



Appeal Decision

Site visit made on 18 October 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCMi fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2025Ap

Appeal Ref: APP/G5750/C/23/3332672

35 Clova Road, Forest Gate, London E7 9AQ

- 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 “1990 Act”).
- The appeal is made by Mr David McGuinness against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 25 October 2023.
- The breach of planning control as alleged is the material change of use of an outbuilding to a self-contained storage unit (Use Class B8).
- The requirements of the notice are to cease the use of the outbuilding (as shown in the approximate location edged in blue on the plan attached to the notice) as a self-contained storage unit (Use Class B8).
- The period for compliance is one months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (a), (f) and (g) of the 1990 Act.

Decision

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

Ground (d)

2. The onus of proof is upon the appellant. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant’s version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant’s evidence alone is, on the balance of probability, sufficiently precise and unambiguous. For the challenge to succeed on this ground, the appellant needs to show the change in use alleged started on or before 25 October 2013 and continued thereafter for a period of 10 years without significant interruption.
3. No. 35 is a semi-detached dwelling forming a single unit of occupation. To its rear, there is a narrow but long garden, which is accessed via a passage to the side of the house. There are three outbuildings in the back yard, but the notice relates to the large structure located at the far end of the garden. The latter is clearly outlined blue in the site plan attached to the issued notice. For clarity’s sake, hereinafter referred to as “the appeal outbuilding”.
4. There is an extensive planning history, but I will only refer to the most pertinent aspect of that history. The appeal outbuilding was erected around 2004, and it is physically separate by reason of its detached location. It is the subject of an extant enforcement notice alleging a residential use, which ceased in 2008. There is nothing before me to indicate the notice required the building to be demolished. In 2023, the appellant sought a lawful development certificate (LDC) for the existing storage use¹. That application was refused by the Council. I am, however, grateful for the submission of the LDC bundle.
5. From 2012 onwards, the appellant has consistently maintained that the appeal outbuilding is utilised for storage associated with their activities as a landlord overseeing several properties. This position was clearly communicated in response to the Council’s Planning Contravention Notice, specifically at sections c) and e), where it was stated that the principal use of the appeal outbuilding is for

¹ Council ref 23/01199/CLE refused 10 October 2023.

storage purposes. Further support for this assertion is provided in the statutory declaration accompanying the LDC application. In this declaration, it is expressly stated that the appeal outbuilding has been used to store surplus furniture and white goods. The sworn evidence also confirms that building materials have been kept in the appeal outbuilding, given that some of the appellant's rental properties lack adequate storage facilities.

6. There appears to have been some uncertainty surrounding the precise nature of the storage activity undertaken in the appeal outbuilding. This confusion largely stems from a statement made by the appellant in 2014, when it was conveyed to officers that tenants residing at no. 35 were able to access the appeal outbuilding. This information was provided in the context of ongoing discussions with the Council about whether the storage use was ancillary or incidental to the residential occupation of no. 35. The claim is that evidence exists in the form of a tenancy agreement, which allegedly suggests that a tenant was permitted access to the appeal outbuilding and supports the view that the use of the outbuilding was incidental in nature. However, this interpretation has been directly addressed by sworn testimony from the tenant concerned. The tenant's evidence clarifies that the relevant tenancy agreement pertained to two separate outbuildings, neither of which was the appeal outbuilding central to this appeal.
7. It is apparent to me that significant emphasis was placed on determining whether the storage use of the appeal outbuilding was incidental or ancillary to the residential occupation of no. 35. The underlying concern appeared to be that, if classified as incidental, such use would fall within the scope of section 55(2)(d) of the 1990 Act. In reality, the evidence suggests that the appeal outbuilding may have fulfilled a dual function, accommodating items belonging to both the appellant and the tenants. However, the documentation indicates that while the tenants may have occasionally stored items in the appeal outbuilding, such instances were sporadic and limited in scale. This assessment is corroborated by clear and precise witness statements that reinforce the appellant's account of events. The testimony demonstrates that any use of the outbuilding by tenants was likely infrequent, and minor compared to its primary usage for storage by the appellant. Importantly, regardless of the specific user—be it the appellant or tenants—the essential nature of the activity conducted in the outbuilding consistently remained that of storage.
8. From around 2012 or 2013 onwards, the building's function consistently aligned with typical storage uses and I find that the appellant's sworn evidence is clear and persuasive regarding the extent and distinct character of the self-contained storage operations: the latter had evolved well beyond an incidental or ancillary role. Most goods and items stored were directly related to the appellant's business as a landlord, including supplies and materials necessary for managing multiple properties. This distinguishes the storage use in the appeal outbuilding as a separate and significant activity, rather than a mere extension of the residential function of the main dwelling.
9. The cumulative weight of the evidence demonstrates, on the balance of probabilities, that the appeal outbuilding's self-contained storage use was instituted on or before the relevant date. It has been used in that manner continuously and without significant interruption over a 10-year period. This prolonged and uninterrupted use is supported by precise sworn testimony and consistent statements regarding the function of the outbuilding. Given that the Council had the opportunity to initiate enforcement action against the principal storage use at any point during this ten-year timeframe, but did not do so, the evidence firmly supports the immunity claim.
10. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed on ground (d). The enforcement notice is therefore quashed. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act, do not fall to be considered.

A U Ghafoor

INSPECTOR