



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 07 October 2026

Appeal Ref: APP/E5900/C/25/3369162

41A Goulston Street, London E1 7TP

- 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 Ahmad Shawki Abdelsadeq Harb against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
 - The notice was issued on 12 June 2025.
 - The breach of planning control as alleged in the notice is '*Without planning permission, the material change of use of the ground floor unit to a hot food takeaway (Sui Generis)*'.
 - The requirement of the notice is to: cease the use of the property as a hot food takeaway and remove all associated furnishings and fixings relating to this use.
 - The period for compliance with the requirement is: three (3) months.
 - The appeal proceeds on the grounds set out in section 174(2)(a), (f) and (g) 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. It is directed that the enforcement notice be varied as follows:
 - Time for compliance - delete '*Three (3) months*' and insert '*Four (4) months*'.
2. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is also refused on the application deemed to have been made under section 177(5) of the Act.

Ground (a)

Background and Main Issues

3. The property that is the subject of the notice is the ground floor at No.41A Goulston Street (the unit) and is also in a Conservation Area. The deemed application for planning permission is for the matters specified in the breach of planning control in the notice, as set out in the 4th bullet point in the banner header above – in essence, a material change of use of the unit to a hot food takeaway. The main issues are:
 - the effect of a hot food takeaway on the living conditions of the occupants of adjoining residential properties, having regard to noise and odour; and
 - whether commercial waste management arrangements for a hot food takeaway are satisfactory.

Reasons

4. The unit was open and busy at my lunchtime weekday site visit. It is a narrow, long galley kitchen with no space (seating or tables) for customers to consume food on

this premises. Whether prepared in the unit or a kitchen elsewhere, I saw that some food is served cold (such as salad and hummus or similar) or warmed/heated using an electric sandwich press (such as wraps or paninis).

5. The appellant claims there is light frying of falafel in the unit using a small electric fryer, with no heavy cooking, grilling or deep frying associated with a traditional hot food takeaway. While it may be a small appliance in industry terms, I saw a commercial grade electric twin-basket countertop deep fat oil fryer in use. I have not been informed it is not for cooking raw falafel as a hot food fit to eat, such as in wraps or paninis. This fryer (or similar) appears in Council photographs from 2023 and in the appellant's photographs taken after the notice was issued. Considering also the menu displayed at the unit, cooking falafel by this means is evidently integral to the appellant's business, trading as 'Falafel Shack'.
6. In this configuration and use, the unit is a hot food takeaway.

Living conditions

7. Flats above the unit, in the upper floors of this terraced building, including to either side of the ground floor, have opening windows. These appeared to be or include habitable rooms with little evidence to the contrary.
8. There is no technical specification before me for the overhead extractor installed inside the unit, including whether it connects to external ducting or a flue or if and where it vents to atmosphere. Nor is there a background baseline noise survey, including in relation to windows in the flats and equipment or activity taking place in the unit. I have also not been informed if there are noise attenuators, odour filters, grease traps or hoods or the potential effect of mitigation measures such as this.
9. Planning conditions can usually require the retention and maintenance of approved hot food takeaway equipment or machinery. But details such as those outlined above are necessary to determine impact on the occupants of nearby residential properties to begin with, so are relevant to a decision in principle to grant planning permission. In addition, the effect of any necessary external ducting, vents or flues on the character or appearance of the Conservation Area is presently unknown. These details cannot therefore be left to conditions, including those suggested by the appellant.
10. After the notice was issued, a Council Environmental Health Officer inspected the unit and issued a 5-star food hygiene rating, including to confirm the extractor is satisfactory for food hygiene purposes. But that is a separate regulatory matter and the external 'shopfront' with double doors was installed after this inspection. In any event, to trade from the unit as a hot food takeaway I saw that the doors need to be open, for example there is no serving hatch. As a result, they provide little apparent noise or odour mitigation while hot food is cooked to be taken away by in-person customer collection or by delivery driver/rider.
11. I saw a large number and variety of hot food takeaway street traders with stalls in pitches in front of the unit in the road and further along this part of Goulston Street in both directions. This quite intensive, noisy activity in the open adds notable bustle to the area, including a large throng of customers. It also generates significant smoke, fumes and other cooking related odour, including from gas fired or charcoal grills and deep fat oil fryers. This permeates the area, beyond canopies or awnings, including upwards and towards the windows of the flats. The appellant

refers to this activity as ‘typically’ occurring to 15:00, though I have not been informed if it is daily, including weekends or on occasions into evenings.

12. Be that as it may, I accept that much of the noise disturbance or odour nuisance experienced by some occupants of the flats can likely be attributed to the temporary or transient street traders, not specifically from inside the unit as a permanent hot food takeaway use, including the appellant’s business. Nevertheless, for the reasons outlined earlier, there is insufficient evidence to show that even the appellant’s hot food takeaway does not generate significant odour, noise or disturbance intrinsically unacceptable for planning purposes or in combination with the nearby street traders. This can occur at a lower level than a statutory Environmental Health nuisance.
13. Furthermore, it is generally accepted that hot food takeaways usually seek to operate into evenings and at weekends. As a result, the appellant’s hot food takeaway hours (either between 10:00 and 15:00 or 11:00 and 14:00, Monday to Friday) would, on the face of it, be unduly restrictive. I cannot anyway be certain that even the appellant’s hours do not cause unacceptable noise or odour impact to at least some occupants of the flats who may be at home during the day. In these circumstances, conditions to any of these effects, or even a personal planning permission for the duration of the appellant’s occupation of the unit, would either be unreasonable or not make a hot food takeaway use acceptable in planning terms.
14. Consequently, I am not satisfied the appellant has demonstrated that a hot food takeaway does not harm the living conditions of the occupants of adjoining residential properties, having regard to noise and odour. This consideration has substantial weight against the appeal and a hot food takeaway is contrary to Policies D.ES2, D.ES9 and D.DH8 of the Tower Hamlets Local Plan, January 2020 (LP). These include that development must protect the amenity of occupants of existing buildings without unacceptable levels of noise or odour, including to minimise impact with ventilation plant and mitigation measures.

Waste management

15. I saw a domestic sized waste bin towards the front of the unit containing a refuse sack. As well as kitchen waste, it is evidently convenient for some customers to use this bin if hot food were consumed near the unit. The appellant’s kitchen furniture has shelving or cupboards for refuse storage and he purchased some Council approved refuse sacks after the notice was issued. I accept that another hot food takeaway could operate like this.
16. Nonetheless, there is little evidence that these arrangements meet the Council’s commercial waste operating requirements for a hot food takeaway, or that they could be met in the unit given the limited internal space available. Nor have I been informed how this commercial waste is separated or collected. These issues are also relevant to granting planning permission so cannot be resolved by conditions, including those suggested by the appellant.
17. Consequently, I am not satisfied the appellant has demonstrated that commercial waste management arrangements for a hot food takeaway in the unit are satisfactory. This consideration has significant weight against the appeal and a hot food takeaway is contrary to LP Policy D.MW3. It includes that development should include sufficient accessible space to separate and store waste for collection within individual units.

Other Considerations

Fallback

18. After the notice was issued, the Council granted a lawful development certificate (LDC) for proposed use of the unit as 'Use Class E(a) (shop other than the sale of hot food)'¹. The applicant (who may or may not be one in the same as the appellant) told the Council that preparation and sale of hot food would stop by removing a grill then cooking and preparing food elsewhere to be sold cold or warm. The Council considered the unit would then be in Class E(a) use.
19. I accept that the modest scale of a hot food takeaway and size of premises in this case means the unit is like a small food shop and can no doubt be well-managed. But Class E(a) excludes the sale of hot food. In my planning judgement, as a matter of fact and degree, the planning permission sought and nub of the matter in dispute (a hot food takeaway) can be distinguished in nature as something materially more than a 'modest extension' of the lawful Class E(a) use of the unit with distinctly different impacts.
20. Accordingly, the LDC is not a comparable fallback for a hot food takeaway, not even the appellant's business. This consideration therefore has little weight in support of the appeal.

Personal circumstances

21. I am informed that the unit is the appellant's sole source of income and supports his dependants. Refusal of planning permission for a hot food takeaway would likely have significant implications in these regards and, potentially, for a member of staff I saw.
22. However, the appellant is a tenant and there is little evidence that finding another premises for his hot food takeaway business is not possible or within his means. In any event, the Council has no apparent in principle objection to a hot food takeaway in the unit, whereas it has not been shown that necessary safeguards such as those outlined in the main issues above are possible. The notice does not anyway require all food sales to cease, nor that the unit should close given that it does not prevent reversion to the last lawful beneficial use in Class E(a) by virtue of the LDC, which includes food sales.
23. Consequently, while I sympathise with the appellant's concerns in these regards, on the evidence before me they have modest weight in support of the appeal. I am also satisfied that in these circumstances upholding the notice would be a proportionate outcome in the wider public interest.

Other Matters

24. I saw that the significance of this part of the Conservation Area (CA) includes that the unit is in a frontage of mainly ground floor shops, restaurants and hot or cold food takeaways with flats above. This pattern repeats along both sides and directions of this stretch of Goulston Street. The doors installed as part of the new shopfront result in a similar entrance to some of these other commercial properties, including metal roller security shutters, though I have not been informed if these

¹ PA/25/00977 - suffice to say, a LDC should specify the actual use that would have been lawful, not just a Use Class in the Town and Country Planning (Use Classes) Order 1987, as amended (Planning Practice Guidance paragraph 17c-005-20140306).

works required planning permission. Nevertheless, in terms of use and exterior impression, a hot food takeaway in the unit with these doors therefore has a largely neutral effect on the significance of the CA which as such preserves the character and appearance of this part of CA and the CA overall².

25. Some interested parties were also concerned about whether or not the unit used as a hot food takeaway complies with other regulatory requirements, such as health and safety, fire risk or vermin control. But that is a separate matter for the appellant or owner of the unit and the relevant authorities. Alleged obstruction of a ground floor entrance door to the flats by customers of the Falafel Shack (or any hot food takeaway) is a private matter for the appellant or owner of the unit and the persons concerned.

Planning Balance and ground (a) conclusion

26. There are, therefore, no other considerations to indicate that ground (a) should be determined otherwise than in accordance with the development plan taken as a whole³. Consequently, for the reasons given above, the material change of use of the ground floor unit to a hot food takeaway (Sui Generis) is unacceptable and planning permission should not be granted for it. Accordingly, ground (a) fails.

Ground (f)

27. 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.
28. The reasons for issuing the notice refer to some amenity considerations but these explain why the Council decided it was expedient to take enforcement action, which it considered resulted in harm, in this appeal as also set out in the Enforcement Officer report. Taken with the requirements, it is clear that the purpose of the notice is to remedy the breach of planning control. Section 173 of the Act provides that the steps required to be taken by a notice can include discontinuing any use of the land. Relevant caselaw has established this can include removing associated works. The requirements would achieve these outcomes and the Council does not seek to under-enforce.
29. I acknowledge that planning enforcement should be remedial, not punitive and I accept that if the unit were to continue as a hot food takeaway this would be at less cost and disruption to the appellant. But the appellant's case on ground (c) is essentially similar arguments already made in ground (a). No other lesser step or obvious alternative was advanced.
30. In these circumstances, the steps required by the notice are consistent with remedying the breach of planning control so are necessary, proportionate and not excessive. Accordingly, ground (f) fails.

Ground (g)

31. For ground (g) to succeed, the appellant must demonstrate that the 3 month period specified in the notice to take the steps required by it falls short of what should reasonably be allowed.

² Section 72(1) - Planning (Listed Buildings and Conservation Areas) Act 1990, as amended.

³ Section 38(6) - Planning and Compulsory Purchase Act 2004, as amended.

32. An additional 3 months (6 months in total) is sought so that further works can be carried out to the unit and further approvals obtained after submission of details. But that is not the issue in ground (g) and ground (a) fails anyway. The appellant does not otherwise dispute that hot food takeaway use of the unit could stop (cease trading) within 3 months.
33. I accept that as a matter of principle, timely and effective planning enforcement is endorsed in relevant Planning Practice Guidance. The Council also has discretion under section 173A(1)(b) of the Act to extend the period for compliance. Nevertheless, the period in the notice must be sufficient to begin with. There is little apparent specific justification by the Council for 3 months in this case, which could have significant, unduly immediate implications for the appellant for reasons outlined in ground (a).
34. In light of all the above, there is little to justify the appellant's request for an additional 3 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 month for the appellant to make suitable arrangements to continue trading in the unit or elsewhere would be proportionate and justified. Consequently, the 3 month compliance period falls short of what should reasonably be allowed and ground (g) succeeds.

Overall Conclusion

35. Grounds (a) and (f) both fail, but ground (g) succeeds. The appeal is therefore successful to this extent. I shall alter the time period for compliance with the notice accordingly then uphold the varied notice and refuse planning permission.

Robin Buchanan

INSPECTOR