Planning Inspectorate

Appeal Decision

Site visit made on 4 November 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2026

Appeal Ref: APP/M1520/C/25/3376062
Land at 14 Dovedale, Canvey Island, Essex, SS8 8HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Oluwole Solanke (Dshosgrill Limited) against an enforcement notice issued by Castle Point Borough Council.
- The notice was issued on 17 October 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, a material change of use of the Land to a mixed use for residential occupation and as a hot food takeaway/delivery business.
- The requirements of the notice are to: (1) Cease all use of the Land in connection with hot food take-away/ delivery; (2) Remove all kitchen facilities/ equipment from the garage and from the Land; and (3) Return the garage to its authorised use.
- The period for compliance with the requirements is: For requirement (1), one month from the date the notice takes effect; for requirement (2), two months from the date the notice takes effect; and for requirement (3), three months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Decision

1. It is directed that the enforcement notice is corrected by:

2. The deletion of requirement (1) and the substitution of a new requirement (1) containing the following words "Cease the mixed use of the Land for residential occupation and as a hot food take-away/ delivery business by ceasing any activity associated with the hot food take-away/ delivery element of the use".

3. Subject to that correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

4. The breach of planning control, as set out in the enforcement notice (EN) alleges a material change of use of the land to a mixed use for residential occupation and as a hot food take-away. Prior to the breach occurring the property was in use as a single dwellinghouse. A mixed use occurs where two or more primary uses exist within the same planning unit, as is the case in this instance. Essentially, the former garage of the house has been converted into a kitchen for the commercial food business but the remainder of the house is in residential use, occupied by the appellant, his wife and their family.

5. It is important that the requirements of an EN correspond to the alleged breach of planning control, as described. In this case, although the alleged breach refers to a material change of use to a mixed use, the notice does not explicitly require the cessation of that mixed use, it simply requires one element of that mixed use to cease.

6. For clarity, I have corrected the requirement to make it clear that the mixed use of the land should cease which will, essentially, be brought about by the cessation of the hot food take-away/ delivery element of the use. No injustice will arise as a result of me doing so because the corrected wording merely provides clarity and does not make any difference to the substance of the requirements.

The Appeal on Ground (a)

7. The main issues in respect of the appeal on ground (a) are the effect of the development on the living conditions of neighbouring occupiers and the effect on highway safety of parking associated with the use.

8. The property in question is situated within a residential cul-de-sac, made up of short rows of terraced dwellings, generally with three dwellings in each block. The surrounding area is entirely residential in nature and has a quiet and peaceful feel, given that it is a cul-de-sac with no through traffic. There is consistency in the design of the dwellings, all of which have integral garages, projecting slightly to the front of the main elevation.

9. No.14 is the end property in the row of three, being attached to No.16 at one side and with a narrow gap to No.12 at the other. The layout is such that those neighbouring dwellings are in close proximity. The extraction system above the commercial style cooker vents to the side passageway to No.12, with a metal flue attached to the side of the dwelling reaching just above roof level. The roller shutter garage door remains in place.

10. Notwithstanding that flue, the close proximity of neighbouring dwellings is such that they will remain vulnerable to cooking odours arising from the food business. The top of the flue is still in close proximity to upstairs bedroom windows, particularly of No.12. Moreover, there is nothing to stop the garage door being left open, particularly in hot weather where ventilation may be desired in the cooking area, thereby allowing cooking odours to disperse.

11. Letters from numerous residents testify to the impact of odours on the enjoyment of their homes and I have no reason to doubt the genuine nature of those representations, given the proximity of the use and the commercial nature of the cooking operations. In addition to odours from inside the property, neighbours have complained about smoke arising from cooking within the rear garden. It is difficult to tell whether the barbecuing in the garden is associated with the food business or whether it was for the benefit of the family, or a combination of both.

12. However, the numerous letters would indicate a frequency greater than one may expect for purely domestic purposes and the shed and storage boxes in the rear garden are full of pots/pans and other items related to the food business which indicates that the use is not contained to the kitchen area. One of the captions from the Instagram account for the business depicting the food provided refers to

"dshosgrill Authentic bbq from Dshogrill Kitchen to your event"[1]. The images of some of the meat and vegetables have the distinctive chargrilled outer associated with that cooking method. Consequently, it seems likely that at least some of the external cooking relates to the business.

13. From the information before me, the extent of cooking associated with the business is substantial. It caters for events and provides frozen and fresh meals for delivery and offers a take-away service to collect from the premises on its website. The extent of cooking is much higher than levels one would normally associate with a domestic property. It is a commercial enterprise in a residential area. The associated fumes, odours and cooking smoke have had a detrimental effect on the living conditions of neighbouring residents and the presence of the extraction flue is not sufficient to disperse those odours to a satisfactory degree.

14. Moreover, the additional comings and goings associated with the use are likely to have had a further impact as a result of additional noise and disturbance. As part of its investigation the Council ordered food from the website and collected it at the premises which indicates that such a service is available. The appellant claims that order was made during a "beta" testing phase of the company website, such that it is not typical of orders received.

15. If the website was simply in development and offering a service the appellant did not offer, one may have expected someone to contact the purchaser to explain. However, the order was placed online for collection at a specific time, the food was prepared and collected at the premises. That shows that deliveries were available and it seems unlikely to me that the Council was the only recipient of that service. Extracts of the Dshogrill website also show collection slots available on different days throughout the day and evening. Letters from residents also testify to people collecting food.

16. It is unclear whether those collecting the food are the people who have made the order or a courier/ taxi service used to deliver food, or the appellants themselves delivering food, or a combination of all three. Whichever is the case, the increased comings and goings will generate additional traffic, conversations on the driveway, noise from loading and unloading vehicles and the like. That additional noise is likely to cause disturbance to neighbouring residents in my view, above what could reasonably be expected in what was previously a very quiet residential environment.

17. Complaints have also been made to the Council's Environmental Health team regarding increased waste associated with the use, with reference to increased vermin and fox activity. As noted by the Council, no trade waste collection contract has been presented and there does not appear to be any waste collection facilities beyond normal domestic bins which would not be expected to accommodate the scale of waste and food waste associated with a commercial business.

18. The appellant maintains that waste is taken by the business to the local tip to be disposed of. However, that appears to be an ad-hoc arrangement that is not an adequate substitute for having proper waste bins and collection arrangements capable of managing the likely significant amounts of waste generate on site.

[1] Appendix 5 to the LPA's statement of case

Without such arrangements, additional odour and the attraction of vermin, as alleged by neighbours is easy to imagine.

19. The impact in that regard adds to the overall concern relating to the effect on the living conditions of surrounding residents arising from odour and smoke emissions and additional noise and disturbance. I have considered whether those impacts could adequately be mitigated through the imposition of planning conditions but am not satisfied such conditions would be effective, given the residential nature of the area and close proximity of neighbouring residents.

20. A condition limiting the hours of operation of the food business from 10.00am to 9.00pm would still leave residents exposed to cooking odours for a significant portion of the day and I am not satisfied that extraction equipment, even if maintained, would remove cooking odours sufficiently or prevent the garage door being open or outdoor cooking taking place.

21. A condition to prevent collections from the premises could be imposed but that may then lead to an increase in the number of deliveries to customers, such that the overall disturbance from comings and goings would not be reduced to any notable degree. A condition to secure details of waste collection arrangements could be imposed to ensure a more satisfactory scheme of collection and disposal but that would not be sufficient to overcome the fundamental concerns relating to noise and odour control.

22. Similarly, a personal permission, limiting the operation of the use to the current occupiers would not remedy the harm arising. Fundamentally, the harm arises from the nature of the use and the close proximity to other dwellings in a quiet residential area, as opposed to the personal attributes of the occupants.

23. In view of the above, the development undoubtedly causes harm to the living conditions of neighbouring residents and that harm could not be adequately mitigated. In that respect, there is clear conflict with the aims of Policy E3 of the Castle Point Borough Local Plan (1998) (the Local Plan) which states that development proposals which would have a significant adverse effect upon the residential amenity of the surrounding area by reason of traffic, noise, fumes or other forms of disturbance will be refused.

24. Whilst the use will and has generated an increase in traffic there is little evidence of any associated harm to highway safety. Customers visiting are likely to have to park on the street and that may lead to some inconvenience for other residents if they can't park close to their homes. It may even result in driveways being blocked temporarily whilst people collect food or delivery vehicles are loaded, if those vehicles park inappropriately.

25. However, to my mind, those issues are not necessarily evidence of harm to highway safety, it is more a matter of inconvenience and the harm to living conditions and the amenity of local residents arising from comings and goings which has been covered above. Therefore, the effect on highway safety it not a matter, of itself, which causes particular harm.

Other Matters

26. I have been provided with copies of letters sent to households within the vicinity by Anglian Water regarding the need to clear drains in the area which had become

blocked. The blockage was caused by a number of factors, including wipes and sanitary products being flushed down toilets but also due to cooking fats building up in the system. It is not clear if the food business at the appeal site has contributed to that issue but little detail about how cooking fats or oils are disposed of is before me. If not properly controlled such discharge is likely to be significantly greater than for a domestic property. Had I been minded to allow the appeal that may be a matter that would have required further consideration. However, given the harm arising in respect of the main issue, I am minded to dismiss the appeal and it is not a matter that is determinative in my decision.

27. I recognise that the food business provides employment for those concerned and I attach modest weight in favour of the economic benefits commensurate with the scale of the operation. However, I also note that the appellant's response to the Planning Contravention Notice indicated that the company had a shop prior to Covid, before moving to the present location. There is nothing to indicate that alternative premises could not be found if the notice was upheld.

Conclusion

28. In view of the above, the development causes significant harm to the living conditions of neighbouring residents, contrary to the relevant policies of the development plan in that respect. That harm could not be mitigated through the use of conditions. Whilst there may be some modest economic benefit associated with the food business, that does not outweigh the harm to the living conditions and the unsuitability of the location on account of its close proximity to neighbouring dwellings in a quiet residential area.

29. Therefore, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Chris Preston

INSPECTOR