

FOUNDRY CHAMBERS

Fast Food v Slow Planning

Developing trends in fast-food preparation and provision are putting companies in increasing conflict with local authority planners. The results for businesses can be serious including injunctions preventing operation as well as prosecutions resulting in substantial fines and confiscation of assets. Several recent prosecutions have seen local authorities pushing back against established chains who are themselves constantly testing (consciously or unconsciously) the scope of designated use as applied to the properties they operate.

At the heart of this tension lies the application of A5 and A1 usage to food outlets and, in particular, the circumstances in which the predominant use of a premises can be determined as the service of hot food for consumption off-site (A5). As shops selling predominantly cold food items to take away (A1) are increasingly developing ranges of hot-food items the primary purpose and nature of premises can change.

Even what constitutes 'hot food' for planning purposes can be surprisingly unpredictable. The 'hot' Cornish pasty tipped from the bakers oven is often cold in the eyes of planning law - the hot sensation being only an unfortunate by-product of eating the item before it has had a chance to properly cool. Food operators are increasingly seeking - through careful planning of product lines - to maintain at least an arguable case for A1 status which, in turn, frees up a wider range of potentially lucrative sites.

In what they perceive to be a battle against the encroachment of hot-food takeaways into the high-street, local authorities are increasingly seeking to restrain perceived breaches of designated use by issuing enforcement notices under section 172 of the Town and Country Planning Act 1990. These notices can require the occupier, explicitly or effectively, to cease trading.

For both sides, but particularly the Local authority, this enforcement tool is a blunt one. Not only does the process of enforcement and prosecution take a significant period of time (during which little is being positively done to alleviate the perceived nuisance) but also the need for precise notice terms enables motivated operators to adapt working practices only to the extent necessary to side-step direct enforcement.

For food operators facing enforcement action the process can seem an interminable and wholly unresponsive one with local authorities unwilling or unable to accept reasonable amendments to working practices intended to ensure compliance with designated use. Various avenues exist for those facing enforcement action, from appeal of the notice itself to certificates of lawfulness, but each requires careful consideration and targeted legal advice - often provided at the earliest stages of planning.

As the demand of consumer's tastes and planners principles increasingly clash it seems this is an area of regulatory enforcement which is likely to see increased attention inside and outside the courts.