



Appeal Decision

Hearing held on 8 July 2025

Site visit made on 8 July 2025

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 11 August 2025

Appeal Ref: APP/T5150/X/25/3363659

274 Watford Road, Harrow, Middlesex HA1 3TT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kishan Parshotam against the decision of the Council of the London Borough of Brent.
 - The application ref 24/2133, dated 25 July 2024, was refused by notice dated 7 October 2024.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which an LDC is sought is the demolition of the existing outbuilding and the erection of a new outbuilding.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by Mr Kishan Parshotam against the Council. This is the subject of a separate decision.

Preliminary Matters

3. The relevant date for the determination of lawfulness is the date of the LDC application, that is 25 July 2024. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) as subsisted at the time of the application. The burden of proof is on the appellant to show that the development referred to in the application would have been lawful if begun on the date the application was made, that is 25 July 2025.
4. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
5. For the avoidance of doubt, the planning merits of the matters applied for are not relevant to this appeal and thus it is not for me to determine whether or not what is proposed would be acceptable in planning terms.

Main Issue

6. S195(2) and (3) refer to the Secretary of State's role on appeal as one of being satisfied that the Council's decision is or is not "well-founded". In other words, the appeal is confined to the narrow remit of reviewing the Council's decision and not the reasons for it.

Reasons

7. The appeal relates to a semi-detached dwelling situated in a modest plot within the Sudbury Court Conservation Area. The LDC application sought to ascertain whether the demolition of the existing outbuilding, which is situated in the rear garden, and the construction of a new larger outbuilding would be lawful. The appeal building was granted planning permission ref:10/3123 by notice dated 24 February 2011 for the erection of a single storey detached outbuilding within the rear garden of the dwellinghouse (the 2011 permission). Condition 4 states: "The outbuilding hereby approved shall be used solely for purposes ancillary to 274 Watford Road. No business or industry shall be carried out therein, nor shall this building be used for additional living accommodation or be sold, let or occupied separately from the main dwellinghouse."
8. The appellant considers that the use of the building, in breach of condition 4, has established its lawful use providing living accommodation in association with the main dwellinghouse. They refer to the Council's stance provided to them in email correspondence dated 25 October 2024 which confirmed that it was prepared to accept that the outbuilding had been used for living accommodation in excess of 10 years and as such the suspected breach of condition was immune from enforcement action.
9. The Council's view is that although the condition may have been breached, it was considered that, at the time of the LDC application, the building was being used as a separate dwellinghouse, and that use had created a separate planning unit. Accordingly, it considers that the existing use of the building was unlawful and that Article 3(5) of the GPDO was engaged, and planning permissions granted by Schedule 2 did not apply. The Council considered that this would prohibit the demolition of the outbuilding under Part 11 Class B and the erection of a new building under Class E of the GPDO. Furthermore, it considered that there was no justification for a new larger outbuilding and due to the inclusion of a bathroom, it would contain primary living accommodation which would not be incidental to the enjoyment of the dwellinghouse.
10. For clarity, the habitable use of the outbuilding is not in dispute. It is whether the nature of the habitable use amounts to the creation of an additional self-contained unit of residential accommodation, in other words a 'new dwelling' at 274 Watford Road, needs to be considered.

Whether a separate planning unit has been created

11. There is no definition of the term 'dwellinghouse' in the 1990 Act, but it was accepted in established case law found in *Gravesham*¹ 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. From the evidence

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

presented, it is not disputed that the outbuilding has a functioning kitchen, a bathroom and living space with sufficient room for a bed. As a matter of fact and degree, the outbuilding has the distinctive characteristics of a dwellinghouse.

12. While the outbuilding may provide facilities for independent day-to-day living, this does not necessarily equate to the creation of a new dwelling, which would be a separate planning unit from the host dwelling. From established case law in *Uttlesford*², planning permission had been granted for an incidental garage, but the accommodation provided gave the occupant the facilities of a self-contained unit, intended to function as an annexe only, with the occupant sharing her living activity in company with the family in the main dwelling. A fact and degree judgement was made on the specific circumstances of the case, and the key issue was that a separate planning unit had not been created.
13. It was explained at the hearing that the appellant's uncle needed accommodation due to personal circumstances and that the outbuilding was constructed to provide him with living space as room inside the main dwellinghouse was limited. He is said to have resided in the outbuilding from when it was completed in 2011 to when he moved elsewhere in 2018. During this time, it is said that the appellant's grandmother would prepare food for him and do his washing. After he left, Ms S, who had previously been living in the house and caring for the appellant's grandmother until she passed, occupied the outbuilding between 2018 and winter 2022. Since then, the appellant describes the use of the building as being on an ad hoc basis as 'overflow space' for the house and as accommodation for family friends who come to stay periodically. The house is described as providing two 'proper sized' bedrooms and a box room with limited space to accommodate guests beyond those who reside in the main dwellinghouse.
14. The Council's view is that since 2024, following a complaint received in April 2024 that the building was being 'let-out', the outbuilding was being used for independent residential accommodation and as such, a new planning unit had been created. This is said to have occurred prior to the LDC application, with the use of the building changing by providing accommodation to family friends rather than members of the household. The appeal site was visited on 15 May 2024 by a Council officer who, although not seeing inside the building, formed the view that it was being occupied separately from the main dwellinghouse. As the visit was said to be in association with the planning application for the extension, the matter was not pursued.
15. Correspondence between the parties after the refusal of the LDC refers to there being a "clear understanding that the family friend residing there would vacate the outbuilding by 31 October 2025, as a gesture of goodwill". This is supported by a letter from the Council to the appellant dated 29 October 2024³ which confirms agreement that the family friend would move out of the outbuilding within the next 12 months and that it would then be used as an office ancillary to the main house. At the time of my visit, the outbuilding was not being occupied for residential purposes although it remained furnished with a kitchen, bathroom and sofa bed.
16. The appellant rejects the allegation that the outbuilding has been utilised as a separate dwelling providing independent living accommodation. They insist that it has always been used in an 'ancillary manner' being parasitic to the main

² Uttlesford DC v SSE & White [1992]

³ LPA Statement Appendix 7

dwellinghouse in terms of electricity and broadband supply and has been used as overspill accommodation in association with the house.

17. To support this claim, the appellant states that there is no washing machine in the outbuilding and the shower is said to provide only cold water which is necessary for religious purposes. Although the shower is said to only provide cold water and thus would not sustain someone living in the building independently, I am not persuaded that this is determinative. Furthermore, not every dwellinghouse will have a washing machine, particularly where space is limited.
18. The outbuilding is situated in the rear garden which is modest in size. There is no separate access to the rear garden, access is gained via a gate to the side of the main dwellinghouse between its side elevation and the garage. The route is narrow and restricted and goes through the appellant's private space and over the appellant's lawn. There are no physical barriers to indicate separate occupation. There is no separate or private space set aside for the outbuilding and thus the outdoor space is shared with the occupants of the main dwellinghouse. There was no indication of a separate address on either the main dwellinghouse or the outbuilding and no indication of a separate receptacle for post or separate utilities.
19. Correspondence between the parties refers to the building not being 'rented out' but occupied by a family friend. Although the fact that rent was not paid may not necessarily indicate how the building is being used, from what I observed at the time of my visit, it adds weight to the appellant's claim that the building is not in a separate use. I note further correspondence from the appellant dated 8 October 2024 stating "we have never suggested, and do not seek to suggest, that the building has had its own postal address or been a separate dwelling. The key point is that the building has been used for additional living accommodation."
20. In my judgement and from my site observations, the location for the unit falls within the existing residential planning unit, close to the main dwellinghouse, and its use is part and parcel of the primary residential use of the site. It has provided additional primary living accommodation for use by close family members and friends of those who occupy the main dwellinghouse. There is nothing in the evidence to suggest that at the time of the LDC application, the outbuilding was occupied separately from the main dwellinghouse. The land remains in single ownership and control, and the use of the outbuilding, in the manner described by the appellant, has not involved physical or functional separation of the land from the main dwellinghouse. No new planning unit has been created, and the character of the residential use of the existing single planning unit has not change.
21. Therefore, it seems to me that, on the balance of probabilities, the use of the appeal building is lawful and there are permitted development rights available to the overall property as a dwellinghouse and its curtilage by virtue of Article 3 of the GPDO.

Demolition of the outbuilding

22. Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in s55 of the 1990 Act and embraces building operations which, s55(1A)(a) says includes the demolition of buildings. However, the categories of work that do not amount to 'development' are set out in s55(2)(g) which includes the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities

generally or to a particular local planning authority shall not be taken to involve development.

23. Buildings or structures which are in a conservation area are subject to stricter controls over demolition. Demolition of a building in a conservation area requires an application for planning permission to be made except that:

a) buildings with a volume not exceeding 50 cubic metres can be demolished without planning permission because this does not amount to development having regard to the provisions of the Town and Country Planning (Demolition – Description of Buildings) Direction 2021.

b) demolition of buildings and structures listed in the Conservation Areas (application of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990) Direction 2015, including:

- any building with a total cubic not exceeding 115 cubic metres (as ascertained by external measurement) or any part of such a building.

is permitted development under Article 3(1) which grants planning permission for the classes of development described as permitted development in Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

24. No planning application is required because planning permission for the demolition is granted by the Order, subject to conditions set out in Part 11. Condition B.2(b)(i) requires that the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the ‘prior approval of the authority’ will be required as to the method of demolition and any proposed restoration of the site. As part of this requirement, an application must be accompanied by a written description of the proposed development, a statement that a site notice has been displayed in accordance with paragraph (b)(iv) and any fee required to be paid.
25. There is no evidence to suggest that the pre-commencement condition to ascertain whether prior approval would be required for the demolition of the existing building has been complied with. This is a condition subject to which permission is granted by the GPDO. Thus, at the time of the LDC application, it would not have been lawful to demolish the building as no application as required by paragraph B.2(b)(i)(aa) had been made.
26. Therefore, I conclude that demolition of the outbuilding, which has a volume of between 50 cubic meters and 115 cubic metres, comprises development for which planning permission is required and that, although such permission is granted by the GPDO, it would not have been lawful to have demolished the building on the date of the application as the pre-commencement condition had not been complied with.

Erection of a new outbuilding

27. There is no disagreement that the proposed outbuilding would comply with the size and other limitations within paragraph E.1 of Class E of the GPDO, and I concur with that view. The point of dispute is whether the proposed outbuilding would meet the requirement of E(a); that it would be “required for a purpose incidental to the enjoyment of the dwellinghouse as such”.

28. Class E.4 provides that purposes incidental to the enjoyment of the dwellinghouse as such includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance⁴ advises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings and garages as long as they can be properly described as having a purpose incidental to the enjoyment of the house. The Guidance continues to advise that a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
29. Established case law found in *Emin*⁵ confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.
30. The application drawings show an L shaped building with a floor area of approximately 28sqm. There would be two doors providing access from the garden. Internally, the building would be sub-divided into three areas to provide space for an office, a storeroom and a shower room which includes a w.c. and hand basin.
31. The building must be required for a purpose incidental to the enjoyment of the dwellinghouse as such. Planning permission has recently been granted for a large extension to the main dwellinghouse. Although not currently implemented, I have no reason to believe that works to extend the house would not be carried out. Plans show that the property would be extended to provide four bedrooms, two large reception areas, a study and four bathrooms.
32. The space provided by the proposed outbuilding would allow the appellant and his wife, when working at home, to do so in privacy, which is said to be required at times for their work. The bathroom would naturally provide facilities for those using the office and for those who are said to use the garden for prayer meetings.
33. Given the extent of the accommodation that would be provided in the main dwellinghouse, while an office separate from the house may well be beneficial, I am not persuaded that a bathroom separate from the house is a reasonable requirement particularly as the plans to extend the house show a complete bathroom would be provided on the ground floor. Furthermore, the proposed outbuilding would be situated within proximity of the house and therefore those facilities would be conveniently close.
34. Overall, given the siting of the proposed outbuilding in close proximity to the main dwelling and the inclusion of facilities that are for purposes integral to the use of

⁴ Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019).

⁵ *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

the dwellinghouse, I am not satisfied that the proposed building is one that is required for purposes incidental to the use of the dwellinghouse as such. It is not therefore development permitted by Part 1 Class E of Schedule 2 to the GDPO.

Conclusion

35. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant an LDC was well founded, and the appeal does not succeed. I shall therefore exercise my powers under section 195 (3) of the 1990 Act as amended.

S A Hanson

INSPECTOR

APPEARANCES

For the Appellant

Mr Kishan Parshotam	Appellant
Mr Nitin Parshotam	Appellant's father

For the Local Planning Authority

Mr Tom Wicks	Consultant instructed by the Council
Mr Nigel Wicks	Consultant instructed by the Council