



Appeal Decision

by **Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 September 2025

Appeal Ref: APP/K5600/C/24/3342667

2 Pooles Lane, LONDON, SW10 0RH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Vered Abrahams against an enforcement notice issued by Royal Borough of Kensington and Chelsea.
 - The notice was issued on 6 March 2024.
 - The breach of planning control as alleged in the notice is: the erection of an outbuilding in the rear garden.
 - The requirements of the notice are:
 - i) Remove from the land the outbuilding as shown on drawings A.100, A.200, A.201, A.202, A.203 and A.400 submitted under planning application ref: PP/23/06904 attached as Appendix A
 - ii) Remove from the land all resulting debris.
 - The period for compliance with the requirements is: five calendar months from the date on which this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary matters

2. In light of the case presented by the appellant and the information submitted by both parties including the photographic evidence, it has not been necessary for me to conduct a site visit to determine this appeal.
3. The Council's appeal statement claimed that the appeal site is in the Lots Road conservation area. The appellant made it clear in her statement that this was not true. I queried this with the Council who later acknowledged that its own statement was incorrect. In fact, the site is not in, but abuts, the conservation area.

Ground (c)

4. In an appeal on ground (c) the onus is on the appellant to show on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control.
5. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) (as amended) (GPDO) grants planning permission for certain developments (providing the relevant exceptions, limitations and conditions are met) without the developer having to make a formal application to the local planning authority for planning permission.
6. An outbuilding may be permitted development as provided for in Schedule 2, Class E of the GPDO permits the provision within the curtilage of a dwellinghouse of—
“(a) any building or enclosure, swimming or other pool required for a purpose

incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.”

7. Class E details various height, size and location restrictions among which are:

E.1 Development is not permitted by Class E if... (e) the height of the building, enclosure or container would exceed - (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or (iii) 3 metres in any other case...” (my emphasis).

8. The appellant has provided meticulously detailed plans of the pre-existing and existing situation which, together with photographs supplied make it unnecessary to inspect the property to ascertain the dimensions of the outbuilding. The plans indicate that the outbuilding is less than 2m from the rear boundary of the property and that it is 2.548m high. The agent’s statement acknowledges in terms that the height of the outbuilding is fractionally over the permitted limit but notes it:

“marginally surpasses the permitted height by a mere 48mm, which technically rounds down to 2500mm. Despite the best efforts to adhere strictly to planning regulations, this slight deviation occurred. However, given its negligible nature, we firmly believe it constitutes a minor infringement that does not significantly impact the surrounding area or neighboring [sic] properties. We acknowledge the importance of adhering to planning regulations and the client has taken proactive measures to ensure compliance wherever possible. The slight excess in height was unintentional and does not alter the fundamental character or functionality of the outbuilding.”

9. I agree. I regard this difference as “de minimis”, in other words it is on too small a scale for the law to take account of it. In all other respects the outbuilding conforms to the required dimensions set out in Class E. The Council has not commented.
10. The case for the Council appears to be that the outbuilding is a new permanent structure, *“of a large size and is a material alteration to the external appearance of the property and therefore constitutes development requiring planning permission”*.
11. It is not disputed that the building requires planning permission, the issue is whether permission has been granted through the GPDO. The Council has provided two “Article 4 directions” each of which removed permitted development rights for specified kinds of development. Why the Council has submitted them is mystifying because neither of them concern development that is permitted under Class E, they relate to entirely different parts of the GPDO.
12. The Council next asserts that *“the outbuilding is equipped to facilitate it being used as a self-contained unit as it includes a bed, kitchen facilities and a bathroom.”*
13. The Council has not provided further details of the precise nature of these facilities, however I am prepared to accept, without inspecting the property, that the outbuilding may indeed house these facilities. The appellant originally proposed this outbuilding in an application for planning permission which was refused. An appeal was made but then turned away as unfortunately the appellant was unable to produce certain documents to validate the appeal within the deadline set by the validation officer.

14. I have been supplied with the officer's report that recommended refusal of the application and enforcement action to remove the outbuilding. The report did not consider the possibility that the outbuilding, which the Council appeared implicitly to acknowledge was within the permitted dimensions (it recorded the height as 2.5m) was in fact permitted development. The enforcement action was authorised on the basis that it adversely affected the character and appearance of the area.
15. Therefore, the Council followed up with the enforcement notice now the subject of this appeal. However, the outbuilding was and remains, according to the agent:

"crucial for the client's medical needs as the client needs a walk-in-shower as he is unable to get in and out of the bath, the outbuilding is also used as a therapy room where the client receives physiotherapy in order to improve their mobility."
16. A letter dated March 2024 from this individual's doctor at the NHS medical centre in Kings Road, was also provided as part of the appeal statement. It confirms that the individual's use of his garden outbuilding at 2 Pooles Lane was following a serious injury the previous month, necessitating a walk-in shower, presumably not available to him at home, and confirming that he plans to use the outbuilding as a therapy room to be used with the NHS physiotherapist. The individual shares a surname with the appellant, and it is assumed they are related, if not closely so.
17. The Council has not disputed this statement, despite having an opportunity to do so by making what is known as "final comments" in the written representations process. In any case the descriptions of the facilities from the parties do not necessarily contradict each other. It would not be unusual to find a bed of some kind in a therapy room. It is noteworthy though, that the Council offers no other information at all to evidence its claim that the outbuilding is a *"self-contained unit"*.
18. A feature of the interplay between outbuildings erected under Class E and a material change of use to create separate self-contained units, is that a building initially erected under Class must be for purposes "incidental" to the use of the dwelling within whose curtilage it is erected. Such purposes are not generally understood to include accommodation within the primary use itself of the planning unit, ie the residential use of the main dwelling.
19. However, if a building constructed as permitted development under Class E and its existing incidental use, (say for example a therapy room that was in the circumstances an ordinarily incidental use) was later changed to a use integral to that of the dwellinghouse, then provided that the dwellinghouse and outbuilding remain part of the same planning unit which is still occupied by a functionally single household, still no material change of use will have taken place.
20. Where an outbuilding provides all the facilities necessary for independent day-to-day living, it will be in residential use and not use for a purpose incidental to the use of the dwellinghouse. However, the residential use may be regarded as part and parcel of (rather than incidental to) the use of the main dwelling, even if the outbuilding contains the facilities required for use as a self-contained dwellinghouse (see *Uttlesford DC v SSE & White* [1992] JPL 171).
21. None of this legal framework is analysed by the Council in its statement. Rather, it seems to have reacted to a complaint in September 2023 by satisfying itself that no planning permission had been applied for, required an application which was made but refused it on planning merits grounds followed by enforcement action.

22. Applying then, the above principles, firstly, it seems that there was a pre-existing outbuilding or shed in the curtilage of the garden which was then removed and replaced with the instant development. It can be seen in photographs dating from March 2016. I have considered whether the erection, apparently in 2023, of the building now in situ was in any way shape or form a “maintenance, improvement or other alteration” of the shed. However, it does not, it is an entirely different building.
23. Next, having established above that the various thresholds for its size and configuration comply with the GPDO limitations and conditions, the issue is whether it was erected for *a purpose incidental to the enjoyment of the dwellinghouse as such*. The first indication of its use was to provide facilities to help a resident/owner of the main property recover from an accident, closely followed by providing therapeutic facilities for longer term rehabilitation. The uses are basically the same. The Council does not dispute either use. The Council describes the appeal property in its statement thus:

“2 Poole’s Lane is a three storey, mid-terraced residential property.”
24. That is incorrect. As appears from the meticulously detailed drawings submitted by the appellant, the appeal property is a single level flat with modestly appointed accommodation and a single bedroom. The north elevation drawing very clearly shows Nos 2, 4 and 6 as separate flats, No 2 on the ground floor, No 4 on the 1st floor and No 6 on the second floor.
25. It is assumed the Council examined these plans which demonstrate that the bathroom is not large and it might not be easy to adapt either it to provide a walk-in shower, or the accommodation generally to provide a discrete space for physiotherapy activity. In my view the use of the outbuilding is capable of being a purpose incidental to the enjoyment of the dwellinghouse.
26. The Council says that the building is of “*a large size*”, although it is unclear in what context exactly the point is made. Anyway, it is settled law that the size of the building is not on its own determinative of whether it falls within Class E1.
27. The Council has not indicated in this appeal what its own measurements are, if any¹. The in-situ existing drawing shows the outbuilding with two rooms, a physio room and a shower room. The rooms are of relatively modest size. Looked at as a whole, size may be an important factor, but in this case of more relevance is the relationship of that size to the main dwelling. In that context, it is difficult to accept that the outbuilding can be regarded as other than genuinely incidental to the enjoyment of the dwellinghouse as such.
28. That leaves the question of whether, to the contrary, the outbuilding has become a self-contained unit of accommodation its own right. The Council’s submissions do not appear to elaborate on this other than to note that there is a bed, kitchen facilities and a bathroom. Clearly the drawings and photographs make it obvious there is no separate entrance and no separate letter box. There is no physical barrier or boundary between the outbuilding and main dwelling. Indeed, the entrance is quite close to the patio doors of the living room in the main dwelling.

¹ It becomes clear, on receiving the officer’s report on the earlier planning application, that they recorded the dimensions as 4.9m wide, 2.5m high and 2.3m deep, but this was considered, as noted above, only as to its planning merits, not whether or not it was permitted development.

29. Nor have I been made aware that it has a separate postal address, is treated as a separate hereditament for Council tax purposes, is let as a separate unit or has utilities that are all connected separately from those of the main dwelling. The above are the kind of considerations that the Council might have enquired about.
30. The assessment of the physical and functional links between the use of the outbuilding and main dwelling is a matter of fact and degree and planning judgement. It would appear that both remain part of the same planning unit and are occupied by a functionally single household. Overall, I am satisfied on the balance of probability that no change in the use of the property is involved that constitutes a material change of use and is therefore a breach of planning control.

Other matters

31. An objector M, suggests that the appellant has erected the outbuilding for the sole purpose of being used as accommodation by her adult son. M's interest in the matter is undisclosed, an address in Knightsbridge is given, reasonably far from the appeal site. There is clearly a history of cross accusations between the applicant and M who is understood to have lived in a house on the gated accommodation at Pooles Lane. These matters are irrelevant to my consideration of the appeal and unsupported by evidence, but in any case the use alleged would not necessarily be a breach of planning control if the outbuilding were not occupied in such a way as to create a new planning unit, as I have described above.
32. M is also concerned at the effect of the development on the character or appearance of the conservation area, including local landscape character and has deep concern for the habitats of various bird species that he names that apparently "reside" in the adjacent park. None of these matters is relevant to an appeal on ground (c), although I do appreciate the sincerity with which M holds his views. In fact, it appears that on the earlier planning application, the report recorded a comment about protection of wildlife and animal habitat but sadly, that was dismissed by the officer, wrongly, as not a material planning consideration. It would be very much a planning consideration where planning merits were being considered.

Conclusion

33. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.

Grahame J Kean

INSPECTOR