



Appeal Decision

Site visit made on 11 February 2026

by Grahame J Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2026

Appeal Ref: APP/U5360/C/23/3328663

43 St. Kilda's Road, Hackney, LONDON, N16 5BS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Zeesy Krausz against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 18 July 2023.
 - The breach of planning control as alleged in the notice is: without planning permission, the construction of an outbuilding.
 - The requirements of the notice are:
 1. Remove the outbuilding located in the rear garden in its entirety;
 2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is: 6 months after this notice takes effect
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

2. The appellant requested that an inquiry be held, whereas the Council was content with the written representations (WR) procedure. The Secretary of State applied the relevant criteria and considering all representations received, started the appeal by the WR mode. I have kept this under review and see no good reason to adopt a different procedure. It is not a complicated matter and the appellant's agent put forward no justification whatsoever for the request.

Ground (c)

3. An appeal on this ground is that the matters alleged to be a breach of planning control (if they occurred) do not constitute a breach of planning control. The onus of proof lies with the appellant on the balance of probability.
4. The appellant's case is that the outbuilding is permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Class E of Part 1 of Schedule 2 permits among other things, the provision within the curtilage of a dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse

as such. In addition, Paragraph E.1 (b) limits the total area of ground covered by such buildings within the curtilage (other than the original dwellinghouse) to no more than 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).

5. In the appellant's statement there is an extract from a drawing (source not stated but apparently from a drawing submitted elsewhere with the appeal papers, dated 29.8.2023 No EX-P001 Existing Ground Floor), that purports to show that the total garden space is 296.4m².
6. Unhelpfully, the appeal statement does not highlight or mention what is to be found in the complete drawing EX-P001, namely that the "new built" element, ie the outbuilding and approved extension is annotated as 132m².
7. Although annotated solely with figures representing the square metre coverage for various areas, the drawing does not contain scaled measurements of the walls. There is a scale reproduced on the drawing, but either it or the drawing appears inaccurate. For example, the rear projection consisting of the disabled toilet has a square footprint, the length of each wall corresponding closely with the scale at 2m but the annotated figure for the area is 3m². If that latter figure were accurate each side of the toilet area would be c1.73m long but according to the printed scale right next to the plan, it is not, it is 2m which would give an area of 4m². No attempt seems to have been made to agree the measurements with the Council. For these reasons I place no reliance on the appellant's submitted drawing.
8. The Council's description of the measurements in its statement is itself confusing. It acknowledges disagreement with the figures and suggests the new built area is c148m² which it considers would be more than 50% of the total area covered by the buildings within the curtilage, but actually this is very close to 50% on the appellant's figures, such as they are. The appellant failed to respond substantively in its final comments, other than asserting that the area covered is less than 50%.
9. I also note that part of the rear garden area is built over with a ramp, a significant part of which is more than 0.3 m high and therefore counts as part of the built over area, yet this has no annotated area in the appellant's drawing, which increases the uncertainty as to the calculations. It is the appellant's burden to demonstrate on the balance of probability that the outbuilding meets this particular threshold. The unreliability of the submitted drawing and the lack of detail or agreement even as to where any discrepancy might lie, and thin margin of error here in comparing the size of the outbuilding with the acceptable limits, lead me to conclude that the appellant has failed to discharge her burden of proof as to this threshold.
10. Apart from the foregoing, it is established¹ that regard should be had not only to the use to which the Class E building would be put, but also the nature and scale of that use, in the context of whether a proposal is incidental to the enjoyment of the dwellinghouse.
11. The appellant states that the building is for use by her husband, a rabbi who has health issues and requires it for the sole purpose of a place to study outside his bedroom². Later, the appellant added that the outbuilding is used as the rabbi's "*study and physio area and is incidental to his residential use of the house*" as he

¹ See eg *Emin v SSE* [1989] JPL 909.

² See planning contravention notice reply on or around January 2023 and appeal statement.

is restricted to the ground floor due to health issues³. I saw that several pieces of equipment, health or exercise aids were placed around the capacious main room but looked oddly isolated, as if they were there to fill up the space. A few books barely filled the shelves of a large bookcase in the main room whilst another bookcase, about half the size and located in the corridor, was full.

12. Although size is not determinative the outbuilding is not subordinate to the main dwelling. Air conditioning units on the roof require planning permission and the outbuilding has a veranda said to be added after the building was completed. It has two doors and two windows on each side to the front. Inside there is a room adjacent to the front door to the right, a large room and another room which the Council noted during a visit on 22 November 2022 contained some 30-40 seats.
13. It is not necessary in my view to have an outbuilding of this size for use as a study and physiotherapy as suggested. The very spacious main room and general layout together with the stacked chairs that I saw in one of the smaller rooms, suggest that the outbuilding is used for congregating in, for whatever reason. Submitted images from an interested person show several people using it during the day and at night, which is described as a regular occurrence. The stacked and stored chairs in the outbuilding are said to be for use when the rabbi gives a lecture twice a year. This statement contradicts the reply to the planning contravention notice (PCN) that the outbuilding was not used for educational purposes.
14. I find that the building is not genuinely and reasonably required or necessary in order to accommodate the stated use or activity and is not incidental to the enjoyment of the dwellinghouse as such. Nor has the appellant demonstrated on the balance of probability that the building meets the required threshold set out in Class E. It would also appear that the air conditioning units do not fall within any of the permitted categories of development, or if they did, being situated on a building that is itself unlawful development, they cannot be permitted development.
15. The ground (c) appeal does not succeed.

Ground (a)

16. The reason for issuing the notice is stated to be that the building's design, scale and materials are not acceptable in terms of quality and attractiveness, making it uncharacteristic of the host building and neighbouring properties.
17. The main issues are the effect of the unauthorised development on the character and appearance of the area, and secondly, the personal circumstances of K.

Character and appearance

18. The development plan policies cited in the reasons for issue are Policy LP1 (design quality and local character) of the Hackney Local Plan 2020 (LP) and the London Plan 2021, Policies D3 (optimising site capacity via a design-led approach) and D4 (delivering good design).
19. The site is neither in a conservation area, nor is the host dwelling locally or statutorily listed. The surrounding area is residential in character where rear extensions do exist, including some that are subject to separate enforcement action, but I disagree that in general they are comparable to the unauthorised

³ Appellant's final comments.

development at the appeal site. The prevailing character of rear extensions in the vicinity can be seen in the images supplied to be reasonably subordinate to the host properties, which is a positive feature of the locality.

20. Having viewed the outbuilding, I find it lacks a high-quality design, is not subordinate to the host dwelling, and results in a significant loss of outdoor amenity space. It also results in a loss of mature trees that appear to have been present on site judging from the aerial image supplied by the Council and about which the appellant did not respond.
21. The structure spans almost the entire width of the garden and is some 18m long. Its overall design, bulk and mass is a grossly disproportionate addition for an outbuilding in the plot of this two/three storey mid-terrace building. The materials used are not durable high-quality materials and contribute to an overall appearance of lesser environmental quality. Further visual harm is experienced where the unauthorised development appears as a conspicuous and unattractive building from neighbouring properties, including Rosedale House, a five-storey residential block directly behind the property. The outbuilding overwhelmingly dominates the garden area such that use of alternative materials, timber boarding or brick slips would not address the harm I have described.
22. I find on this issue that the unauthorised development due to its poor design including its disproportionate bulk, scale and mass, and materials used detracts considerably from the character and appearance of its surroundings including the host building and neighbouring properties. contrary to the aims of LP Policy LP1, London Plan Policies D3 and D4 to secure a high-quality design for new development whilst respecting local character.

Personal circumstances

23. A doctor's letter outlining K's health issues has been considered. The couple occupy the part two and part three-storey property. Whilst it is understood that access to the upper floors may be unviable for K, it remains a substantial property with space on the ground floor, some part of which it would not be unreasonable to use or alter so that it could be used for study for the stated purposes if that were required outside the relatively large ground floor room used as K's bedroom. I do not minimise K's health difficulties but there is no compelling reason given as to why these should override the harm caused by the unauthorised development.
24. The family's religious persuasion, K's advanced age and health issues are protected characteristics such that the public sector equality duty (PSED) is engaged. I have had regard to the desirability of eliminating discrimination based on these traits; advancing equality of opportunity; and fostering good relations.
25. In this case I do not believe that upholding the notice would discriminate against or remove a disadvantage suffered by K or his family, or undermine relations with the wider community, since areas for study and physiotherapy could be provided either within the ground floor of the main house or in a smaller extension subject to obtaining any necessary consents, or by a combination of both. I have taken into account and have considerable sympathy with K's personal circumstances. However, upholding the notice would be a proportionate means of achieving the legitimate aims of enforcing relevant development plan policies, taking action proportionate to the breach of planning control and maintaining public confidence in the planning system.

26. I would add that it was said that the stacked chairs seen in the outbuilding were for the use when the rabbi gives a lecture "*in his house*" twice a year. Whether or not this deflects consideration of such a use away from the unauthorised outbuilding, I also note it was said that the persons observed around the outbuilding at different times of the day and night were accounted for by the appellant as "*waiting for a private audience and a blessing*" and that when the rabbi can be visited is carefully organised by carers and he may receive people at night. Also, the interested party stated, which was not disputed, that they witnessed large religious gathering at the property and chanting could often be heard at the weekends, clearly audible from inside their flat at Rosedale House.
27. As a leading elder rabbi who can no longer attend his place of worship, it is understandable that on occasion people come to K to receive a blessing. However, that would not justify the egregiously large, disproportionate outbuilding erected in the rear garden of the appeal site if it were intended for an assembly of that or any other kind, unless planning permission were specifically applied for and obtained or it were determined to benefit from permission under the GPDO.
28. In having due regard to the PSED matters and taking reasonable steps to acquaint myself with the relevant information I am aware from public records that a charity operates from the appeal premises, the appellant and K being trustees of the Kolel Bys Shlome Arye Trust. This charity, whose principal address is 43 St Kilda's Road⁴, maintained a college for advanced rabbinical studies that in 2015 had a student roll of around one hundred and twenty, each on a part-time basis. The trust's objects are relief of poverty, sickness and infirmity amongst persons of Jewish faith, advancement of orthodox Jewish religious education and faith.
29. To say that the outbuilding is simply used as living accommodation as stated in the PCN is unlikely in my view. There is a strong possibility that the accommodation also has a purpose, if not a main purpose, connected with religious and educational activities.
30. It is well established that apart from the personal circumstances of an occupier and personal hardship, the difficulties of businesses of value to the character of a community are not to be ignored in the administration of planning control⁵.
31. However, there is no purpose for the outbuilding that is overtly stated to be for any charitable purpose or public benefit. What may be surmised from the statements is that lectures are occasionally given, and people bob over for a blessing. I cannot therefore assess what additional benefits might be weighed in the balance that emanate from activities not confirmed in this appeal. As it is, apart from the use for private study and physiotherapy, there is clearly some evidence of restricted community events occurring on the property of which the large outbuilding forms a part. However, this is more likely to be in the nature of a private benefit of limited weight that would not override the harm I have identified.

Other matter

32. The appeal decision for 25 St Kilda's Road cited⁶, relates to an extension to and material change of use of, a dwelling to a D1 use. However, this was for a change

⁴ site:register-of-charities.charitycommission.gov.uk "1091867" 2015

⁵ Westminster City Council v Secretary of State for Communities and Local Government [2013] EWHC 69 (Admin). When Lord Scarman referred to businesses, I take this to include non-profit undertakings in the wider sense that have community value.

⁶ APP/U5360/C/14/2225502; APP/U5360/C/14/2225505; APP/U5360/A/14/2225489, 16 July 2015.

of use to a school which does not compare to the outbuilding in this appeal. I accept that there are a few large outbuildings in the area. However, I have not been made aware of any other lawfully erected and significant extensions to neighbouring properties comparable the circumstances of the present appeal. As to No 49 it is understood enforcement action has already been taken.

Conclusion on ground (a)

33. I have found that the unauthorised development has an unacceptably adverse effect on the character and appearance of the area, including the host dwelling and neighbouring properties due to its poor design and disproportionate bulk, scale, mass, and materials used, contrary to the aims of the development plan described above.
34. The unauthorised development conflicts with the development plan as a whole. I have had regard to the other considerations submitted, including the circumstances of K and his family, but do not find them of sufficient weight to indicate that a decision should be made otherwise than in accordance with the development plan. Planning permission will therefore be refused.

Ground (f)

35. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
36. Clearly the aim of the required steps is to remedy the breach of planning control by removing the outbuilding entirely from the appeal site. The appellant suggests that more suitable materials could be substituted, such as timber boarding or brick slips to give it a more permanent appearance. Replacing the cladding is not a remedy that would achieve the aim of the requirements of the notice which in my opinion having reviewed the evidence including the statements and submissions of both parties, are necessary and sufficient to remedy the breach, ie by removing the outbuilding entirely, making good all resulting damage and removing all materials, debris, waste and equipment from the appeal site.
37. The appeal on this ground fails.

Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Grahame J Kean

INSPECTOR