



Appeal Decisions

Site visit made on 9 December 2025

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2026

Appeal A Ref: APP/A5270/X/23/3332173

9 Eskdale Avenue, Ealing, Northolt, UB5 5DJ

- 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 Mrs Xiu Lu against the decision of the Council of the London Borough of Ealing.
 - The application ref 231384CPE, dated 23 March 2023, was refused by notice dated 17 May 2023.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is described as “the existing outbuilding at the rear of the garden is permitted development utility used for table tennis, it is not higher than 2.5 metres”.
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Appeal B Ref: APP/A5270/W/23/3332179

9 Eskdale Avenue, Ealing, Northolt, UB5 5DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs Xiu Lu against the decision of the Council of the London Borough of Ealing.
 - The application Ref is 233924PALHE.
 - The development proposed is single storey rear extension up to 6 metres.
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Decisions

Appeal A

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.

Appeal B

2. The Appeal is dismissed.

Appeal A

Preliminary Matters

3. The application was made under s191(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Although the application form ticks that the LDC was sought for an existing use (s191(1)(a)), it appears from the grounds for the application that the LDC was sought for existing building works (s191(1)(b)).
4. S191(2) of the 1990 Act states that uses and operations are lawful at any time if—
(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do

not constitute a contravention of any of the requirements of any enforcement notice then in force. The onus lies with the appellant to make her case on the balance of probabilities.

Main Issue

5. The Council's notice states that it declined to determine the LDC application for the detached single storey rear outbuilding because it is subject to an enforcement notice, which is in force and in effect, pursuant to s191(2)(a)(b) of the 1990 Act.
6. However, s191(4) states that if the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. There is no provision to decline to determine the application.
7. In any event, the above reason for declining to determine the application is effectively the Council's reason for refusal. The main issue is whether the decision to refuse to issue an LDC was well-founded.

Reasons

8. On 6 March 2023, the Council issued an enforcement notice alleging without planning permission, the construction of a single storey detached outbuilding at No 9 Eskdale Avenue (ref: 23EN0133(1)). The outbuilding is marked with an 'X' on the plan attached to the enforcement notice and is clearly in the same location as the outbuilding shown on the existing block plan accompanying the application.
9. The notice specified that it was to take effect on 21 April 2023, unless an appeal was made against it beforehand. The Council state that no appeal was made and the appellant does not show otherwise.
10. Under s191(4) of the 1990 Act, the relevant date for ascertaining whether the existing development is lawful, is the date of the LDC application, which in this case was 23 March 2023. Consequently, the enforcement notice had yet to take effect so was not in force when the application was made.
11. Nevertheless, s285(1) of the 1990 Act states that "The validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought."
12. Lawful rights can therefore be lost if an enforcement notice is served and those rights are not appealed on grounds (c) or (d)¹, given the effect of s285(1). What was lawful before the enforcement notice took effect may no longer be lawful. An LDC is therefore only conclusive on the date of the application.
13. That is the scenario applicable here because the appellant did not make an appeal against the enforcement notice, so it came into force on 21 April 2023. Consequently, granting a LDC certifying lawfulness on the date of the application will have no real value because the requirements of the enforcement notice to

¹ (c) that those matters (if they occurred) do not constitute a breach of planning control; (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters

demolish the outbuilding and remove all resultant debris, still have to be complied with, having regard to s285(1).

14. Under the grounds for making the LDC application, the appellant ticks that the building works were substantially completed more than four years before the date of the application. In this case, that equates to 23 March 2019. However, despite the onus lying with the appellant to make her case on the balance of probabilities, no evidence is provided to show that the outbuilding was substantially completed by that date.
15. The appellant argues that outbuildings are permitted development, subject to limitations and conditions. Presumably, reference is being made to Article 3 and Schedule 2, Part 1, Class E of the GPDO², which grants planning permission for, amongst other things, the provision within the curtilage of the dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such.
16. The Council does not argue that the outbuilding fails to meet the relevant limitations set out in paragraph E.1, and I find no reason to do so either. Nevertheless, the informative to the Council's decision notice states that even if the outbuilding was not subject of an enforcement notice, the LDC would have been refused on the grounds that it falls outside the provisions of Class E because it was not constructed for purposes incidental to the enjoyment of the dwellinghouse and it would appear that the property is not operating within its lawful use as a single family dwellinghouse.
17. However, the application form refers to the use as a Class C3 dwellinghouse and no evidence is provided by the Council to show that was not the case at the time of the application. The Council refer to its observations at its site visit on 13 May 2023 that the ground floor appeared to be used for storage and was uninhabitable, but I have no evidence to show that the rights to utilise the property as a dwellinghouse had been lost.
18. The Council also makes reference to observations made during an enforcement related site visit on 25 February 2023 when it appeared that the outbuilding was intended to be used as a separate, self-contained dwelling. However, there is no evidence of such a use at the time the application was made.
19. The appellant asserts that the outbuilding is used for utility purposes and for table tennis. That is reflected in the existing block plan, which annotates its use for those purposes, as well as showing an exercise bike. The drawing title is also "Garden outbuilding for recreational use".
20. Before considering this matter further, it is worth highlighting that the essential feature of an incidental use is that it should have a functional relationship with the primary use, and the relationship should be one that is normally found.
21. The recreational use of the outbuilding as annotated is clearly capable of being a use incidental to the residential use of the main dwelling and the space given over for the same is not disproportionate or unreasonable. I reach the same conclusions for a small, general utility space.

² The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

22. I note that the Council states that when it carried out its site visit on 13 May 2023, the outbuilding was being used for storage purposes. That was similarly the case at the time of my own site visit. Although that use does not correspond with the application details, its use for storage purposes is also capable of being an incidental use and is one that is normally found in outbuildings.
23. Under s191(4) of the 1990 Act, any LDC granted must describe the existing use or development found to be lawful. That may not be exactly what was written on the application form, and so s191(5) enables a local planning authority to modify the description. An Inspector may exercise that power on appeal and is indeed obliged to issue a LDC for any existing use or development that is shown to be lawful on the facts and evidence.
24. Having regard to the Council's observations and the lack of contradictory evidence to show that the outbuilding was used for recreational purposes at the time of the application, I will modify the description of the LDC to "detached single storey outbuilding required for purposes incidental to the enjoyment of the dwellinghouse as such". On that basis the development would, on the date of the application, constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the GPDO and would have been granted planning permission by Article 3(1) of the same.
25. I therefore conclude that the Council's refusal to grant a LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended. However, for the reasons explained, there is no value to granting the LDC because the enforcement notice in force requires the outbuilding to be demolished and all resultant debris removed.

Appeal B

Preliminary Matters

26. Planning permission is granted under Article 3(1) and Schedule 2, Part 1, Class A of the GPDO for the enlargement of a dwellinghouse, subject to limitations and conditions.
27. Where an application is made for a determination as to whether prior approval is required for development which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g), paragraph A.4(3) provides that the local planning authority may refuse the application where it considers that the proposed development does not comply – or that the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with the conditions, limitations or restrictions that are applicable to such permitted development.
28. Paragraph A.4(7) stipulates that where any owner or occupier of any adjoining premises objects to the proposed development, the prior approval of the local planning authority is required as to the impact of the proposed development on the amenity of any adjoining premises.

Main Issue

29. The main issue is whether the proposed development would be granted planning permission by Article 3 and Schedule 2, Part 1, Class A of the GPDO.

Reasons

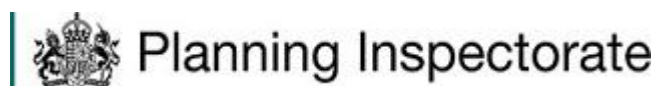
30. The appeal relates to a two storey semi-detached property with existing rear ground floor extension.
31. Whilst I note the Council's concerns, I have no evidence to suggest that the property is used in a manner which would preclude it from benefiting from Class A permitted development rights.
32. Nevertheless, as highlighted by the Council, there is inconsistency between the proposed plans; whereas the floor plans and elevations show the proposed extension directly behind the main rear elevation, the block plan shows that it would be off set, extending beyond a wall forming a side elevation of the original dwellinghouse with a width greater than half the width of the original dwellinghouse.
33. Having regard to the description of the proposed works set out in the application form, it is very likely that the proposed block plan is incorrect and has been drafted in error. However, paragraph A.4(2)(b) stipulates that before beginning the development the developer must provide to the local planning authority a plan indicating the site and showing the proposed development. That information is provided on the proposed block plan and because of what is shown, it would unlikely meet the limitations of Class A and thus would not be permitted development.
34. In any event, paragraph A.4(7) is triggered as a result of an objection from the adjoining semi-detached dwelling at No 11 Eskdale Avenue. Unlike the appeal property, the dwelling at No 11 has not been extended to the rear and it has patio doors close to the side boundary, which, in the absence of evidence to the contrary, are likely to serve a habitable room.
35. Because of the length and height of the proposed extension and its positioning on the boundary, it would amount to an overbearing and oppressive feature that would unduly dominate the outlook from the patio doors as well as the outlook from the adjacent patio area.
36. The Council also states that the development would fail to safeguard the amenities of No 7 Eskdale Road, but the separation and extent of existing development to the rear of that property would prevent material harm arising to its occupants.
37. Nevertheless, the proposed extension would result in unacceptable harm to the living conditions of the occupiers of No 11. Consequently, prior approval should not be granted for the proposed development, having regard to the requirements of A.4(7) and (9) of Schedule 2, Part 1, Class A of the GPDO, relating to the impact on the amenity of neighbouring premises.

Conclusion

38. For the reasons given above, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 March 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

Even though an enforcement notice requiring demolition of the outbuilding has subsequently come into effect, it was not in force at the time of the application when the operations were permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and as such were granted planning permission by Article 3(1) of the same.

Signed

Richard S Jones

INSPECTOR

Date: **[09 January 2026]**

Reference: APP/A5270/X/23/3332173

First Schedule

Detached single storey outbuilding required for purposes incidental to the enjoyment of the dwellinghouse as such.

Second Schedule

9 Eskdale Avenue, Ealing, Northolt, UB5 5DJ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

However, on 6 March 2023, the Council issued an enforcement notice relating to the operations described in the First Schedule taking place on the land specified in the Second Schedule. That notice took effect on 21 April 2023 and requires the outbuilding to be demolished and all resultant debris to be removed.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **[09 January 2026]**

by **Richard S Jones**

Land at: 9 Eskdale Avenue, Ealing, Northolt, UB5 5DJ

Reference: APP/A5270/X/23/3332173

Scale: Not to Scale

