



Appeal Decision

Site visit made on 18 November 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2026

Appeal Ref: APP/T5150/X/24/3340908

45 Charterhouse Avenue, Wembley HA0 3DD

- 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 & Mrs Liyanage against the decision of the Council of the London Borough of Brent.
- The application ref 23/3919, dated 15 December 2023, was refused by notice dated 1 March 2024.
- The application was made under section 191(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 single-storey outbuilding for ancillary use to main dwelling.

Decision

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.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a LDC is well-founded.

Reasons

3. Section 191(1)(b) of the Act provides that if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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 ii) They do not constitute a contravention of any enforcement notice then in force.
4. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
5. The main thrust of the appellant's case is that the proposed development is granted planning permission by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).

Schedule 2, Part 1, Class E of the GPDO permits the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. Given the matters in dispute, this appeal will turn on whether the outbuilding is within the limitations set out in Class E, E.1(e)(ii) and if so, whether the outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse.

Whether the outbuilding meets the limitations of Class E

6. Planning permission is granted by Class E subject to certain conditions and limitations. E.1 sets out that development is not permitted by Class E if (e) the height of the building, enclosure or container would exceed (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.
7. Article 2(2) of the GPDO states 'Unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.'
8. The Technical Guidance: Permitted development rights for householders (2019) advises that 'references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level. (Note, ground level is the surface of the ground immediately adjacent to the building in question, and would not include any addition laid on top of the ground such as decking. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.)
9. At paragraph 4.1.6 of its statement, the Council states that it is its understanding that the height of the outbuilding should not exceed 2.5m from the level of the surface of the ground level adjacent to all sides. It is stated that, the height of the outbuilding as built was measured to have a height of 2.8m from the front elevation and would therefore fail to meet the limitation set out at E.1e. The Council noted that at the time of its site visit, the outbuilding was measured to have a maximum height of 2.5m to the rear elevation.
10. The appeal building comprises a flat roofed, single storey outbuilding which has been erected to the rear of the main dwelling. Towards the rear of the garden, adjacent to the outbuilding, the land steps up by approximately 0.25m (see below). Although parts of the rear garden appear to have been excavated, from the photographs provided by the Council, it seems likely that the levels at the rear of the garden have been retained.
11. During my site visit, the parties took a number of measurements of the outbuilding, which broadly accorded with the Council's measurements of 2.8m in height at the front elevation (during my visit a measurement of 2.79m was recorded, +/- 1cm at one corner and 2.72m +/- 1cm at the other corner) and 2.5m at the rear elevation (during my visit a measurement of 2.55m +/- 1cm was recorded at one corner and 2.57m +/- 1cm at the other corner, with a height to the top of the adjacent step of approximately 0.25m).

12. The Council has drawn my attention to an appeal decision in Harrow, reference APP/M5450/X/16/3146803, which was dismissed on the basis that the height of the outbuilding should not exceed 2.5m when measured from the level of the surface of the ground immediately adjacent to all four sides. However, that reasoning appears inconsistent with wording of Article 2(2) of the GPDO and the guidance for householders referred to above, though I note the decision letter pre-dates the latest version of the guidance.
13. The appellant has drawn my attention to an appeal decision in Worcestershire, reference APP/P1805/X/23/3321452, which appeared to take a contrary view, and found that the measurement of the eaves height (in that case) should be taken from the point where the proposed building would be furthest up the slope, thereby finding that a building, with eaves which would vary between 2.3m and 6.29m was held to be permitted development.
14. While I mindful that I do not have full details of either case referred to me by the parties, in my view, the approach taken in respect of the Worcestershire case is the correct one. It is not necessary for the appellant to show that the height of the outbuilding does not exceed 2.5m from the level of the surface of the ground level adjacent to all sides, rather the measurement should be taken from the level of the highest part of the surface of the ground adjacent to it, which in this case is at the rear of the outbuilding, not the patio to the front of the outbuilding.
15. Given the wording of the GPDO and the advice contained within the guidance referred to above, from my inspection of the site, I find, on the balance of probabilities, that the outbuilding does not exceed 2.5m above ground level (the highest part of the surface of the ground next to the building, not including any addition laid on top of the ground) and is therefore within the limitations set out at Class E, E.1(e)(ii) of the GPDO.

Whether incidental

16. Notwithstanding my finding above, Class E only grants planning permission for buildings which are required for a purpose incidental to the enjoyment of the dwellinghouse. The test is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse.
17. The proposed outbuilding is located to the rear of the dwelling, and comprises a shower room with toilet and wash basin, a room laid out with gym equipment and a room identified as a home office. The building measures around 8.51m by 3.33m. While the outbuilding is generous in size, the host dwelling is a substantial two-storey building and so the outbuilding appears subordinate to it.
18. The Council raises concern that the appellant has failed to demonstrate that the submitted plans are consistent with the existing use observed during the site visit, where the gym appeared to be used as an office as a shrine and there was ambiguity as to what the room labelled as 'home office' was used for.
19. The Council visited the site on 2 February 2024 and took a number of photographs of the appeal site. The room labelled as the 'gym' was laid out with a side board, upon which ornaments have been placed (which the Council describes as a

shrine) and a table and chairs, which appear in use as an office, with a laptop and books/notebooks visible. The room at the rear, which is labelled as an 'office' on the submitted plans, is laid out with a wardrobe, two chairs, ornaments and radiators. The appellant explained that the Council's site visit was carried out during a period when the final configuration of the outbuilding was being settled.

20. During my visit, I saw dog coats and equipment in the shower room, various gym equipment, including weights, a yoga mat, Pilates ball (not inflated), cycle machine and various ornaments in the room labelled 'gym' and book shelves and a desk laid out in the room labelled 'office'. The space provided by the outbuilding did not appear excessive, nor did it appear to be being used for activities which are not ordinarily incidental to the enjoyment of the dwellinghouse.
21. The outbuilding includes a shower room, however, given the layout of the main property, which would mean that a user of the outbuilding would have to go through a number of rooms to reach the bathroom, or up the stairs, I consider it reasonable that an individual may wish to use the facilities provided within the outbuilding. Indeed, I note the Inspector in respect of appeal APP/T5150/X/17/3188649 found in that case that a shower, WC and handbasin was reasonably necessary for users of the playroom/gym, since they would otherwise have to make their way back to the house each time they needed them.
22. While I must be satisfied of the lawfulness at the time of the application, I have seen nothing in the evidence which leads me to conclude that the outbuilding is not for purposes which are incidental to the enjoyment of the dwellinghouse. Although the space provided by the proposed building would be generous, I find, on the balance of probabilities, that the building is genuinely and reasonably required or necessary for purposes incidental to the enjoyment of the dwellinghouse.
23. Thus, I find that the outbuilding is permitted by the GPDO and the appeal should succeed.

Conclusion

24. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for single-storey outbuilding for ancillary use to main dwelling is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

M Savage

INSPECTOR

Plan

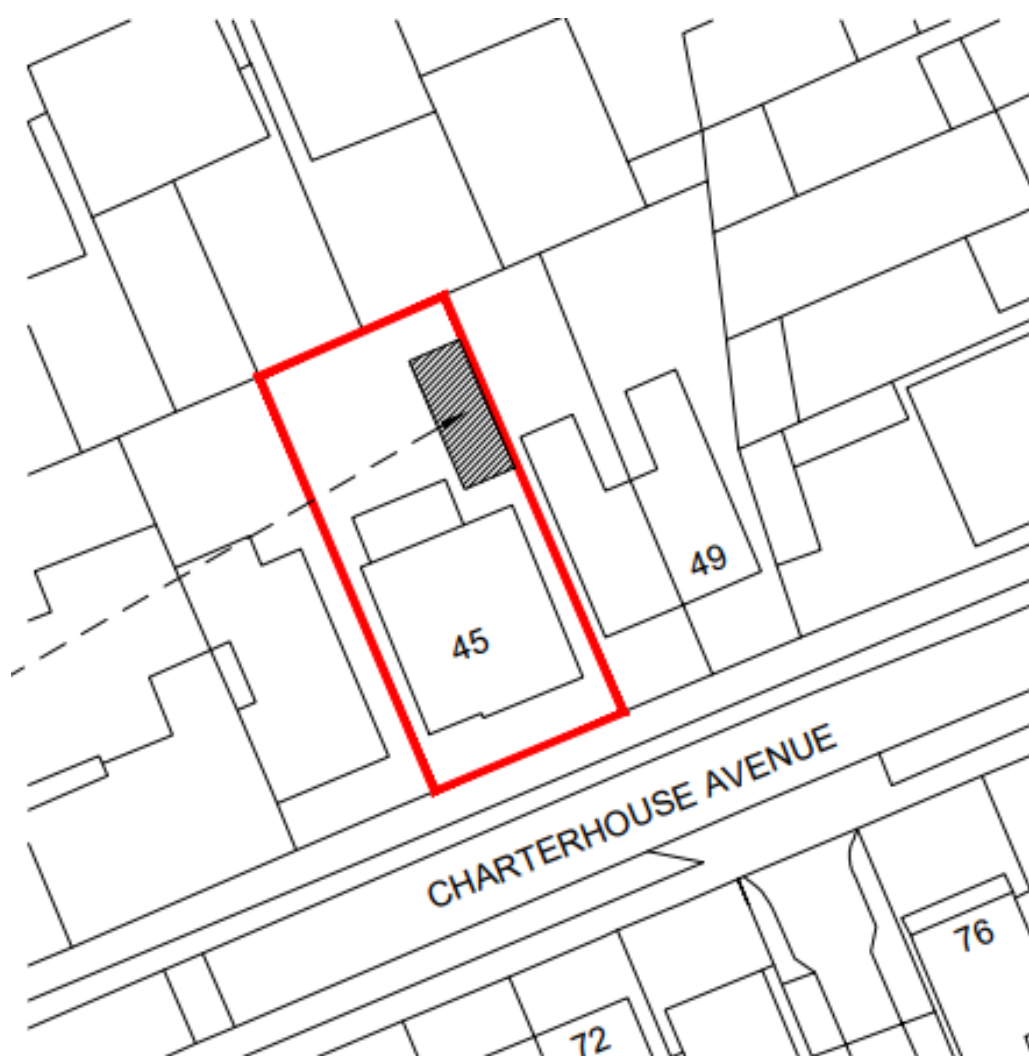
This is the plan referred to in the Lawful Development Certificate dated: **27 January 2026**

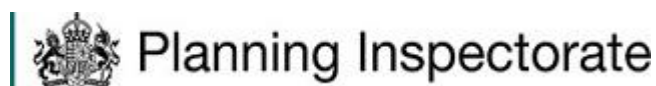
by **M Savage**

Land at: **45 Charterhouse Avenue, Wembley HA0 3DD**

Reference: **APP/T5150/X/24/3340908**

Scale: Not to Scale





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 15 December 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 reason:

The appellant has shown, on the balance of probabilities, that the outbuilding does not exceed the limitations set out at E.1(e)(ii) of Part 1, Class E of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) and is used for purposes which are incidental to the enjoyment of the dwellinghouse and is therefore development which is granted planning permission by the GPDO.

Signed

M Savage

Inspector

Date: **27 January 2026**

Reference: APP/T5150/X/24/3340908

First Schedule

Single-storey outbuilding for ancillary use to main dwelling, as shown in drawing number PA-02: Proposed outbuilding floor plans, elevations, cross section and block plan.

Second Schedule

Land at 45 Charterhouse Avenue, Wembley HA0 3DD

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

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.