



Appeal Decisions

Inquiry Held on 1 April 2025

Site visit made on 2 April 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 9 May 2025

Appeal A: Ref APP/T5150/C/24/3351394

10 Heather Road, London NW2 7ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr S Gilson (Sydon Investment Ltd) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 30 July 2024.
 - The breach of planning control as alleged in the notice is:
Without Planning Permission, the material change of use of the premises to a House in Multiple Occupation (HMO) ("the unauthorised change of use")
AND Without Planning Permission, the erection of a single storey rear extension ("the unauthorised development").
 - The requirements of the notice are to:
STEP1 Cease the use of the premises as an House in Multiple Occupation (HMO) and remove all fixtures, fittings and partitions associated with the HMO from the premises.
STEP2 Remove the sinks and other cooking facilities from within the bedrooms from the premises.
STEP3 Remove the Elfin units from the premises.
STEP4 Alter the ground floor internal layout so that it reflects that shown in the plan A attached to the notice.
STEP5 Restore the first floor of the premises to its previous condition before the unauthorised change of use took place. This will involve removing all en-suites from the bedrooms so that the first floor consists of one landing, one bathroom, and two bedrooms.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (d) (f) (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: Ref APP/T5150/X/24/3357377

10 Heather Road, London NW2 7ND

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Sydon Investment Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 24/2777, dated 30 September 2024, was refused by notice dated 2 December 2024.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which the certificate is sought is the erection of single-storey rear extension.
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Decisions

1. It is directed that the enforcement notice be corrected in Schedule 2 by replacing the words "the unauthorised development" with "the unauthorised operational development". Subject to this correction, Appeal A is allowed and the enforcement notice is quashed.
2. Appeal B is allowed and attached to these Decisions is a certificate of lawful use or development describing the existing operation which is found to be lawful.

Costs Applications

3. At the Inquiry, applications for costs were made by the appellant against the Council of the London Borough of Brent. The applications are the subject of separate Decisions.

Procedural Matter

4. I am making a correction of the notice, without any prejudice to the parties, for clarity purposes in order to distinguish the operational development from the change of use (since both are development under the Act).

Appeal A ground (c)

5. For an appeal to succeed on ground (c), the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.

Single storey rear extension

6. Article 3(1) and Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) affords general planning permission for the enlargement, improvement or other alteration of a dwellinghouse.
7. The extension is an 'enlargement, improvement or other alteration'. The property's use was as a single household *dwellinghouse*, before changing at some point to a *dwellinghouse* in use by not more than 6 residents as a house in multiple occupation ('a small HMO'). I heard much evidence from the parties as to any 'gap' which occurred between the works to construct the extension and any subsequent internal works to convert the property to an HMO. However, whatever the date the 2 ground floor rear letting rooms were created, I find as a matter of fact and degree that the property was a *dwellinghouse* to which Class A applied at the time of the works (and since).

Class A Limitations

8. Class A.1.(g), as applied to the terraced appeal property, permits a single storey rear extension providing it does not exceed 4m in height or extend more than 6m from the rear wall of the original dwellinghouse. It is common ground that the extension does not exceed these limitations of Class A, or indeed any others, and I have no reason to disagree.

Class A Conditions

9. The Council points to Condition A.3.(a). However, I find as a matter of fact and degree that exterior materials of the extension are of a similar appearance to those used in the construction of the dwellinghouse. The extension's rear

elevational brickwork is of similar appearance to that of the chimney breasts, entrance plinth and boundary walls of the property. The painted side rendering of the extension is similar in appearance to that upon the first floor rear elevation of the original dwellinghouse. The PVC doors and windows of the extension are similar in appearance to others installed in the property.

10. Further, the appellant complied with Condition A.4. because it formally provided the required information to the Council in 2017. There were no objections from adjoining owners or occupiers and, accordingly, the Council decided that that no prior approval was required as to the impact of the proposed development on the amenity of any adjoining premises. A.4.(11) requires that the development must be carried out in accordance with the information provided, but in the context of the of scheme as a whole (*Hillside*¹ refers) I do not find, as a matter of fact and degree, that the departures from the submitted plans are material for the following reasons:

- The differences in internal layout (2 letting rooms in place of a kitchen/diner) are not material departures in the context of the scheme as a whole which has taken place under Class A.1.(g). That statutory provision affords general planning permission for single storey rear extensions limited to compliance with certain external measurements – as this one does².
- The slight reduction in building height and the differences in doors and fenestration (2 separate single doors with adjacent windows, in place of 2 double patio doors), and the other design matters raised in paragraph 2.8 of Mr Wicks’ Proof of Evidence³, are not material departures in the context of the scheme as a whole given their limited extent. Further, the reduced building height and glazing arrangements do not suggest changes which would materially impact upon neighbouring amenity. While the submitted plans said the extension would be “similar to the extension at property No 7”, I construe (as a reasonable reader would) those words to mean in terms of height (rather than external finishes) since that statement is set within a box with height measurements. I have seen no evidence that would lead me to find that the appeal extension is dissimilar in height to the extension at 7 Heather Road.

Conclusion on lawfulness – single storey rear extension

11. For the above reasons, I am satisfied on the balance of probabilities that the appeal extension benefits from general planning permission afforded by Article 3(1) and Schedule 2, Part 1, Class A of the GPDO. Accordingly, it is lawful and not a breach of planning control. While this is a different finding to the Inspector who made the Appeal Decision (APP/T5150/C/20/3245458) quashing the 2019 enforcement notice, I have formed my own judgements as to materiality while applying current case law⁴.

¹ *Hillside Parks Ltd v Snowdonia National Parks Authority* [2020] UKSC 30

² Indeed, the written description of the proposed development required by Condition A.4.(2)(a) – which is the only information required to be sent to neighbours with a view to consultation on potential impact on the amenity of adjoining premises – only requires the inclusion of such external measurements.

³ Mr Wicks also refers to Building Regulations plans but I must consider any departures from the information provided pursuant to A.4.(2) of Condition A.4.

⁴ For instance, materiality within the context of the scheme as a whole was not explicitly addressed in the previous Decision (particularly as regards the internal layout). However, I certainly agree with the earlier Inspector that the extension is of the same size and overall shape as shown in the information submitted with the prior notification.

Change of Use

12. Article 3(1), Schedule 2, Part 3, Class L of the GPDO gives planning permission for a change of use from a single household dwellinghouse to a small HMO.
13. On 1 November 2022 the Council brought in a Direction under Article 4(1) of the GPDO restricting the exercise of those permitted development rights within its area (including the appeal site).
14. There is clear and persuasive evidence that the change of use to a small HMO licence took place before 1 November 2022 (HMO licence, unit tenancy agreements from 2019) and I am satisfied on the balance of probabilities that this aspect of development benefits from general planning permission under Class L of the GPDO. Accordingly, the change of use is not a breach of planning control.

Conclusion

15. For all of the above reasons, the appeal on ground (c) succeeds. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on grounds (a), (d), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Appeal B

16. The main issue in this appeal is whether or not the Council's decision to refuse to issue the LDC for the single-storey rear extension was well-founded.
17. For the same reasons given in Appeal A, the extension benefits from general planning permission afforded by Article 3(1) and Schedule 2, Part 1, Class A of the GPDO. It is therefore lawful.
18. The Council's decision notice on the LDC application also said that the development was not lawful as an enforcement notice was in place. However, the Breach of Condition Notice (subsequently withdrawn on 9 January 2025) was issued on 28 November 2024 which was after the date of application for the LDC (30 September 2024). Further, the enforcement notice which is the subject of Appeal A did not become in force because of the appeal made on 5 September 2024. While I have read with interest the views of some Inspectors in the Decisions put forward by the Council, the Secretary of State's Planning Practice Guidance⁵ advises that an enforcement notice is not in force where an enforcement appeal is outstanding and, standing in the shoes of the Secretary of State and pending any contrary case law, I adopt that position.
19. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the single storey rear extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

⁵ Paragraph: 003 Reference ID: 17c-003-20140306

APPEARANCES

FOR THE APPELLANT: Celina Colquhoun (instructed by Simply Planning)

She called Roger Birtles
(Simply Planning)

FOR THE LOCAL PLANNING AUTHORITY: Nigel Wicks (instructed by Tim Rolt,
Planning Enforcement Manager)

He called himself

INTERESTED PERSONS: None

DOCUMENTS submitted after the opening of the Inquiry

- 1 Chronology (submitted by appellant)
- 2 Correction to Proof of Evidence of Roger Birtles (Paragraph 4.1 –
Timeline of Events)



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 30 September 2024 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It benefited from general planning permission afforded by Article 3(1) and Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

Andrew Walker
INSPECTOR

Date: 9 May 2025

Reference: APP/T5150/X/24/3357377

First Schedule

Single-storey rear extension

Second Schedule

Land at 10 Heather Road, London NW2 7ND

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 9 May 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

Land at: 10 Heather Road, London NW2 7ND

Reference: APP/T5150/X/24/3357377

Scale: Do not scale

