



Appeal Decision

Site visit made on 23 February 2026

by **Andrew Dale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th March 2026

Appeal Ref: APP/M2840/X/25/3361077

78 Park Avenue, Rushden NN10 9NR

- 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 (hereinafter “certificate”).
 - The appeal is made by Mr O Aiyegbusi against the decision of North Northamptonshire Council.
 - The application ref. NE/24/00682/LDP, dated 9 July 2024, was refused by notice dated 3 October 2024.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The proposed development for which a certificate is sought is a 2-storey rear extension.
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Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed operation which is found to be lawful.

Matters of clarification

2. I have noted different spellings of the appellant’s name across the papers before me. In the heading above I have adopted the spelling found on the application form.
3. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
4. A certificate is not a planning permission. Thus, the planning merits of the proposal are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended.
5. My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in the appeal rests on the appellant who must demonstrate, on the balance of probability, that the proposed 2-storey rear extension would have been lawful on the date of the application, that being 9 July 2024.

Main issue

6. The main issue is whether the Council’s decision to refuse to grant a certificate in respect of the proposed 2-storey rear extension was well-founded. This will turn on whether the proposed extension could have been lawfully commenced on the date of the application with the benefit of the planning permission granted by Article 3 and Schedule 2, Part 1, Classes A, B and/or C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

7. No. 78 is a 2-storey, 3-bedroom detached property in use as a small house in multiple occupation. It has minor single-storey, flat-roofed wings to each side and a conservatory to the rear. The main roof has a hipped profile which returns as a slightly lower, advanced 2-storey gable at the front towards the south-western end.
8. The proposed 2-storey rear extension would project beyond the rear wall of the original dwelling by 3m, involve the removal of the conservatory and join onto the main roof of the original house with a combination of hipped and crown flat roofs.
9. The Council refused to issue a certificate for the following reason:
"The cubic content of the proposed roof space would exceed the cubic content of the original roof space of the dwelling by more than 50m³, contrary to Schedule 2, Part 1, Class B.1(d) of the Town and Country (sic) (General Permitted Development) (England) Order 2015. Thus, on the date of application the Council would have been able to take enforcement action against the development and as such it would have been unlawful."
10. The gist of the appellant's case is that the volume of the roof should not have been considered under Schedule 2, Part 1, Class A of the GPDO which grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse, subject to conditions and limitations. He says that: *"Since the proposal does not involve an alteration to the principal roof form beyond that which is permissible under Class A, it should not have been assessed against Class B."*
11. The proposed extension would comply with the conditions and limitations pertaining to Class A, as in force on 9 July 2024, except for A.1(k) (iv), which provides that development is not permitted by Class A if it would consist of or include an alteration to any part of the roof of the dwellinghouse.
12. The document published by the Government titled *"Permitted development rights for householders Technical Guidance"* (TG) and last updated in September 2019 assists with the interpretation of the GPDO. This explains that *"...changes to the roof of a house are not permitted development under Class A, but may be permitted development under Class B or C."* Class B relates to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof; Class C concerns any other alteration to the roof of a dwellinghouse.
13. The Council asserts that the proposed extension falls to be considered under Class B and would not comply with the limitation at B.1(d); this provides that development is not permitted where the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50m³. I can understand why the Council found that the development would fall foul of B.1(d).
14. However, the Council's stance would only be right if the proposed extension is to be considered under Class B in the first place. I share the appellant's view that the scheme does not trigger assessment under Class B. The test for applying Class B is not whether a development would involve changes to the roof as suggested in the Council's statement, but whether it would be an enlargement of the house consisting of an addition or alteration to its roof.

15. The TG specifically addresses the type of development proposed thus: *“For example, where a proposed two storey extension at the rear of a house has a roof that joins onto the main roof of the original house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and Class C (which covers any alterations to the roof) in order to be permitted development. If the works also include the creation of a dormer window to enlarge the roof space, either in the extension or the original roof space, then they would also need to meet the requirements of Class B.”*
16. The submitted plans do not include the addition of dormer windows to either the extension or the original roof space, so on a plain reading of the TG, Class B does not apply and the Council’s calculations about roof volume are irrelevant. Put another way, there is no individual element of the proposal which consists only of an addition or alteration to the roof, like a dormer window. It is also necessary to assess the proposal against Class C. Under Class C, paragraph C.1(b), an alteration to the roof of a dwellinghouse is not permitted if it would protrude more than 0.15m beyond the plane of the slope of the original roof. The TG states that *“This limitation to projection from the roof plane should not be applied in cases where the roof of an extension to a house that is permitted development under Class A is joined to the roof of the original house. In such cases, the roof of the extension should not be considered under Class C as protruding from the original roof.”* On 9 July 2024, the proposed extension was therefore permitted under Classes A and C.
17. The Council did not draw attention to any other decisions it has made or to any appeal decisions which might pull me in a different direction. The appellant, on the other hand, refers to a decision by the Council of the London Borough of Hillingdon on a certificate application from 2021 (at 3 Highfield Drive, Ickenham under ref. 4075/APP/2021/1447) where a similar proposal to the appeal scheme was allowed. That decision concerned a 2-storey rear extension which was considered under Class A because its roof would simply have been joined onto the main roof of the dwellinghouse. Excluding the minor factual differences between the cited scheme and this, my reasoning is largely consistent with that reached by that Council. Whilst I have evaluated the evidence and law as I find them for the subject proposal and site before me, that other case lends some weight in the appellant’s favour.
18. Consequently, in the light of the above and having taken into account all other matters raised, I judge that, on the balance of probability, the proposed 2-storey rear extension was granted planning permission on 9 July 2024 under Article 3 and Schedule 2, Part 1, Classes A and C of the GPDO.

Conclusion

19. For the reasons given above I conclude, on the evidence now available, that the Council’s refusal to grant a certificate was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Dale

INSPECTOR



Lawful Development Certificate

APPEAL REF. APP/M2840/X/25/3361077

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 9 July 2024, the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged with red lines on the plan attached to this certificate would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed operations would constitute permitted development within the terms of Schedule 2, Part 1, Classes A and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended for which planning permission is granted by Article 3(1) of that Order.

Signed

Andrew Dale

INSPECTOR

Date: 11th March 2026

First Schedule

2-storey rear extension, in accordance with the drawings numbered 78PARK01, 78PARK02, 78PARK03, 78PARK04, 78PARK05, 78PARK06 and 78PARK07, as submitted with application ref. NE/24/00682/LDP dated 9 July 2024.

Second Schedule

Land at 78 Park Avenue, Rushden NN10 9NR

IMPORTANT NOTES – SEE OVER

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 11th March 2026

by **Andrew Dale BA (Hons) MA MRTPI**

Land at: 78 Park Avenue, Rushden NN10 9NR

Appeal Ref. APP/M2840/X/25/3361077

Scale: Do not scale

Location Plan

Site Address: 78, Park Avenue, Rushden, NN10 9NR



Date Produced: 07-Dec-2024

Scale: 1:1250 @A4



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