



Appeal Decision

Site visit made on 29 July 2026

by Thomas Shields DipURP, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2026

Appeal Ref: APP/Y3615/C/25/3366379

86 Haydon Place, Guildford, GU1 4LR

- 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 Ibrar Karim against an enforcement notice issued by Guildford Borough Council.
 - The notice was issued on 22 April 2025.
 - The breach of planning control as alleged in the notice is without planning permission, material change of use of the premises as a single unit to a takeaway.
 - The requirements of the notice are (i) Cease the operation of a takeaway except for within the hours 08:00-22:00 Sunday to Thursday and 08:00-23:00 Friday and Saturday.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Act. 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.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Preliminary matters

2. The parties were invited to submit any further comments they wished to make following publication of the National Planning Policy Framework (August 2026) (NPPF). I have taken the NPPF and submitted comments into account.

Appeal on ground (d)

3. An appeal on ground (d) is that at the date the notice was issued (22 April 2025) the use of the whole ground floor of the property as a food takeaway shop was immune from enforcement action due to the passage of time, in this case 10 years. The appellant therefore needs to show that the use as a takeaway commenced at any time before 22 April 2015 and continued for at least 10 years without any significant break or interruption thereafter.
4. The Courts have established that the burden of proof falls to an appellant, with the test of the evidence being on the balance of probabilities. Also, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

Analysis

5. Affidavit 1¹ from owners: refers to the premises as “*takeaway with some eat in seating area/restaurant*”. It is not stated how long they have owned the premises and hence whether that ownership covers a full 10 year period. While it states their personal knowledge of the site “*for the past 10 years*”, the affidavit is dated 16 May 2025, which does not cover a full 10 year period from the relevant date of 22 April 2015. The document does not therefore provide clear evidence of the whole of the ground floor being in use solely as a takeaway for any 10 year period.
6. Affidavit 2² from neighbour: also refers to past use as being “*takeaway/restaurant with seating*” and that he has eaten “*in*” the premises on numerous times, and confirms “*it has always had seating to eat in*”. Although he states his knowledge as being over the past 10 years the affidavit is dated 20 May 2025 which also does cover a full 10 year period from 22 April 2015.
7. Signed statement³ of previous occupier: states he occupied the premises for a 12 year period from August 2011 to December 2023. He also refers to the use as a takeaway with seating. Hence this also does not provide clear evidence of solely takeaway use for any 10 year period. It also does not cover the period after December 2023 to the date the enforcement notice was issued.
8. The submitted Google street-view images from 2009 onwards do not provide any convincing evidence of a continuous use of the whole of the ground floor of the appeal property as a takeaway premises at any time. To the contrary, if anything they appear to show that No. 86 and No. 86A, were physically separate units up to and including the May 2019 image, with an internal combination not being identifiable until the September 2020 image. One objector to the appeal also confirms it was laid out and in use as a restaurant when dining at the premises in November 2022.
9. The two images of social media posts⁴ in 2021 which seek a food delivery driver do not provide evidence of an uninterrupted 10 year continuous use as a takeaway since or before 22 April 2015. The August image also refers to being able to “*book a table*” which again suggests the premises were not solely in use as a takeaway. The takeaway menu for Tiffins is undated, but in any event it also does not provide evidence of the whole of the ground floor being in use solely as a takeaway for any 10 year period of time.
10. The appellant’s submitted existing layout plan dated 19 January 2025 shows an internally combined layout of Nos. 86 and 86A. However, it is uncontested that this is not shown in the June 2015 application “existing” plan⁵ (less than 10 years before the notice was issued) referred to by the Council, showing a single vacant shop unit in 86A with no internal link to no 86.
11. The appellants submissions⁶ also refer to a mixed use of the premises operating as: “*a takeaway (with eat-in seating) for well over 10 years dating back to at least 2009*”; as a “*combined restaurant and hot food takeaway for more than ten years*”; and as a “*mixed-use*”. However, an appeal on ground (d) is that the breach of

¹ Karim and Bashir

² Naeem

³ Miah

⁴ WhatsApp images dated August and September

⁵ Council Ref: 15/P/00805

⁶ Appellant Planning Appeal Statement and Final Comments

planning control as alleged is immune from enforcement action. The alleged breach of planning control is a single takeaway use of the premises. No appeal on ground (b) - that the alleged use had not occurred because it was in use as a mixed use - has been made. However, even if that were the case, a 10 year period of such use of 86 and 86A combined has not been demonstrated for the reasons I have set out earlier.

12. To conclude; the appellant's evidence is not clear and unambiguous, and is also contradicted by the Council's evidence. It has failed to show, on the balance of probabilities, that the breach of planning control is immune from enforcement action.
13. The appeal on ground (d) therefore fails.

Appeal on ground (a)

14. The appeal property is located in a one-way street within the Guildford Town Centre boundary and also within the Guildford Town Centre Conservation Area. There is a residential unit located above the ground floor premises, with a mix of commercial and residential properties nearby.
15. The appeal on ground (a) seeks planning permission for the material change of use alleged in the notice, and in this regard the appellant seeks operating hours to 23:00 every day.
16. The Council does not argue that planning permission should be withheld for the use of the ground floor as a food takeaway business. This is reflected in the enforcement notice which permits the use to continue, but prohibits its operation outside of 08:00-22:00 Sunday to Thursday and 08:00-23:00 Friday and Saturday. As such, the notice 'under-enforces' the breach of planning control.
17. Consequently, although the appeal on ground (a) fails for the reasons set out below, the enforcement notice grants a deemed planning permission by virtue of s173(11) and s73A of the Act for use as a takeaway, but limited to the restricted hours of operation as set out in the notice.

Main Issue

18. Following on from the above, the main issue in this ground (a) appeal is the effect of the takeaway use on the living conditions of nearby local residents beyond 22:00 hrs on Sundays to Thursdays.

Reasons

19. Since the under-enforcement in the notice would permit opening to 22:00 on Sundays to Thursdays, and only 1 extra hour is sought by the appellant, I find that there would be no harm to the character or appearance of the Conservation Area resulting from the extra 1 hour of operation on those days.
20. Nearby local residents have submitted representations, some with photographs, objecting to the proposed use. These primarily relate to noise disturbance from kitchen activities and staff when windows are open, noise from comings and goings of customers and delivery service vehicle drivers/riders, vehicles waiting in the street outside residential properties leaving engines running, and drivers/riders congregating and talking outside residential properties. Also, that pedestrian and

vehicular access to residential properties is sometimes blocked by parked vehicles attending the takeaway.

21. Given that there are a significant number of individual objections with consistency in their concerns and recollections of how activities are affecting their amenity, I am not convinced by the appellant's suggestion they are exaggerated. Some of them provide times and dates with photographs relating to their concerns and so neither do I consider them to be anecdotal or unreliable.
22. Since the Council's under-enforcement will permit the use to continue with restricted hours, I accept the appellant's point that some level of disturbance from customers and delivery personnel may be inevitable. I also accept that unlawful parking in the street on double yellow lines, blocking of access to properties, and anti-social behaviour are enforceable matters within the enforcement remit of the Highway Authority and Police. Also, that odour and noise emissions are capable of being controlled by local authority Environmental Health departments.
23. However, despite those protections under different laws and regulations it is clear to me that local residents living conditions have nonetheless suffered poor levels of amenity later into the evenings. As such, a reasonable balance needs to be struck between supporting the operation of the business with the living conditions of occupiers of nearby residential properties.
24. With this in mind I find that the proposed 23:00 hrs closing on Sundays to Thursdays does not strike a reasonable balance. I consider that during the evenings preceding the main Monday to Friday working and school days there should be a greater, and hence earlier, degree of protection from the significant harmful impacts to residential amenity I have described.

Conclusion

25. I find the proposed use to 23:00 on Sundays to Thursdays would be harmful to the living conditions of occupiers of nearby residential properties in conflict with LP⁷ Policies D5 and D11 which, taken together, require that development proposals avoid having an unacceptable impact on the living environment of existing residential properties including in terms of noise disturbance.
26. While I recognise that local planning policies, along with NPPF Policy TC2, also support the continuing viability and growth of town centre uses and the local economy, and that the proposal would provide benefits of substantial weight in that regard, I find that those benefits are substantially outweighed by its adverse effects.
27. For all these reasons I conclude that the appeal on ground (a) must fail.
28. However, as set out earlier, and provided the enforcement notice requirements are fully complied with within the 1 month period for compliance, a deemed permission is granted for use as a takeaway between the hours of 08:00-22:00 Sunday to Thursday and 08:00-23:00 Friday and Saturday.

Thomas Shields

INSPECTOR

⁷ Guildford Borough Local Plan: Development Management Policies (March 2023)