant implications for a business of this nature.

31. I therefore conclude that the use of the premises as a hot food takeaway, and the associated extractor unit, result in unacceptable harm to the living conditions of residents, in terms of noise and odour. Consequently, the development is contrary to policies D3 and D14 of The London Plan, LP2 of the Hackney Local Plan 2033 (Local Plan) and P3 of the Framework, which seek to ensure that development does not adversely affect the health and quality of life of others with regard to noise, fumes, odour and other forms of pollution.

Over concentration and proximity to schools

32. Policies E9 of the London Plan, LP39 of the Local Plan, and HC5 of the Framework set out the criteria for new hot food take aways, seeking to avoid the overconcentration of such uses and their location close to schools and other places where children and young people congregate.
33. The site is located within a mixed-use area comprising shopping and other commercial services, as well as residential and hotel accommodation. I have not been advised, for the purposes of assessing the development against local plan policy LP39, whether or not the appeal property is within a designated centre, or if it is, whether the development results in more than 5% of the units in the centre as a whole operating as hot food takeaways. Whilst I saw that there are two hot food takeaways on the opposite side of Seven Sisters Road to the site, and another nearby on Green Lane, I saw no others within the same row of shops or within the next three units. Consequently, based upon the thresholds set out in the policies before me, the development does not result in an over concentration of hot food takeaways in the area.
34. However, the boundaries of the nearest schools, one on Woodberry Down and two on Woodberry Grove, do appear to be within 400 metres of the site, as does the Youth Hub on Woodberry Grove. This is contrary to Policies E9 of the London Plan, LP39 of the Local Plan, and HC5 of the Framework, which seek to assist in addressing rising levels of childhood obesity by preventing new hot food takeaways close to schools and other places where young people congregate. I have also not seen any evidence that the appellant has made any commitment to operating in compliance with Healthy Catering Commitment Standards as required by The London Plan and the Local Plan.
35. The use of the appeal premises as a hot food takeaway is therefore unacceptable having regard to its proximity to schools and other places where young people congregate.

Other Matters

36. I acknowledge that the previous use of the premises as a bakery would also include the sale of high calorie unhealthy foods within close proximity to schools. However, these tend to sell bread, cakes, pastries, sandwiches etc some of which

may be baked or reheated on the premises. As the primary purpose of a bakery is not the sale of hot food cooked on the premises, these are not currently restricted in terms of use class or the planning policies which I must assess the development against. Moreover, the heating up of baked goods is unlikely to omit the same level of odour as cooking hot and fried foods, bakeries do not normally operate late into the night, and there is no evidence to suggest that the bakery was subject to complaints about noise or odour.

37. I acknowledge that the property lease states that the property can be used for the former use classes A1, A3 and A5 but there is no record of any planning permission to confirm the same, and legislation amending these use classes and permitting changes between uses has been amended.
38. Economic pressures faced by the appellant do not justify the unauthorised development, the harm caused to the living conditions of local residents, or the harm to the health interests of the wider community.

Conclusion

39. For the reasons given above, the development fails to accord with local and national planning policies, and there are no material considerations that would outweigh this. The appeal on ground (a) therefore fails and planning permission ought not be granted.

The appeal on ground (f)

40. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary to either (a) remedy the breach of planning control or (b) remedy any injury to amenity which has been caused by the breach.
41. In this case, as the enforcement notice requires the use to cease and the removal of the extraction unit, I consider the purpose of the notice is to remedy the breaches of planning control.
42. The appellant states that the requirement to remove the extraction unit is excessive as this would be required to return the use of the premises back to a bakery. However, the extraction unit previously used in connection with the bakery is still present, and it has not been demonstrated that the new unit would be required in connection with a bakery, or any other lawful use of the premises. Furthermore, the extractor unit results in an unacceptable increase in noise, and the premises are unlikely to reopen as a bakery given that that former business has relocated into the neighbouring unit.
43. I have considered whether there are any lesser steps that would achieve the purpose of the notice with less cost and disruption to the appellant, but none are obvious to me.
44. Since the purposes of the notice are to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve those purposes. The appeal on ground (f) therefore fails.

Conclusion

45. For the reasons given above, I conclude the appeal should fail. I shall uphold the notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

46. It is directed that the enforcement notice be varied by deleting the words at step 3 of the requirements and replacing them with the words “Remove the extraction unit installed to the rear of the property”.
47. Subject to the variation above, the appeal is dismissed, the enforcement notice is upheld as varied, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended for the breach of planning control alleged in the notice.

R. Bartlett

INSPECTOR