



Appeal Decision

Site visit made on 1 April 2025

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 May 2025

Appeal Ref: APP/W1905/C/23/3321471

Land at 31 Palmers Way, Cheshunt, Hertfordshire EN8 9HS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Alex Shmaysani against an enforcement notice issued by Broxbourne Borough Council.
- The notice was issued on 4 April 2023.
- The breach of planning control as alleged in the notice is: without planning permission, the erection of an outbuilding and raised platform to create an independent unit of residential accommodation in the rear garden.
- The requirements of the notice are:
 - (i) Cease all residential occupation of the outbuilding
 - (ii) Remove, in its entirety, the outbuilding from the Land
 - (iii) Remove in its entirety, the raised platform from the Land (sic)
 - (iv) Remove any resultant debris from the land
- The periods for compliance with the requirements are:
 - Step (i) – One (1) month
 - Step (ii) – Two (2) months
 - Step (iii) – Two (2) months
 - Step (iv) – Four (4) months
- The appeal is proceeding on the grounds set out in sections 174(2)(a) and (b) of the Town and Country Planning Act 1990 (as amended) (“the Act”). 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 (“the DPA”).

Summary of decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. Parts of the appellant’s case on ground (b) relate to whether the outbuilding operations were undertaken as ‘permitted development’, and whether independent use has occurred. These are normally matters for appeals on ground (c), but given the Council has responded to those matters, no injustice would occur to either party were I to consider them. As the matters are interrelated and difficult to separate, I have considered the appeals on grounds (b) and (c) together.
2. A planning application (reference 07/22/0760/HF) for use of the outbuilding as a (residential) annexe ancillary to the dwelling was made in 2022 and refused in 2023. No appeal was made against that decision.
3. As shown above there is a typographic error in Section 5(iii) of the Notice and I shall correct it in my formal decision.

The appeals on grounds (b) and (c)

4. Appeals on ground (b) are made on the basis that the matters stated in the notice have not occurred, and those on ground (c) that the matters do not constitute a breach of planning control.
5. The thrust of the appellant's case is, firstly, that independent residential use of the outbuilding constructed in the rear garden ("the outbuilding") has not occurred, and secondly, that it was erected with planning permission as 'permitted development'. There is no dispute that an outbuilding and raised platform have been erected.

The use:

6. The alleged breach of planning control in Section 3 of the Notice is the erection of an outbuilding and a raised platform to create an independent unit of residential accommodation in the rear garden of 31 Palmers Way ("No 31"). The Notice is also entitled, "Enforcement Notice - Material Change of Use".
7. The Council advises the Notice was intended to target the change of use of the Land from use as a single dwellinghouse to use as two dwellings, and the erection of an outbuilding and raised platform.
8. The unit of occupation is the Land as a whole, and neither party has claimed exclusive physical division of the land into two separate units. The outbuilding erected contains rooms which include a kitchen and bathrooms, but also a store which is accessed separately and used in association with the original dwelling. Although independent access to the new outbuilding would be possible via the side gate, it would require access through the rear garden, at least part of which is clearly associated with the original dwelling and is immediately outside its rear windows. Therefore, even if functional use as two residential units has occurred, the Land is not divisible into two physically separate parts, and remains a single planning unit.
9. The Council's case is that what has been erected is a dwelling. In *Gravesham*¹, the court held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence, although actual use is also a consideration.
10. The plans submitted by the appellant show the outbuilding is of double skinned construction. It comprises a main entrance door leading to a room fitted as a kitchen, from which two rooms are accessed at the rear each containing mirrored glass fitted wardrobes/cupboards. From each of those rooms an individual toilet and shower room is accessible. At the front of the outbuilding, a further room is independently accessed from the raised platform and is used as a store.
11. In the photographs in evidence, and at my site visit, the two rear rooms were laid out as a gym, beauty room and home office. But the layout and internal fittings suggest the outbuilding was constructed principally for residential use, with two bedrooms. By design, there is therefore no living/dining room, and the kitchen is not large enough for a dining table and chairs. That accords with the

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

appellant's expressed intent to use the majority of the outbuilding as a granny annexe to provide ancillary accommodation for elderly relatives.

12. Although the Council states the applicant originally submitted images showing the units as bedrooms, neither party have alleged that actual residential use of the outbuilding has occurred. I note that one of the rear rooms could be used as a living/dining room, and that the raised platform could also be used as a separate garden area, being at a higher level than that immediately outside the original dwelling. But I have not seen any evidence that that has been the case.
13. On the balance of probabilities, an independent unit of residential accommodation has therefore not been created in the rear garden. It has not been evidenced that residential use of the outbuilding has occurred but, even if it has, with the evidence before me, that use was ancillary to residential use of the original dwelling as an annexe and relied on shared facilities in the original dwelling and the rear yard.
14. An independent unit of residential accommodation has therefore not been created in the rear garden. Neither has residential use of the outbuilding, if that has occurred, constituted a material change of use of the Land.

Erection of the outbuilding and raised platform:

15. Construction of the outbuilding and raised platform was development for the purposes of Section 55 of the Act, as the carrying out of outbuilding operations on land. Planning permission was therefore required for their construction in accordance with Section 57 of the Act.
16. Part 1 Class E of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") facilitates the provision of an outbuilding within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse as such. However, the parties agree that use as a residential annexe is not one incidental to the enjoyment of the dwellinghouse.
17. Therefore, as the outbuilding was designed and built for residential occupation and as a store, the outbuilding as a whole was not provided for a purpose incidental to the enjoyment of the dwellinghouse as such. It was therefore not 'permitted development' under Part 1 Class E of the Order, irrespective of the height of the outbuilding and its current use as a gym, beauty room and home office.
18. In 2021 the Council issued a Lawful Development Certificate (LDC) for the erection of an outbuilding on the Land (reference 07/21/0288/LDP). However, the parties agree that the outbuilding erected is different from that identified in the LDC on account of its size and shape. It also differs in terms of its fenestration and internal layout. The outbuilding erected is therefore not the outbuilding for which the LDC was granted.
19. I have not seen any evidence to refute the Council's allegation that the raised platform exceeds 0.3m, and at my site visit it appeared to be higher. The raised platform is therefore not 'permitted development' under Part 1 Class E of the Order. Consequently, neither the outbuilding nor the raised platform benefitted from deemed planning permission under Article 3(1) of the Order.

20. In conclusion, an outbuilding and raised platform have been erected without planning permission. But, on the balance of probabilities, there has not been the creation of an independent unit of residential accommodation in the rear garden, and no material change of use of the Land has occurred.
21. The appeals on grounds (b) and (c) therefore succeed in part. I shall correct Section 3 of the Notice to, "Without planning permission, the erection of an outbuilding and raised platform", and delete requirement (i) from Section 5.

The appeal on ground (a) / the DPA

22. Appeals on ground (a) are made on the basis that planning permission ought to be granted for the matters constituting the breach of planning control, as stated in the Notice. Having corrected the Notice, those matters are the erection of an outbuilding and raised platform.
23. Section 75 of the Act states that the grant of planning permission for the erection of a outbuilding may specify the purposes for which it may be used. Where no purpose is specified, the permission shall be construed as including permission to use the outbuilding for the purpose for which it was designed. In this case, both the design of the outbuilding and the expressed intention of the appellant are that use of the outbuilding is as a residential annexe and domestic store.

Main Issues

24. The main issues are:

- The effect of the development on the character and appearance of the area;
- The effect of the development on the living conditions of neighbouring occupiers;
- The effect of the development on the living conditions of residents of No 31;
- Whether the development is the minimum level of accommodation required and capable of independent residential use; and
- Whether 'permitted development' rights provide a fallback position sufficient to justify the development which has occurred.

Character and appearance

25. The Land is a semi-detached dwelling comprising the dwellinghouse, its front parking area and rear garden. It is located in a residential area with neighbouring dwellings either side and to the rear.
26. Between 29 Palmers Way ("No 29") and No 31 a shared access drive provides vehicular access to the rear of both properties. Prior to the development, each property had a garage in the rear garden, at the end of the access drive. The garage at No 29 remains and is sited adjacent to the boundary and the Council advise it is around 2.5m high.

27. The Council acknowledge that the outbuilding is not particularly visible from the wider street scene but consider the outbuilding overdevelopment of the site and an overly dominant form of development.
28. The appellant's plans show the outbuilding is around 40sqm in area, being just less than half the area of the original rear garden. It is higher than the garage adjacent at No 29, and the Council's evidence is that the outbuilding is around 2.9m in height, as measured from the original ground level adjacent to the neighbouring garage.
29. I was unable to see the original ground levels at my site visit, as the outbuilding is the full width of the garden and the decking had been installed across the remaining area, other than a small area adjacent to 33 Palmers Way ("No 33"). The remaining rear garden is divided into lower and upper decked areas, with three steps to the upper area adjacent to the outbuilding (the raised platform), around seven courses of bricks higher than the lower decking.
30. The fence between numbers 31 and 33 appears to have preceded the development, and the gravel board remains visible on the boundary line. The garden at No 33 is also stepped, albeit to a lesser extent. The neighbouring garden to the rear was not visible at my visit on account of the full width of the outbuilding, but photographs in evidence show the neighbouring garden to have been at a higher level.
31. The outbuilding is a significant structure in the rear garden, made more imposing by the rising levels from front to rear. In form, the brick built structure is not in itself excessively high, albeit that it is constructed at the level of the upper decking. I have seen no evidence that it is unduly tall or out of character from the neighbouring garden at the rear, and its effects on the garden at No 33 are limited. Neither is the upper decking harmful to the character or appearance of the area. It is smart in appearance, and provides upper and lower external amenity areas, which do not detract from the character and appearance of the area.
32. The greater effect is that of the store, which stands forward of the residential part of the outbuilding. The store is the same height as the rear parts of the outbuilding, but projects forward beyond the front of the garage adjacent at No 29, and into an area where the natural ground level was lower. It is an imposing element of the outbuilding, and closer to the original dwelling and those either side, and is a solid structure with relatively few features. With the evidence before me, including my site visit, this part of the outbuilding does not reflect, and is harmful to, the character and appearance of the area. But without this element, the outbuilding would not be incompatible with the existing pattern of development in the area.
33. In conclusion, the development as a whole conflicts with the relevant parts of Broxbourne Local Plan 2018-2033 (2020) ("BLP") Policy DSC1. That policy requires developments to enhance local character and distinctiveness, taking into account existing patterns of development, urban form and height, among other matters. However, removal of the part of the building used as a store would resolve the conflict and remove the harm to the character and appearance of the area. That could be achieved by a planning condition.

34. The Council have also alleged conflict with the Borough of Broxbourne Borough-Wide Supplementary Planning Guidance 2004 (updated 2013) ("SPG"), but I have not been directed to any specific part against which the development conflicts.

Living conditions of neighbours

35. The Council's concern relates to privacy for occupiers of, and outlook from, No 33.
36. Without the store, the outbuilding is set back around 8.6m from No 33's dining room window. The SPG expects a separation distance of 25m between facing elevations. However, the only window facing the rear of No 33 serves a WC/shower room which was obscure glazed at the time of my visit. The door was also solid, with no glazing, and all other rooms are served solely by rooflights. Subject to a planning condition requiring any glazing to be obscured, there is therefore no realistic prospect of harmful overlooking occurring from the outbuilding.
37. The raised platform is only slightly higher than No 33's own garden, and the current occupier has expressed his intention to keep his boundary fence low to facilitate neighbourly interaction. A higher fence could be erected if required by future occupiers and would reduce overlooking of the dwelling at No 33 to an acceptable level in this urban area. A boundary wall between No 29 and No 31 does so, and no case has been made in relation to privacy for occupiers of No 29.
38. The Council also claims there have been objections raised relating to noise emitted from the rooflights of the outbuilding but has provided no further substantiation or evaluation of the noise alleged. I am therefore unable to afford any material weight to this matter and use as an annexe rather than a gym could result in lower noise levels.
39. In conclusion, subject to a suitable planning condition, the development accords with the relevant parts of BLP Policy EQ1, which require development in the urban area to avoid detrimental impacts on the amenities enjoyed by neighbouring residents.

Living conditions of residents of No 31

40. The SPG seeks 80sqm of external amenity space for 4 bedroom dwellings, and 100sqm for 5 bedrooms. The Council claims only 56sqm remains, but with the removal of the store, that area would increase by 7sqm. Although the recommended levels are not met, the upper and lower decking areas provide functional space sufficient for use of the dwelling with an annexe operating as a single dwelling.
41. The Council advises the bedrooms meet the minimum internal space standards. The very nature of an annexe dependent on the main dwelling is that it is not self-sufficient, and a failure to meet the space standards for new dwellings in other respects is not significant. In fact, development plan Policy H8, which is described below, requires annexe accommodation to be the minimum necessary.

42. In conclusion, there is no harm to the living conditions of occupiers of No 31, and no material conflict with the relevant parts of BLP Policy DSC1, which require regard to be given to the SPG.

The nature of the accommodation

43. The outbuilding is located in close proximity to the main dwelling. Unless one of the bedrooms identified on the appellant's plans is used as its living and dining area the outbuilding relies on the main dwelling for those facilities. It is also subordinate in scale to the main dwelling, and without the store, will be no larger in footprint than the original dwelling prior to its extension.
44. I have not seen sufficient evidence to establish whether the facilities proposed are the minimum needed for the intended occupants. The appellant advises the accommodation is intended for his parents in law, one of whom he describes as being very unwell and suffering from medical conditions. The outbuilding used as an annexe would enable the appellant's family to care for and support them.
45. With the information before me I have not seen evidence of the need for separate bedrooms and bathrooms, but the kitchen area is small, and the size of the outbuilding (without the store) is not unduly large.
46. I have found no conflict in relation to the character and appearance of the residential part of the outbuilding, and no harmful loss of privacy, subject to a suitable planning condition.
47. Although the Council alleges its parking requirements of 3 on-site spaces would not be met, it confirms there would be no significant harm to highway safety or parking on the relatively quiet residential street. It concludes there would be no conflict with the relevant policy in relation to parking.
48. Although it may be possible to use the outbuilding independently from the dwelling, by using the driveway, separating the rear garden, and using a bedroom as a living/dining area, that is not the development before me. Policy H8 requires the imposition of a planning condition to limit use of the outbuilding to use as an annexe ancillary to the primary household, and for occupation only by occupants of the main dwelling. Doing so with an enforceable condition would prevent independent use.
49. In conclusion, subject to a suitable planning condition, the development would accord with BLP Policy H8, which sets out requirements for residential annexes, permitting them only in specific circumstances.

The appellant's fallback position

50. As set out above, Part 1 Class E of Schedule 2 of the Order facilitates the provision of an outbuilding within the curtilage of a dwellinghouse in certain circumstances. It is clear from the exceptions to the development permitted and the definitions in Class I that it includes the construction or provision of a raised platform not exceeding 0.3m.
51. 'Permitted development' rights do not apply retrospectively, but the appellant's case is that a similar outbuilding and similar decking could be erected with deemed planning permission, as 'permitted development', were he required to demolish the outbuilding and raised platform.

52. In relation to the building, the crux of the appellant's case is that the technical guidance² states that, where the ground level is not uniform, it is the highest part of the surface of the ground next to the building. The appellant considers the ground level at the rear of the building means the outbuilding does not exceed 2.5m in height for the purposes of Part 1 Class E.
53. Given the outbuilding is the full width of the garden I was unable to see the rear-most point of the Land or the building's height along the rear boundary. Although the appellant provided some evidence to suggest there were higher ground levels at the rear, that did not appear to be substantially so, and in my view the evidence was not conclusive. On the balance of probabilities, with the evidence before me, an outbuilding which could be erected as 'permitted development' would be lower than that constructed, and possibly significantly so. It would therefore have a more limited effect on the character and appearance of the area and is not justification for the outbuilding erected.
54. Similarly, the decking meets the doors of the outbuilding, and provides level access forwards to its front edge, where 3 steps lead down to the lower decking at a height of around 7 courses of bricks. I have not seen evidence of the ground levels relative to the raised platform, and no conclusive comparison has been made between a deck which does not exceed 0.3m in height above ground level and the decking erected. I am therefore unable to give any material weight to the fallback position of decking which could be erected as 'permitted development'.
55. Therefore, although the appellant has a realistic fallback position, it is not sufficient justification for the development erected.

Conditions

56. As set out above in relation to character and appearance, it is necessary to require the removal of the store room part of the outbuilding in order to make the development acceptable.
57. To protect the privacy of occupiers of adjacent dwellings, it is also necessary to require any windows on the front elevation of the outbuilding to be obscure glazed and non-opening.
58. As described above, residential use of the outbuilding should be limited to use as an annexe ancillary to the dwelling, and such a condition is a development plan requirement.

Conclusion

59. Subject to planning conditions, the development therefore accords with the development plan and there are no other material considerations that require a decision to be made other than in accordance with the development plan.
60. The appeal on ground (a) therefore succeeds.

² Permitted development rights for householders Technical Guidance - Ministry of Housing, Communities and Local Government

Conclusion

61. For the reasons given above I conclude that the appeal succeeds in part on grounds (b) and (c) and succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The enforcement notice will be corrected and quashed.

Decision

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

- In the heading, after the words 'Enforcement Notice', the deletion of the words "Material change of use";
- In Section 3, the deletion of the words, "to create an independent unit of residential accommodation in the rear garden"; and
- In Section 5, the deletion of the words "(i) Cease all residential occupation of the outbuilding"
- In Section 5(iii), the deletion of the word, "Lan" and its replacement with the word, "Land".

63. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of an outbuilding and raised platform at Land at 31 Palmers Way, Cheshunt, Hertfordshire EN8 9HS, subject to the following conditions:

- 1) The building hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within two months of the date of failure to remove the part of the building marked as "Store" on drawing reference ELA/1RevA entitled 'Existing Layout' dated 29/02/21 and drawing reference ELA/3RevA entitled 'Proposed Layout & Elevations' dated 29/02/21.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), at no time shall there be any window less than 1.7 metres above internal floor level on the front elevation of the outbuilding unless it is obscure glazed and incapable of being opened.
- 3) The outbuilding shall be occupied for residential accommodation only by persons living as a single household with occupants of the main dwelling.

Peter White

INSPECTOR