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## Appeal Decision

Site visit made on 24 September 2026

**by Robin Buchanan BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 30 September 2026**

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**Appeal Ref: APP/E5900/C/25/3368399**

**232 Whitechapel Road, London E1 1BJ**

- 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 Abdul Latif against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
  - The notice was issued on 27 May 2025.
  - The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the ground floor to a hot food takeaway (Sui Generis)'.
  - The requirement of the notice is to: cease the use of the ground floor as a hot food takeaway.
  - The period for compliance with the requirement is: two (2) months.
  - The appeal proceeds on the grounds set out in section 174(2)(c), (f) and (g) of the Act.
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### Decision

1. It is directed that the enforcement notice be varied as follows:
  - Time for compliance - delete '*Two (2) months*' and insert '*Four (4) months*'.
2. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

### Ground (c)

3. For ground (c) to succeed, the onus is firmly on the appellant to demonstrate, on the balance of probability, that the matters alleged in the notice is not a breach of planning control. This centres on the ground-floor use of No.232 Whitechapel Road as a hot food takeaway.
4. There is no dispute that about 40 years ago the Council granted planning permissions for 'use of premises as a takeaway food shop' then 'change of use from a takeaway food shop to a restaurant'<sup>1</sup>. In essence, the appellant claims that when the notice was issued 'the site' was a takeaway food shop or a hot food takeaway, so there was no breach of planning control. The site edged red in his location plan shows No.232<sup>2</sup>.
5. However, the appellant has not shown that either planning permission related to the ground floor of No.232; such as by a property address in a Council decision notice or a red edged site in an approved plan. Nor, anyway, that the first planning permission was implemented and a takeaway food shop existed on the ground floor of No.232 when the Council considered the second planning application. But even if it did exist, implementation of the second planning permission would have

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<sup>1</sup> PA/83/00886, PA/84/00918

<sup>2</sup> Drawing number 1002/PL1/000

extinguished a takeaway food shop use because it became a restaurant. There is, in any event, little evidence about continuity of lawful hot food takeaway use of the ground floor of No.232 without material interruption for a period of 10 years, such that enforcement action could not have been taken by the Council.

6. There is no planning permission granted under Article 3(1) for a material change of use to a sui generis use as permitted development<sup>3</sup>. In May 2025 the Council refused to grant planning permission retrospectively at No.232 for 'change of use of ground floor unit from E(b) sale of food and drink to take away restaurant (Sui Generis)'<sup>4</sup>. While this may not have been the applicant's description of the development, Class E(b) is for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises<sup>5</sup>.
7. When the notice was issued, the Council maintains that the last lawful use of the ground floor of No.232 was 'a retail unit under Class E'. Class E(a) excludes the sale of hot food regardless of where it is consumed. Furthermore, that with minimal floorspace for customer seating (i.e. ancillary consumption of hot food on the premises) the main activity appeared to be for the sale of hot food consumed off the premises as a hot food takeaway (sui generis) use. This was informed by an Enforcement Officer site visit and shown in some photographs taken at the time included in the notice.
8. The appellant has provided little objective evidence to counter this. For example, details of the proportion of hot food sales consumed off the premises (by collection and deliveries) as opposed to consumed on the premises sat at tables.
9. I acknowledge that the appellant's explanation does not necessarily require corroboration to be accepted. However, it is not sufficiently precise or unambiguous and set against it there is contradictory evidence from the Council. These circumstances make the appellant's claim less likely, rather than more likely.
10. The appellant's ground (c) case is then essentially a response to the Council's reasons for issuing the notice, including planning merits and conditions. It would be more appropriate to ground (a) but there is no deemed application for planning permission before me, so these considerations are not relevant to my decision.
11. The appellant has not shown that the necessary planning permission has been granted for a hot food takeaway on the ground floor of No.232. Nor that this use had become immune from enforcement action by virtue of the passage of time at the date the notice was issued. No other reason was advanced. Consequently, the appellant has not demonstrated, on the balance of probability, that the matters alleged in the notice are not a breach of planning control. For these reasons ground (c) fails.

### **Ground (f)**

12. For ground (f) to succeed, the appellant must demonstrate that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control.

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<sup>3</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

<sup>4</sup> PA/23/00729

<sup>5</sup> Schedule 2, Part A, Class E - The Town and Country Planning (Use Classes) Order 1987, as amended

13. It is clear from the reasons for issuing the notice and the requirements that the purpose of the notice is to remedy the breach of planning control and harm to amenity. Section 173 of the Act provides that the steps required to be taken by a notice can include discontinuing any use of the land. The requirements would achieve these outcomes and the Council does not seek to under-enforce.
14. I acknowledge that planning enforcement should be remedial, not punitive. However, it is not within the powers transferred to me to compel the Council to engage in further negotiation with the appellant or undertake its own land use survey work, even if this would be 'mutually beneficial' according to the appellant. These are also similar arguments already made and more appropriate to ground (a), if it were present. No other lesser step or obvious alternative was advanced.
15. In these circumstances, the steps required by the notice are consistent with remedying the breach of planning control and harm to amenity so are necessary, proportionate and not excessive. Accordingly, ground (f) fails.

### **Ground (g)**

16. For ground (g) to succeed, the appellant must demonstrate that the 2 month period specified in the notice to take the steps required by it falls short of what should reasonably be allowed.
17. I have no reason to doubt that the hot food takeaway at No.232 could be closed (cease trading) within 2 months. But this could have significant, unduly immediate implications for the appellant as the owner of the ground floor of No.232 and for whoever owns or operates the hot food takeaway business (if they are not the same person). Also, for staff who are employed. The appellant seeks an additional 7 to 10 months (9 to 12 months in total) to find an alternative shop that can offer the same services and suitable storage.
18. There is little objective evidence from the appellant to substantiate that finding a premises for a hot food takeaway would take such an inordinate amount of time, nor be beyond his financial means. I am also mindful that the notice does not prevent reversion to the last, potentially beneficial lawful use of No.232.
19. Nonetheless, although a snapshot at the time of my site visit, I saw 2 staff who may rely on the business to earn a living, if only in part. There is also a significant quantity of kitchen and other equipment. It seems to me that 2 months would offer little practical time or opportunity for this busy, small-scale business to re-locate and ensure continuity.
20. As a matter of principle, timely and effective planning enforcement is endorsed in relevant Planning Practice Guidance. I also accept that the Council has discretion under section 173A(1)(b) of the Act to extend the period for compliance. However, the period in the notice must be sufficient to begin with and there is little apparent specific justification from the Council for 2 months in this case.
21. In light of all the above, there is little to justify the appellant's request for an additional 7 to 10 months. In these circumstances it would be tantamount to an unwarranted temporary planning permission and unduly perpetuate the harm the development has caused. However, I consider that a further 2 months to consolidate transition of the hot food takeaway to a suitable premises elsewhere is proportionate and justified for the reasons given above. Consequently, the 2 month

compliance period falls short of what should reasonably be allowed and ground (g) succeeds.

### **Overall Conclusion**

22. Ground (f) fails but ground (g) succeeds, so the appeal is successful to this extent. I shall alter the time period for compliance with the notice accordingly and then uphold the varied notice.

*Robin Buchanan*  
INSPECTOR