



RTPI

Royal Town
Planning Institute

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**Plot A3, Land South West of Telephone Exchange, Claypath Lane, South Shields,
NE33 4PG**

LPA Ref: 250712

Decision: Refusal dated 21 January 2026

Appeal under Section 78 of the Town and Country Planning Act 1990

APPEAL STATEMENT

1.0 INTRODUCTION AND BACKGROUND

1.1 This Appeal Statement is submitted on behalf of the appellant in support of an appeal made under Section 78 of the Town and Country Planning Act 1990 against the decision of South Tyneside Council to refuse planning permission for the change of use of Plot A3, Land South West of the Telephone Exchange, Claypath Lane, South Shields, NE33 4PG, from Class E to a Sui Generis Hot Food Takeaway.

1.2 The appeal site forms part of a recently constructed commercial development approved under planning permission ST/0746/22/FUL, which granted consent for a coffee shop with drive-through and three commercial units falling within Use Class E. The appeal unit has been constructed in accordance with that permission and is lawfully capable of immediate occupation for a wide range of commercial and food-based uses without the need for further planning consent.

1.3 Planning permission for the proposed change of use was refused by the Local Planning Authority on 21 January 2026 for a single reason relating to public health, childhood obesity and conflict with Supplementary Planning Document 22: Hot Food Takeaways and Health, together with references to national policy and emerging Local Plan policy.

1.4 No refusal reasons were raised in respect of highway safety, parking provision, residential amenity, noise or odour impacts, visual amenity, crime and disorder, operational matters or the vitality and viability of South Shields town centre. Statutory consultees, including Environmental Health, the Local Highway Authority, Community Safety and Northumbria Police, raised no objections in principle to the proposal.

1.5 The appeal therefore turns on a narrow issue of principle. The question for the Inspector is whether a delivery-led hot food takeaway, proposed within a modern commercial unit that already benefits from an unrestricted Class E use, can properly be refused on the basis of generalised public health concerns derived from non-statutory guidance and ward-wide obesity statistics, notwithstanding the absence of demonstrable site-specific planning harm.

1.6 For the reasons set out in this Statement, it is submitted that the refusal decision is fundamentally flawed in policy, legal and evidential terms and that planning permission should be granted.

2.0 SITE CONTEXT AND PLANNING HISTORY

2.1 The appeal site comprises Plot A3 within a terrace of three newly constructed commercial units located to the south west of the Telephone Exchange on Claypath Lane. The site lies within a mixed commercial environment and benefits from dedicated parking provision, servicing arrangements and modern infrastructure approved as part of the wider development.

2.2 Planning permission ST/0746/22/FUL, granted on 9 August 2023, established a lawful baseline for commercial activity on the site, including food-led uses falling within Class E. The permission was supported by detailed assessments of highways, parking, servicing, amenity and design, all of which concluded that the site was suitable for such uses.

2.3 The appeal proposal seeks only to regularise the Sui Generis classification required by the proposed operator. It does not involve any increase in floorspace, alteration to the building envelope, expansion of the site or intensification of built form.

3.0 STATUTORY AND POLICY FRAMEWORK

3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

3.2 The adopted development plan comprises the South Tyneside Core Strategy (2007), the Development Management Policies DPD (2011) and the South Shields Town Centre and Waterfront Area Action Plan (2008). Policy DM3 is the relevant adopted policy addressing hot food takeaways.

3.3 Supplementary Planning Document 22 is a material consideration but does not form part of the statutory development plan. It cannot introduce absolute prohibitions or override adopted policy.

3.4 The emerging South Tyneside Local Plan is not adopted and can only be afforded limited weight in accordance with paragraph 49 of the National Planning Policy Framework.

3.5 National planning policy is set out in the National Planning Policy Framework (December 2024), including paragraphs 96 and 97 relating to health and wellbeing.

4.0 CORE GROUNDS OF APPEAL: ERRORS IN PRINCIPLE

4.1 The refusal decision is unsound because it rests on a misapplication of the policy hierarchy, an over-reliance on non-statutory guidance and a failure to properly assess material considerations.

4.2 The Local Planning Authority has treated SPD22 as if it were determinative policy, relying on a numerical obesity threshold to justify refusal despite the absence of any conflict with adopted Policy DM3. This approach is unlawful and contrary to established appeal practice.

4.3 The decision fails to properly apply Section 38(6). The officer report confirms that the proposal would not harm amenity, highways, town centre vitality or design. In the absence of conflict with the development plan, refusal cannot be justified.

4.4 The Local Planning Authority has also misinterpreted national policy, treating paragraphs 96 and 97 of the NPPF as a presumption against hot food takeaways rather than guidance requiring evidence-based, proportionate decision-making.

5.0 THE LAWFUL CLASS E FALLBACK POSITION

5.1 The appeal unit benefits from an unrestricted Class E use. This lawful fallback position is immediate, realistic and capable of implementation.

5.2 Class E permits cafés and restaurants selling hot food for on-site consumption, with no control over nutritional content, customer numbers, opening hours or dwell times. Such uses could lawfully generate greater levels of activity and congregation than the proposed delivery-led Domino's Pizza operation.

5.3 The proposed operation is predominantly delivery-based, with short-stay customer collections and limited seating. In practical planning terms, it would not generate impacts materially greater than those arising from the lawful fallback.

5.4 The distinction drawn by the Council between Class E food uses and Sui Generis takeaways is artificial and unsupported. The planning system does not regulate food healthiness, and similar products could be sold under the fallback use.

5.5 Appeal precedent confirms that Class E fallback rights significantly diminish the weight that can be attached to perceived harms. The failure to properly consider the fallback position is a fatal flaw in the refusal decision.

6.0 PUBLIC HEALTH AND OBESITY CONSIDERATIONS

6.1 The refusal relies on ward-wide childhood obesity statistics and generalised assertions about food environments.

6.2 No evidence is provided to demonstrate a causal link between this proposal and harm to health outcomes. Correlation is relied upon where causation is required.

6.3 National policy does not support refusal based on abstract health data alone. Inspectors have consistently rejected such approaches where site-specific harm is not demonstrated.

6.4 The proximity of the site to a primary school does not justify refusal. National policy does not impose blanket exclusion zones, and SPD22 cannot introduce such controls in the absence of adopted policy support.

6.5 The public health objection therefore attracts limited weight.

7.0 EMERGING LOCAL PLAN WEIGHT

7.1 Emerging Policy 32 mirrors SPD22 and suffers from the same deficiencies. It is not adopted and is subject to unresolved objections.

7.2 Limited weight can be afforded to emerging policy, and it cannot override adopted policy or lawful fallback rights.

8.0 INSPECTORATE APPEAL PRECEDENT AND THE WEIGHT TO BE GIVEN TO THE CLASS E FALLBACK

8.1 The significant weight to be afforded to the lawful Class E fallback position in the present case is firmly supported by recent and directly relevant appeal decisions. These decisions consistently confirm that, following the 2020 Use Class reforms, the planning system cannot draw rigid or artificial distinctions between food uses falling within Class E and those requiring Sui Generis consent, unless clear and demonstrable land-use harm is evidenced.

8.2 In Appeal APP/H4315/W/21/3270869, the Inspector expressly recognised that the nature of hot food sold from premises operating within Class E and that sold from a hot food takeaway is often indistinguishable in planning terms. The Inspector concluded that the planning system is not equipped to regulate or differentiate between the nutritional content or perceived healthiness of food sold from different lawful commercial uses. Importantly, the Inspector found that where a realistic and immediate Class E fallback exists, the perceived impacts associated with a Sui Generis hot food takeaway are substantially reduced, if not eliminated altogether. That conclusion is directly applicable in the present case, where the appeal unit already benefits from an unrestricted Class E use capable of operating in a more intensive food-led manner than the proposal before the Inspector.

8.3 A further directly relevant decision is Appeal APP/A4520/W/24/3349010, relating specifically to South Tyneside. In that case, the Inspector examined the Council's reliance on Supplementary Planning Document 22 and confirmed that it does not form part of the statutory development plan and cannot be applied rigidly or determinatively. The Inspector found that takeaway uses within established commercial locations remain acceptable in principle, provided that amenity and highway considerations are satisfactorily addressed. The decision makes clear that SPD22 must be applied flexibly and proportionately, and that conflict with its guidance cannot, in itself, justify refusal where the proposal accords with adopted development plan policy and no site-specific harm is identified.

8.4 The Inspectorate's approach to the post-2020 Use Class regime was further clarified in Appeal APP/M1595/W/20/3249241. In that decision, the Inspector examined the implications of the introduction of Class E and concluded that the significant broadening of activities now permitted within a single use class must be afforded substantial weight in decision-making. The Inspector confirmed that the "planning landscape has changed

materially”, such that historic distinctions between former Use Classes A1, A2 and A3 no longer carry the same relevance or force. As a result, the continuing lawful ability for Class E premises to operate in an intensive food-led manner can outweigh perceived conflicts with more restrictive or dated local policies.

8.5 Taken together, these appeal decisions establish a consistent and robust principle that is directly applicable to the appeal proposal. Where, as here, a premises already benefits from an unrestricted Class E use capable of selling hot food for on-site consumption, the planning system cannot reasonably conclude that a delivery-led takeaway use would result in materially greater planning harm. In such circumstances, reliance on supplementary guidance or generalized health concerns is significantly weakened, and substantial weight must be afforded to the lawful fallback position when assessing the planning balance.

8.6 Applying this established Inspectorate reasoning to the present appeal, the Council’s refusal fails to properly account for the reality of the lawful baseline position and places undue reliance on SPD-level guidance. When the Class E fallback is correctly assessed and afforded appropriate weight, it is clear that the proposed Domino’s Pizza operation would not introduce impacts materially different from, or more harmful than, those that could lawfully occur without planning permission.

9.0 PLANNING BALANCE AND FALLBACK POSITIONS

9.1 The proposal accords with the adopted development plan when read as a whole and results in no demonstrable planning harm.

9.2 The lawful Class E fallback position is decisive and weighs heavily in favour of approval.

9.3 The appellant’s primary position is that planning permission should be granted without restriction.

9.4 Without prejudice to that position, the appellant would accept a temporary permission or operator-specific condition should the Inspector consider it necessary, demonstrating the proportionality of allowing the appeal.

10.0 CONCLUSION

10.1 The refusal of planning permission is unsound, disproportionate and unsupported by evidence.

10.2 The proposal represents a reasonable and acceptable use of a modern commercial unit and would not result in any material harm.

10.3 The appeal should therefore be allowed and planning permission granted.