



Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 2 March 2026

Appeal Ref: APP/P3610/X/25/3373465

47 Holmwood Road, Cheam, Surrey SM2 7JR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr E Ezen against the decision of Epsom and Ewell Borough Council.
- The application Ref 25/00685/CLE, dated 11 June 2025, was refused by notice dated 22 August 2025.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
- The development for which a certificate of lawful use or development is sought is retention of two storey rear and side return extension with balcony and raised terrace.

Decision

1. The appeal is dismissed.

Procedural Matters

2. It was unnecessary to conduct a site visit to determine the appeal. There is no factual dispute as to what has been built. Rather, the appeal turns on how the law should be applied to it. Further, it is clear from the appeal submissions (including the plans and photographs) what was previously approved and what has been built. The main parties were consulted on my intention to decide the appeal without a site inspection, and no opposing views were received.
3. The Council partially refused the LDC. While accepting that the raised terrace was immune from enforcement action due to the passage of time, and therefore lawful, it made a contrary determination as regards the rear balcony.

Main Issue

4. The main issue in the appeal is whether or not the Council's partial refusal to issue the LDC was well-founded.

Reasons

5. Permission was granted under reference 20/00327/FLH on 28 April 2020 for a 2-storey rear and side return extension.
6. The development was not built as approved but, by way of a successful appeal¹ on 20 February 2025, the original conditions were varied to incorporate design differences relating to the front gable, fenestration and the colour of the render and roof tiles. Notably, the application did not seek to amend the rear balcony – and this has been constructed wider than approved in the conditioned plans.

¹ APP/P3610/D/24/3348086

7. Where a condition is imposed on a grant of planning permission providing that the development should not be carried out except in complete accord with the approved plans (as in this case) and the development is not built in accordance with those plans, there is a breach of planning control consisting of a breach of the condition. That principle applies if there are comparatively minor deviations between what was permitted and what is built. Otherwise, where there is a substantial deviation from the approved plans or the building is sited in a significantly different position from that approved, the breach of planning control will be development without planning permission².
8. The balcony is in the same place as permitted in the approved plans, just a few metres wider. As a matter of fact and degree, I find that this is a comparatively minor deviation rather than a substantial one.
9. Accordingly, I find the breach of planning control to consist of a breach of condition. Therefore the provisions of section 171B(3) of the Act apply, with the relevant immunity period being 10 years from the breach. For that reason, it is not too late for the Council to take enforcement action in respect of it – and so it follows that it is not lawful for the purposes of section 191(2).
10. The raised terrace is a different issue as it does not form part of the approved development. It is therefore operational development without permission, with an immunity period of 4 years under section 171B(1).

Conclusion

11. For the reasons given above, I conclude that the Council's partial refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

² *Handoll & Suddick v Warner & Goodman & Street & East Lindsay DC [1995] JPL 930*