



Appeal Decision

Site visit made on 3 June 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 June 2025

Appeal Ref: APP/T5150/X/23/3323325

59 Alder Grove, London NW2 7DE

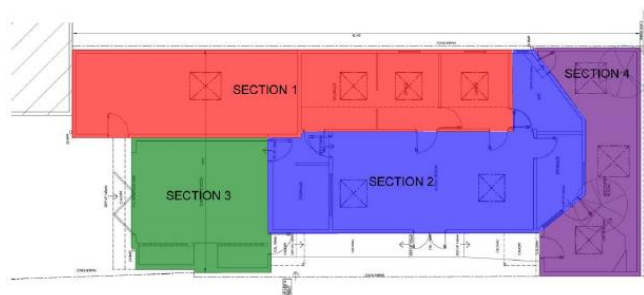
- The appeal is made under section 195 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Ms R and T Kramer against the decision of the Council of the London Borough of Brent.
- The application ref 23/0609, dated 23 February 2023, was refused by notice dated 26 April 2023.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is for the construction of new outbuilding for use as home gymnasium

Decision

1. The appeal is dismissed.

Reasons

2. Section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. In this case, this turns on whether the appellant has been able to show that, on the balance of probability, whether or not the operations would be lawful if begun at the time of the application made for the certificate. The planning merits of the operations are not relevant to the appeal and there is no planning application before me.
3. At the time of the application, there was an outbuilding in the rear garden. This outbuilding had been the subject of a previous enforcement notice (EN)¹, which had taken effect and had also been the subject of a separate, now determined appeal². The EN required the demolition of the unauthorised outbuilding, which had been referred to as containing Sections 1, 2, 3 and 4, as shown below, and the removal of the materials arising from the demolition.



Plan Subdividing the Outbuilding into 4 Sections as part of the Enforcement Appeal

¹ London Borough of Brent Enforcement Ref: E/21/0036

² PINF Ref: APP/T5150/C/21/3284115

4. The Inspector issued a split decision, and the EN was upheld although planning permission was granted to part of the outbuilding (Sections 1 and 2) subject to conditions. Condition 1 stated:

“The Development hereby permitted shall be limited to the building shown outlined in red on Drawing No 21-116.8 dated July 21 and all other elements of the building shall be demolished, including the removal of one bathroom and one kitchen.”

5. Consequently, Sections 1 and 2 of the existing outbuilding were deemed to have planning permission subject to the demolition of Sections 3 and 4 and the removal of a bathroom and kitchen. Section 3 occupied the area where the proposed new outbuilding for the use as a home gymnasium (the subject of this LDC appeal) is to be located.
6. By virtue of section 191(2) of the 1990 Act, proposed operations would be lawful if no enforcement action may be taken in respect of them and they do not constitute a contravention of any of the requirements of any enforcement notice in force.
7. Both parties highlight that the Council has closed the enforcement case, however this does not necessarily provide clarification that the EN has been fully complied with. From the details before me, and following my site visit, it was clear that elements of the fabric and materials of Sections 3 and 4, which include flooring, joists, apparatus and walls, still remain at the site. Thus, I am not satisfied that the EN has been fully complied with.
8. Furthermore, the appellant was unable to grant access inside part of the existing outbuilding (Section 1), and as a result I was unable to ascertain whether the bathroom and kitchen had been removed as required by condition 1 of the split decision. Consequently, there could also be a breach of condition at the site. Even if, access and/or confirmation had been supplied in respect to the removal of the bathroom and kitchen, given that parts of the existing outbuilding subject to the EN remain on site, the development remains unauthorised and thus is unlawful.
9. Article 3(5)(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) states permission granted by Schedule 2 does not apply if in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful. Given my findings above in respect of its lawful status, an LDC for this development cannot be issued at this time. Consequently, I fail to consider whether the development would be incidental to the main house.

Other Matters

10. It is acknowledged that the retention of elements of the unauthorised structure have provided an alternative scheme to the requirements stated in the notice, thus less cost and disruption to the appellant. However, these measures would not achieve the purpose of the EN, which was to remedy the breach of planning control that had occurred. Thus, any retained part of the development would be unlawful and would require planning permission, although as stated, such planning merits are not relevant to an appeal under Section 195.
11. Nevertheless, there remains an opportunity open for the appellant to pursue such arguments under separate development management procedures. For the

avoidance of any doubt, my findings in respect of this appeal would not in any way affect the future consideration of such matters.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the construction of a new outbuilding for the use as a home gymnasium is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Robert Naylor

INSPECTOR