



Appeal Decisions

Site visit made on 20 January 2026

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 April 2026

Appeal A Ref: APP/R5510/C/25/3369352

4 Fairview, Ruislip HA4 0HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Mark Kiernan against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The notice was issued on 17 June 2025.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a balcony enclosure with metal railings on the roof of the single storey rear extension.
- The requirements of the notice are to:
 1. Demolish and remove the metal railings and balcony enclosure on the roof of the single storey rear extension, as shown by the blue line on the attached plan¹; and
 2. Remove from the Land all debris, materials, and waste resulting from the demolition works listed above.
- The period for compliance with the requirements is three calendar months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (g) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/R5510/X/25/3368584

4 Fairview, Ruislip, Hillingdon HA4 0HW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mark Kiernan against the Council of the London Borough of Hillingdon.
- The application ref 58594/APP/2025/972, dated 2 April 2025.
- 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 described in the application as 'railings on first floor rear extension'.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. The development subject of these appeals is visible from the highway along The Fairway and Long Drive. In view of this, and having regard to the matters that are the subject of these appeals, the site visit was conducted as an unaccompanied visit, where the site and the development were viewed from public vantage points only.

¹ Reference here to a plan is to a plan attached to the enforcement notice.

2. Whilst both parties were given the opportunity to provide a statement of case and final comments in accordance with the appeal timetables, no further representations were made by the appellant on either appeal. Accordingly, I have had regard to the appellant's case as set out in their submissions made only when the appeals were made.
3. Limited details of the matter for which the LDC was sought (including drawings, etc.) were submitted with the LDC application and Appeal B. However, having regard to the description of the matter in the LDC application form, I am satisfied that Appeal B relates to the same enclosure that is the subject of the enforcement notice on Appeal B.

Ground (c) on Appeal A

4. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the enforcement notice do not constitute a breach of planning control. The burden of proof is on the appellant.
5. In making their case under ground (c), the appellant says that they feel they have done everything they can do within the rules, although they do not expand on what rules they are referring to. Nevertheless, they do not dispute that a balcony enclosure with metal railings has been erected on the roof of the single storey extension to the rear of the property at No 4. Neither do they suggest that the erection of this enclosure is not development as defined within section 55(1) of The Town and Country Planning Act 1990 as amended (the 1990 Act).
6. The definition at section 55(1) includes the carrying out of building operations. Section 55(1A) informs that, for the purposes of the 1990 Act, 'building operations' includes additions to buildings. Having viewed the enclosure on site, I am satisfied that this is an addition to the existing building. I am also satisfied that it is an alteration that materially affects the external appearance of the building as a whole. I say this having regard to the nature of the enclosure, its prominence, and that it can be viewed from several vantage points, including from the public highways either side of the site. Accordingly, I am satisfied that the enclosure is development for the purposes of section 55(1) of the 1990 Act.
7. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. I have not been made aware of any reason why this development would not require the benefit of express planning permission, in accordance with section 57, and it has not been suggested that the necessary planning permission has otherwise been granted. Accordingly, and on the balance of probability, the erection of a balcony enclosure with metal railings on the roof of the single storey rear extension constitutes a breach of planning control. For this reason the ground (c) appeal must fail.

Ground (d) on Appeal A and Appeal B

The Main Issues and Main Considerations

8. An appeal on ground (d) is that, at the date on which the enforcement notice was issued, no enforcement action could be taken in respect of the breach of planning control that may be constituted by the matters stated in the notice.

9. It is agreed that the relevant time limit² in this case is 4 years. Accordingly, in order to succeed on ground (d) on Appeal A, the appellant must show that the enforcement notice was issued after the end of the period of four years beginning with the date on which the operation, the balcony enclosure in this case, was substantially completed. The relevant date for the ground (d) appeal is, therefore, 17 June 2021. The appellant must demonstrate that the development was substantially completed prior to this date.
10. As for Appeal B, section 191(4) of the 1990 Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. The Council did not determine the application subject of Appeal B. Accordingly, the main issue on Appeal B is, had the Council refused the LDC application, whether or not the refusal would have been well founded.
11. For the appellant to succeed on Appeal B, they must demonstrate that on the date the LDC application was made, a period of four years had passed beginning with the date on which the balcony enclosure was substantially completed. As the date of the LDC application was 2 April 2025, the relevant date on Appeal B is 2 April 2021.
12. The test of the evidence in the case of both the ground (d) and Appeal B is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. This advice is relevant to the ground (d) appeal, as well as to Appeal B.

Reasons

13. In support of their appeals, the appellant has provided a tax invoice from the company WLSC dated 1 October 2020. This provides a price for the provision of a 'steel belly shaped bar balcony' and includes a description of the materials to be used. It has, however, clearly been prepared prior to the works to install the enclosure described in the invoice. I say this because it says, for example, how the bars **will be** spaced and how the balcony enclosure **will be** galvanised and undercoated, manufactured and secured to the building. Whilst I can see that the date of this documentation is prior to both of the relevant dates mentioned above, the document does not say when the works described in it will be carried out. Such information might assist the appellant in corroborating their claim that the works were, indeed, substantially completed prior to the relevant dates.
14. The Council has provided a street view image which it says is dated September 2021. The date of this photograph is not disputed by the appellant. Having compared this image with what I saw on site, I am satisfied that this is a photograph that includes the rear of the property at No 4. In this I can make out part of the

² Having regard to section 171B(1) of the 1990 Act and section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

edge of the flat roof of the rear extension. Although the rear of the property is partly obscured by the tree in the foreground, it is plain that the enclosure I observed on site, around the edge of the flat roof, is not present at the time this photograph was taken.

15. Having regard to all of the above, I can only conclude that the appellant has failed to discharge the burden of proof that is upon him. The appellant's evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the balcony enclosure that is the subject of both appeals was substantially completed more than four years prior to the issue of the enforcement notice subject of Appeal A and the time of the LDC application subject of Appeal B. Notwithstanding this, the evidence provided by the Council is sufficient to contradict the appellant's claims and make their version of events less than probable. For these reasons the appeal on ground (d) for Appeal A must fail, as should Appeal B.

Ground (a) and the Deemed Planning Application on Appeal A

Preliminary Matters

16. Since the appeal was made, a consultation document on proposed reforms to the National Planning Policy Framework (The Framework) has been published. There have not, however, been any changes to the Framework and the proposed reforms are subject to consultation. Accordingly, I have not sought the parties' views on any changes to the Framework, including those proposed.

Main Issues

17. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Having regard to the reasons for the issue of the Notice, the main issue in this case is the effect of the development on the living conditions of occupiers of neighbouring properties.

Policy and Guidance

18. The development plan for the area includes the London Borough of Hillingdon Local Plan Part 2, Development Management Policies, adopted 16 January 2020 (HLP) and the London Plan, adopted March 2021 (LP). The enforcement notice refers to Policy DMHB 11 (Design of New Development) of the HLP, which requires all development, including alterations, to be designed to the highest standards and, incorporate principles of good design including, amongst other matters, the impact on neighbouring open spaces and their environment. Criterion B) of the Policy also informs that development proposals should not adversely impact on the amenity, daylight and sunlight of adjacent properties and open space.
19. The Council refer to Policies D3 (Optimising site capacity through the design-led approach) and D14 (Noise) of the LP. In doing so it refers to the requirements of these policies that relate to noise and how noise generating development should be considered.
20. There is also reference to paragraph 135 of the Framework, where criterion f) informs that decisions should ensure that development creates places with a high standard of amenity for existing and future users.

21. The enforcement notice also refers to Policy DMHD 1 (Alterations and Extensions to Residential Dwellings), which is a householder development policy in appendix 1 of the HLP. Whilst this relates to alterations to residential dwellings, as well as extensions, I cannot see that this includes any criteria or requirements that are relevant to the particular form of development subject of this appeal. Indeed, no particular part of the Policy has been drawn to my attention.
22. The Council refer to Policy DMHB 12 (Streets and Public Realm). However, having regard to the case made by the Council, the relevance of this Policy is not obvious to me. For example, whilst the development can be viewed from the public realm, the Council do not make the case that it adversely effects the street scene. Again, the Council has not pointed to any particular part of this policy.

Reasons

23. In making its case in response to the ground (a) appeal, the Council do not suggest that the development is unacceptable because it has an adverse effect on the appearance of the property or the character of the area. Instead, the Council's case concentrates on the use of the roof of the rear extension at No 4 by its occupiers as amenity space for sitting out on, and the effect of this on the living conditions of the neighbouring occupiers. In doing so, it suggests that the development subject of this appeal enables 'actual and perceived overlooking' and creates an 'outdoor amenity area at first-floor height' that 'introduces activity and noise into an elevated position not previously accessible for such use'.
24. It is the enclosure that has been erected around the perimeter of the flat roof of the extension that is the subject of this appeal, not the use of the flat roof itself by the occupiers of No 4. The occupiers of No 4 can clearly gain access to the roof of the extension, with or without this enclosure. There is nothing to suggest that this is otherwise prevented. Nevertheless, the enclosure clearly facilitates the use of the flat roof by the occupiers. There is nothing to suggest that the use of the flat roof as a sitting out area is not a direct result of the development or that the development was erected for a purpose other than to facilitate this activity.
25. Furthermore, having regard to the confined depth of the roof area and its height above ground level, I find it unlikely that the extension roof would be used as an amenity area by the occupiers of No 4, were it not for the enclosure. I say this not least because its use would, in my judgement, be unsafe without some form of safety barrier, such as the enclosure that has been erected. Accordingly, I am satisfied that the effect of the use of the flat roof that is facilitated by the development subject of this appeal is material to my determination of the deemed planning application.
26. The appeal property occupies a narrow plot and the extension on which the enclosure has been erected extends across much of the width of the plot between 2 and 6 Fairview. Accordingly, the area enclosed by the development finishes on the boundary adjoining No 2 and close to the boundary shared with No 6. For this reason, the development facilitates and makes more likely a use of the flat roof that results in direct overlooking into the rear gardens of the adjoining properties from an elevated location and at close quarters. In view of this, I have no doubt that when the flat roof of No 4 is in use as, for example, a sitting out area, this would have an adverse effect on the neighbouring occupiers use of their own garden

space and is likely to have a direct effect on how these neighbours use their gardens.

27. I also note the location of the enclosure along the boundary, close to the first floor windows in the rear elevation of the two adjoining properties. The enclosure is particularly close to the rear first floor windows at No 2. Anyone stood or sat on the flat roof at no 4 is likely to have direct views into the rooms at the rear of these adjoining properties. Whilst these views might be at an angle, they would be at close quarters, particularly for No 2. I have no doubt that this has a significant detrimental effect on the privacy enjoyed by the occupiers of these adjoining properties.
28. I note the Council's case, that the activity on the flat roof results in harmful noise and disturbance. There is, however, little before me to demonstrate that the noise and disturbance caused by the use of the flat roof as an amenity area is harmful when compared to that generated by similar activities in the existing garden at No 4. Whilst I acknowledge that the development facilitates activity in an elevated location, close to the rear first floor windows at Nos 2 and 6, there is no evidence to suggest that this introduces a degree of harm that is unacceptable. This finding does not, however, reduce the harm I have already found above.
29. Whilst no mitigation has been proposed by the appellant, I have considered whether the harm I have identified above could be mitigated through, for example, the erection of a privacy screen. However, without any detail of this or any alternative mitigation, I am unable to conclude that it would itself be acceptable in terms of its effect on the appearance of the property, the character of the area, or the outlook of the neighbouring occupiers.
30. Having regard to the above, I conclude that the development facilitates and makes more likely the activity on the flat roof extension that causes harm. For this reason, I conclude that the development has an unacceptable effect on the living conditions of occupiers of neighbouring properties. Whilst I have not found conflict with LP Policies D3 and D14, the development is in conflict with the requirements of Policy DMHB 11 of the HLP, mentioned above, and the relevant paragraphs of the Framework.
31. The appellant points to the lack of response from the Council, when they asked for advice on the need for permission for the enclosure. The Council refute that it has ignored any such requests. Nevertheless, this does not justify development that results in the harm identified above.
32. The determination of this ground (a) appeal and the deemed planning application must be in accordance with the development plan, unless material considerations indicate otherwise. All things considered, I have no reason to conclude that my determination of the appeal should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted for the development subject of the enforcement notice and that the ground (a) appeal should fail.

Ground (g) on Appeal A

33. An appeal on ground (g) is that the period specified in the enforcement notice falls short of what should reasonably be allowed. The notice specifies a period of 3 calendar months after it takes effect.

34. Whilst the appellant says that more time is needed, they do not say how long they would suggest is reasonable to comply with the requirements of the notice. Neither do they say why more time is needed to comply with these requirements.
35. The notice requires the removal of the metal railings and balcony enclosure from the single storey extension and the removal of all resulting debris, materials and waste from the appeal site. I find it unlikely that such works would require a specialist contractor, such that it would take additional time to find and secure them. Furthermore, having regard to the extent of the works required, I cannot envisage that removing the enclosure and disposing of the resultant materials would be a difficult and lengthy task.
36. The appellant has not provided any substantiated evidence to show that the requirements of the notice cannot be complied with within 3 months. As such, I have no reason to conclude that the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeal should fail.

Overall Conclusion on Appeal A

37. 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.

Conclusion on Appeal B

38. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of the railings on the first floor rear extension, that refusal would not have been 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.

Formal Decision on Appeal A

39. 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.

Formal Decision on Appeal B

40. The appeal is dismissed.

J Moss

INSPECTOR