Planning Inspectorate

Appeal Decision

Site visit made on 4 November 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2026

Appeal Ref: APP/G2435/X/25/3373258
3 Goodyear Grove, Foxbridge Manor, Castle Donington, Derby, North West Leicestershire DE74 2WL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Lee Bebbington of Pizzeria Fiamma against the decision of North West Leicestershire District Council.
- The application ref 25/00992/CLP, dated 22 July 2025, was refused by notice dated 16 September 2025.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is 'for a small-scale delivery-only pizza business operating Friday-Sunday only – 5-9pm evenings only. Pizzas are prepared and cooked in a wood-fired oven within a covered outdoor garden kitchen. Online orders only. No customer visits occur.'

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of the appeal is whether the Council's decision to refuse the application is well-founded.

Reasons

3. An application under section 192(1)(a) of the Act[1] seeks to establish whether any proposed use of buildings or other land would be lawful. Section 192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

4. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.

5. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to

[1] Town and Country Planning Act 1990 (as amended)

demonstrate on the balance of probabilities that the proposed development would be lawful.

6. The main thrust of the appellant's case is that the proposed activities would not result in a material change of use of the appeal site, would not cause significant harm to residential amenity and would be incidental and subordinate to the primary residential use. 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.

7. Section 55(1) of the Act defines "development", for which planning permission is required. This includes making a material change in the use of land. Subsection (2) lists operations or uses of land which "shall not be taken for the purposes of this Act to involve development of the land…". Section 55(2)(d) is "the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such".

8. There are two questions to be asked: First, would the proposal result in a material change of use and second, if so, would it be for a purpose incidental to the use of the dwellinghouse as a dwellinghouse. The whole unit of occupation should be considered.

9. The concept of a material change of use is not defined in statute or statutory instrument. In support of their case, the appellant has drawn my attention to the case of *Sage v SSETR* [2003] [sic]. The appellant suggests that the case established the principle that 'the primary use of the planning unit governs; incidental acts do not redefine the unit's character'. However, the case referenced concerned the partial erection of a dwellinghouse, the application of section 55(2)(a) of the Act and the question of substantial completion.

10. I suspect that the appellant means to refer to a later case of the same name. Nonetheless, the basic approach is that, for a material change of use to have occurred, there must be a significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. While environmental impact may be relevant as evidence that a material change has occurred, it is not determinative.

11. The appeal site comprises a detached dwelling located off Goodyear Grove, within a generally residential area, with a degree of mutual overlooking within the estate. The rear garden is modest in size, with parking located to the side of the dwelling, between Nos 3 and 5. The rear garden backs on to No 1, with parking between and is opposite No 8. The dwelling, along with its gardens and parking area, in my judgement, comprises the planning unit.

12. In the rear of the garden is an open sided structure, within which pizzas would be prepared and cooked. An oven, a Gozney Dome, which can be powered by gas or wood would be used to cook the pizzas. Hours of operation would be Friday to Sunday, 5pm to 9pm, with orders taken online and deliveries made from the property using a scooter (low dB [sic]) or an electric car, with only one vehicle in operation at any given time. There would be no external signage, no shop front and no customer access.

13. The service would be operated by the family, with no outside staff and would be restricted to postcode delivery zones (Castle Donington only), which it is suggested mirrors the established delivery-only model of Nostra Pizza Derby, which is asserted to operate lawfully from the rear of a dwelling property. The appellant has confirmed that ingredients would be supplied once a week by a transit style van delivery and estimates that there would be around 10 to 15 deliveries per evening.

14. It is suggested that this is fewer than the comings and goings of many households. However, the appellant has not indicated the number of vehicle movements that are ordinarily generated by the residential use of the site. Furthermore, users of the dwellinghouse, including visitors to it, may still make journeys unrelated to the proposed pizza delivery business.

15. 10 to 15 deliveries would equate to 20 to 30 movements over a four hour period and between 60 and 90 movements per week, in addition to any deliveries of ingredients to the site, or waste collection. While there would be no heavy goods vehicles and no palletised deliveries, this, in my experience, is not typical of a residential use, particularly given the regularity with which such movements would be generated, i.e., every Friday, Saturday and Sunday evening.

16. Furthermore, it is not clear how waste arising from the use would be managed. Since the waste generated would relate to the operation of a business, it is likely to require separate collection to household waste, which may generate vehicle movements. Although customers would not visit the site, given its location, towards the end of a cul-de-sac, where the road narrows, serving a limited number of properties, additional movements to and from the appeal site are likely to be highly noticeable to occupants of other properties and would, in my view, appear uncharacteristic of a residential use, despite using a scooter or electric vehicle.

17. The pizzas would be cooked using what the appellant suggests is a ‘domestic-scale’ oven, with a 60cm flue. The appellant has made reference to the use of Binchotan charcoal, however, they have since advised that this is used separately for a domestic barbecue for personal use and is unrelated to the appeal proposal. While the use of gas may limit the release of smoke during cooking, the cooking of pizza outside is likely to generate odours, which would be apparent to occupants of nearby dwellings.

18. The appellant suggests that food preparation by family members in a covered garden setting is comparable to normal domestic use (BBQs, meals). However, while occupants of a dwelling may choose to cook outside, they are unlikely to do so with such regularity or over such a prolonged period, particularly outside of the summer months when outside temperatures are likely to be cooler. While it may only be possible to cook one pizza at a time, the odours and the frequency with which they would be generated are unlikely to be characteristic of a residential use.

19. While there would be no amplified sound or music, noise and disturbance is likely to be generated by the use of the garden, as well as the comings and goings from the deliveries. Given the close proximity of the appeal site to neighbouring properties, this is likely to be noticeable to occupants of nearby properties, particularly given that the proposed hours of operation include Sunday evening, when background noise levels are likely to be lower. While users of a residential

garden may generate noise and disturbance, as set out above, they are unlikely to do so over prolonged periods with such regularity.

20. The appellant states that the appeal site lies within an existing high-noise environment influenced by East Midlands Airport flight paths and Donington Park racetrack and suggests that against this backdrop, the proposed use would introduce no perceptible change to the local soundscape. The appellant has drawn my attention to the case of *Gillingham BC v Medway Dock Co* [1993], which concerned a commercial port and the question of nuisance, which had to be determined on the basis of the character of the neighbourhood after a permission had been granted. However, that case, in my view, does not assist the appellant in this case, which concerns whether the proposal would be lawful.

21. The appellant has written to their neighbours updating them on their business venture, providing a number to contact if they have concerns. The appellant suggests that no complaints have been received and has provided me with compliance monitoring templates, which would be maintained from the outset of operations and can be provided to the Inspectorate if required. However, while I have no doubt about the appellant's intention to utilise these logs, a certificate cannot be subject to conditions.

22. The appellant has drawn my attention to the case of *Moore v SSCLG* [2012] EWCA Civ 1202 which concerned change of use from residential to residential and ten units of holiday accommodation. In that case, it was held that the correct test was whether the development was capable of being materially different from a change to single dwellings. The appellant seeks to distinguish between that case and the appeal before me on the basis that the proposal would be modest and home-based only.

23. However, while the proposed operation would be home-based, the vehicle movements, noise and disturbance and odours which would be generated by the proposed use and the regularity with which they would be generated would not be characteristic of a residential use. There would be a significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. I therefore find that the proposed use would result in a material change of use of the appeal site.

24. Whether a use is incidental must be considered with regard to the primary residential use and the type and size of the dwellinghouse and its curtilage, as well as the scale and nature of the claimed incidental activity. It is vital that there is a normal functional relationship between the incidental and the residential use. While a use may be secondary, that does not mean that it is incidental or ancillary.

25. In support of their case, the appellant has drawn my attention to the case of *Emin v SSE & Mid Sussex DC* [1989] JPL 909, which concerned the erection of buildings within the curtilage of a dwelling house. I accept that working from home may amount to a use that is reasonably incidental to the residential use of the dwellinghouse. However, where the activity is carried out on such a scale or in such a way as to cause a material change to the character of the overall use of the planning unit it is unlikely to be incidental.

26. The appellant has referred to the established delivery-only model of Nostra Pizza Derby, which is stated to operate lawfully from the rear of a dwelling property. However, no substantive details of the circumstances regarding Nostra Pizza

Derby, or other examples cited[2] have been provided and so it is not clear on what basis these were deemed to be lawful.

27. As set out above, I have found that the proposed use would result in a material change of use of the appeal site. Although cooking within a garden may be ordinarily incidental to a residential use, the proposed cooking and dispatch of food as part of a commercial[3] delivery business three evenings a week, in my judgement, is not.

28. I recognise that some of the matters raised by interested parties in response to the application are not determinate, such as the existence of covenants and other premises offering pizza delivery and that residents located significantly closer to the appeal site than objectors have expressed support for the operation. Nonetheless, for the reasons given above, I find that the proposed use would result in a material change of use and would not be reasonably incidental to the enjoyment of the dwellinghouse. The use would therefore require planning permission and so the appeal must fail.

Conclusion

29. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a small-scale delivery-only pizza business is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Savage

INSPECTOR

[2] The appellant refers to 'similar delivery-only food businesses operating from residential premises with outdoor kitchens and limited physical changes having been deemed lawful in planning precedent and guidance'.
[3] Described as 'a small family business'.