

**APPEAL STATEMENT**

**SECTION 195 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990 (AS AMENDED)**

**APPEAL AGAINST THE DECISION OF THE LONDON  
BOROUGH OF CAMDEN**

**APPEAL SITE:** 60 THEOBALD'S ROAD, LONDON, WC1X 8SF

**APPELLANT:** MR ALTAN

**REFERENCE:** 21/04115/LDCE

**DATE:** JANUARY 2025

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## **APPENDICIES**

Appendix A – Officer delegated report and decision notice

Appendix B – Aerial Photograph

Appendix C – Exhibits 1 to 7

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## **1 INTRODUCTION**

1.1 This Appeal Statement has been prepared in support of an appeal against the decision of the London Borough of Camden to refuse to grant a Certificate of Lawful Use or Development (LDC) at 60 Theobald's Road, London, WC1X 8SF for the existing use of the property as restaurant and takeaway (Sui Generis).

1.2 The application dated 9<sup>th</sup> October 2024 was refused under delegated powers on 13<sup>th</sup> December 2024 for the following reason:

*“The evidence submitted fails to demonstrate that on the balance of probability the premises has been solely in continuous use as a mixed restaurant and hot food takeaway (Sui Generis), for a period of at least 10 years prior to the submission of this application.”*

1.3 A copy of the officer report and decision notice is produced at **Appendix A.**

## **2. APPEAL SITE DESCRIPTION AND PROPOSAL**

### **Site Description**

- 2.1 The appeal site comprises the unit located on the ground floor and basement levels of 60 Theobald's Road. At present, this site operates under the name 'Chicken Valley'. The aerial photograph exhibited at **Appendix B** illustrates the location of the appeal site and the nature of the surrounding land uses.

### **Proposal**

- 2.2 The appeal proposal relates to the exiting use of the property as a restaurant and takeaway (Sui Generis).

### **3. MAIN PLANNING CONSIDERATIONS**

- 3.1 The Courts have held that any appeal of this nature requires the applicant to show “on the balance of probability” the use is a lawful one and that the test in criminal law of “beyond reasonable doubt” must not be applied. Furthermore, the Courts have held that the appellant’s own evidence does not need to be corroborated by “independent” evidence to be accepted. (FW Gabbitts Vs SSE and Newham LBD [1985] JPL630).
- 3.2 In this particular case, there is evidence from a number of different independent sources to demonstrate that the property has been continuously used as a restaurant and takeaway (Sui Generis). The application was dated 9<sup>th</sup> October 2024, so in this case the period commences on 9<sup>th</sup> October 2014.
- 3.3 Section 4 of this appeal statement will address the above consideration and set out the appellant’s case in respect of the fact that the evidence is sufficiently precise and unambiguous to justify the grant of a certificate ‘on the balance of probability’.

#### **4. STATEMENT OF CASE**

- 4.1 The Council's refusal reason refers to the fact that they consider that the evidence submitted fails to demonstrate that on the balance of probability the premises has been solely in continuous use as a mixed restaurant and hot food takeaway (Sui Generis), for a period of at least 10 years prior to the submission of this application.
- 4.2 As set out above the appeal proposal relates to the continued existing use of the ground floor and basement of the property as a mixed use restaurant and hot food takeaway (Sui Generis).
- 4.3 The information provided sought to provide a full and clear chronology of the use from 2014.
- 4.4 In this particular case, there is evidence from a number of different independent sources to demonstrate that the appeal site has been continuously used as a mixed restaurant and hot food takeaway (Sui Generis at the time of the application.
- 4.5 The following evidence provided with this appeal comprises the following:

##### **Covering Information**

- Planning permission reference: 2003/2581/P – Exhibit 1
  - Floor plan – Exhibit 2
  - Drawings including floor plans – Exhibit 3
  - Planning application form – Exhibit 4
  - Planning statement – Exhibit 5
  - Letter to Council dated 6<sup>th</sup> October 2003 – Exhibit 6
  - Notices to the landlord dated 6<sup>th</sup> October 2003 – Exhibit 7
- 4.6 The above exhibits are provided at **Appendix C.**

### **Statutory Declarations**

- Statutory declarations from Colin Boyle
- Statutory declaration from Daniel Ritchie
- Statutory declaration from Joao Magalhaes
- Statutory declaration from Ann Scott
- Statutory declaration from Maria Campos
- Statutory declaration from Mr Murat Ozturk
- Statutory declaration from Albert Castiel
- Statutory declaration from Edward Francis Anthony Chuck

4.7 The above statutory declarations are provided at **Appendix D**.

4.8 The Council contends that the appellant has not provided irrevocable evidence to demonstrate continuous use as a mixed-use restaurant and takeaway for the requisite ten-year period. However, the National Planning Policy Guidance (NPPG) clearly states that the test to be applied is the balance of probability, not absolute certainty. The appellant has provided statutory declarations from a number of difference independent sources, which collectively provide clear and unambiguous evidence of the ongoing mixed use nature of the premises.

4.9 The Council contends that the takeaway aspect of the business has been ancillary to the primary restaurant use. However, the appellant does not accept this and the evidence submitted points to the fact that the takeaway service has, in fact, constituted an integral part of the overall business operations.

4.10 The independent testimony from several sources indicates that the takeaway function has consistently contributed a significant proportion of the establishment's revenue and customer base. This suggests that the takeaway service is not a secondary or incidental component but rather a core element of the business model, operating alongside the restaurant to meet customer demand and ensure commercial viability.

- 4.11 With regards to previous planning applications referenced, which described the premises as a restaurant (A3), it should be noted that planning applications often do not capture the full operational scope. The submitted evidence, clearly illustrate that takeaway services have been an integral part of the business throughout the ten year period.
- 4.12 Turning to Council's concern that the evidence does not distinguish between cold and hot food takeaway. The appellant can confirm the sale of hot food products in significant quantities over the years, which corroborate the fact that the premises operated as a mixed use.
- 4.13 The recent operation of the premises as 'Chicken Valley' does not remove the historical mixed-use nature of the business. The transition of branding does not constitute a material change in use, and the appellant has provided evidence to demonstrate operational continuity in terms of takeaway services alongside in house dining.
- 4.14 Overall, the appellant has provided a robust body of evidence that satisfies the balance of probability test, demonstrating that the premises have operated continuously as a mixed use restaurant and takeaway for at least ten years. The objections raised by the Council rely heavily on assumptions and a narrow interpretation of the evidence provided.
- 4.15 In light of the substantial evidence submitted, the appellant respectfully requests that the appeal be upheld and the Certificate of Lawfulness be granted in accordance with the Town and Country Planning Act 1990 as well as National Planning Policy Guidance.



## **5. CONCLUSION**

- 5.1 This appeal has been made by the appellant against the decision of the Council's failure to grant a Certificate of Lawful Use or Development (LDC) for the use of the property as a restaurant and takeaway (Sui Generis).
- 5.2 As outlined above, the relevant test of the evidence submitted in respect of a Certificate of Lawfulness is whether on the balance of probability, the use or development is a lawful one. The appellant has viewed an appeal as a last resort and has sought to engage with the Council during the application process and post decision to ensure a full understanding of the case, and to avoid making an unnecessary appeal.
- 5.3 A comprehensive package of evidence including statutory declarations was provided in support of the application to provide a full picture/record of the situation since 2014. The property has been continuously used as a restaurant and takeaway (Sui Generis).
- 5.4 Overall, the evidence submitted with this application demonstrates that the property has been continuously used as a restaurant and takeaway (Sui Generis). period of ten years up and until the date of the application, as well as this appeal. There was therefore no sound reason for the Local Planning Authority to withhold a Certificate of Lawfulness in this instance.