



Appeal Decision

Site visit made on 28 January 2026

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2026

Appeal Ref: APP/T5150/C/23/3334317

40 Elm Way, London NW10 0NE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Rajni Sriram against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 25 October 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding in rear garden of the premises for residential purposes as a self-contained flat ("the unauthorised development").
 - The requirements of the notice are to:
 - STEP 1 Cease the use of the outbuilding in the rear garden of the premises as a residential dwelling.
 - STEP 2 Demolish the outbuilding in the rear garden of the premises.
 - STEP 3 Remove all debris and items, arising from the demolition of the outbuilding, and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by deleting the word "flat" in schedule 2 of the notice and replacing it with the word "dwelling".
2. Subject to the correction, 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.

The appeal on ground (b)

3. An appeal on ground (b) is that the matters alleged have not occurred as a matter of fact.
4. There is no definition of the term "dwellinghouse" in the Act, but it is an established principle that the distinctive characteristic of a dwellinghouse is its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
5. The outbuilding that has been erected consists of an open plan kitchen/living/sleeping space with a separate shower room. It clearly provides all the facilities required for day-to-day private domestic existence.
6. The Council stated that at their visit on 4 August 2023 the occupant of the outbuilding, stated that the outbuilding was in use as a self-contained flat, and confirmed their tenancy was for the outbuilding alone, which they accessed via the side gate and path, as they had no access to the dwellinghouse to the front of the premises.

7. Although the appellant stated that the outbuilding is used as ancillary accommodation to 40 Elm Way, they provided no substantive explanation about the nature of such use, particularly with regards to the level of self-containment.
8. That the outbuilding does not have separate utility metres, a letterbox or external post box, is not registered for council tax, and that the garden has not been subdivided are not determinative to actual use.
9. When making an appeal on legal grounds, the burden of proof rests with the appellant. Whilst the Council's evidence is limited, the evidence provided by the appellant is not, of itself, sufficiently precise and unambiguous to demonstrate their case, and it seems more likely than not, that the outbuilding was built and used as a dwelling. The appeal on ground (b) fails.
10. However, I shall correct the allegation to reflect that the development constitutes a dwelling and not a flat, since a "flat" is generally accepted to form part of a building, whereas in this case the entire outbuilding was erected for, and in use, as a dwelling. Doing so will cause no injustice as it will not change the notice in substance.

The appeal on ground (a) the deemed planning application

Main issues

11. The main issues are (i) the effect of the development on the character of the area (ii) the standard of the accommodation and (iii) the effect on the living conditions of neighbouring occupants.

Reasons

Character

12. I observed outbuildings in the rear gardens of dwellings which vary in design and include flat roof buildings of typical domestic scale, including at the neighbouring properties. In this context and given the straightforward appearance, the outbuilding causes no harm to the appearance of the area. However, whether there are neighbouring outbuildings in use as ancillary accommodation, in the absence of contrary evidence, detached dwellings in rear gardens are not characteristic of the locality.
13. Consequently, the development is contrary to policies DMP1 and BH12 of the London Borough of Brent Local Plan 2019-2041 Adopted February 2022 (Local Plan) which together require that outbuildings will not be residential accommodation and that development complements the locality and enhances local context by responding to local distinctiveness through their layout.

Standard of the accommodation

14. Policy D6 of the London Plan 2021 relates to housing quality and standards and requires that a one-bedroom, one-person, single storey dwelling, provide a minimum gross internal floor area of 37sqm. This is a minimum standard which applicants are encouraged to exceed in order to provide appropriate living conditions for occupiers.
15. The appellant acknowledged that the dwelling does not meet the standard. At my visit I saw the dwelling has limited internal space, with bed/s taking up the majority

of the space outside the modest kitchen area. Whilst there was a small dining table close to the kitchen and entrance, most notably it does not have a lounge or amenity space where the occupants could sit and relax, nor any dedicated internal or external storage.

16. The dwelling is located around 15m away from the rear of No.40 at the bottom end of the garden. Any use of the garden by either occupants of No.40 or those occupying the appeal property would compromise the occupants' privacy.
17. Moreover, Policy BH13 of the Local Plan requires that all new dwellings, of this size, provide 20sqm of private external amenity space. Even if this could be provided, along with bin and secure cycle storage, it would reduce the amenity space at No.40 and erode the quality of that space.
18. Overall, the dwelling is undersized, resulting in deficient residential quality to the detriment of the living conditions of occupants, contrary to policies DMP1 and BH13 of the Local Plan and Policy D6 of the London Plan 2021. Together these require that housing be of a high design quality and provides adequately sized rooms with comfortable and functional layouts, and of a location, use, scale, and design, which provides high levels of internal and external amenity. It also conflicts with the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing and future users of buildings.

Living conditions of neighbouring occupants

19. Whilst the Council raised general concerns regarding noise and disturbance, no evidence has been provided to indicate that the use has caused local problems in those respects. Accordingly, there is no conflict with the amenity protection aims of Policy DMP1 of the Local Plan and the Framework.

Other Matters

20. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice and as built. Nevertheless, I do have the power under section 177(1)(a) of the 1990 Act to grant planning permission for any part of the matters stated in the notice.
21. The appellant proposed that the outbuilding be retained and used for ancillary accommodation to No.40. However, the allegation cannot be corrected to enable a development different to that which is correctly defined in the notice.
22. The use of the outbuilding for ancillary purposes, or for purposes such as a home gym, do not properly fall within the statutory power to grant planning permission. My consideration is confined to the development in the allegation as corrected, namely the erection of an outbuilding for use as a dwelling.
23. I acknowledge remarks in the estate agent's affidavit regarding the interest in renting the dwelling and positive feedback from the current tenant. Nevertheless, these considerations do not outweigh the harm to the character of the area and in respect of the standard of accommodation since the Framework seeks to ensure a high standard of amenity for existing and future users of buildings.

Overall conclusion on ground (a)

24. The dwelling makes a very modest contribution to the supply and mix of housing in the borough, at, according to the appellant, an affordable rent, and I have found no harm to the living conditions of neighbouring occupants. However, these considerations do not outweigh the conflict with policies DMP1, BH12 and BH13 of the Local Plan and Policy D6 of the London Plan 2021 in respect of the harm to the character of the area and the living conditions of occupants.
25. As such, the development is contrary to the development plan when read as a whole. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.

The appeal on ground (f)

26. The appeal on ground (f) is that the requirements of the notice exceed what is necessary.
27. The purpose of the enforcement notice is to remedy the breach of planning control and demolition of the outbuilding is consistent with that purpose. However, the enforcement procedure is intended to be remedial rather than punitive. Consequently, it is open to me, and I am required to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption.
28. The appellant's case is that the requirements be varied to enable the outbuilding to be retained and altered in accordance with the terms of a previously approved lawful development certificate (LDC) for a proposed outbuilding for storage use, reference 21/2191.
29. The appellant also suggested, which I addressed above, retaining the outbuilding for the purposes of ancillary accommodation, and stated that no useful planning purpose would be served by requiring demolition of the outbuilding only for it to be rebuilt soon afterwards and utilised for storage or other incidental purposes such as a home gym.
30. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) does not grant retrospective planning permission. Therefore, if a building in the curtilage of a dwellinghouse has been erected, it would only be permitted by the GPDO if it met the conditions and limitations, in this case under Class E of the GPDO, when it was erected or constructed.
31. Nevertheless, it would have been open to me to vary the requirements of the notice to offer the opportunity to modify the development in accordance with the LDC and the terms of the permission granted by the GPDO, should such rights represent a realistic fallback position.
32. Class E buildings are only granted planning permission if they are reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. Although an LDC was previously granted for an outbuilding for storage use, the outbuilding was built as a dwelling, and it seems that subject of the LDC was not required to fulfil a storage function. Accordingly, and given the appellant's indecision about how they might use the outbuilding, in my view there is no reasonable prospect of the

outbuilding being re-erected for storage purposes shortly after its demolition and I attach little weight to this fallback.

33. I have carefully considered the suggestion that requiring compliance with the details of the LDC would be a less punitive alternative that could be achieved with less cost and disruption to the appellant. However, for the reasons given, that is not an appropriate course of action. Since, the steps required to be taken by the notice do not exceed what is necessary to remedy the breach of planning control, the appeal on ground (f) fails.

The appeal on ground (g)

34. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of nine months to enable them to raise the necessary funds, to find a contractor to complete the works and to give the tenant adequate time to find alternative accommodation.
35. The purpose of the period within an enforcement notice is to allow for the use to cease and the physical works associated with the notice to be removed. The appellant's submissions largely relate to the time before the works can commence.
36. Whilst the appellant's concerns are understandable, in the absence of substantive explanation regarding the availability of contractors, and alternative accommodation, I consider the period of six months, as specified in the notice, is proportionate to the breach of planning control that has occurred.
37. Additionally, the Council referred to their powers under section 173A(1)(b) to extend any period for compliance, if necessary, a matter which is entirely at their discretion, without prejudicing their right to take further action.
38. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Felicity Thompson

INSPECTOR