Appeal Decision

Site visit made on 23 April 2026

by R Merrett BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2026

Appeal Ref: APP/E5330/X/25/3367893
455 Westhorne Avenue, Eltham, London SE9 5LR

- 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 (LDC).
- The appeal is made by Mr Erda Ersen against the decision of Royal Borough of Greenwich.
- The application ref 25/0824/CE, dated 13 March 2025, was refused by notice dated 9 May 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 a garage extension.

Decision

1. The appeal is dismissed.

Reasons

2. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development, require planning permission or because the time for enforcement action has expired (s191(2) of the 1990 Act).

3. There is a further proviso that the development must not contravene the requirements of any enforcement notice then in force. I have not been told that there was any extant enforcement notice relating to the property at the time of this application.

4. In this case the appellant is relying on the arguments that the development did not require planning permission and (in the alternative) on the passage of time.

5. The development for which an LDC is sought is an extension to the front and rear elevations of an existing garage, attached to the side elevation of a semi-detached dwelling.

Whether the development required planning permission

6. Article 3, Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) is concerned with the enlargement, improvement or other alteration of a dwellinghouse. Such operations can amount to ‘permitted development’, and thus not require express planning permission. However, paragraph A.1. sets out various limitations, beyond which development is not permitted by Class A. These include in relation to the scale and height of the extension, and its relationship to the principal elevation of the dwelling.

7. In this case, the development comprised of single storey extensions to the front and rear elevations of the pre-existing attached garage. It is unclear from the information before me whether the pre-existing garage was constructed at the same time as the original dwelling, and therefore was itself original.

8. The GPDO states that development would not be 'permitted development' if the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse.

9. I have had regard to the Government's technical guidance on permitted development rights[1]. This states that in most cases the 'principal elevation' will be that part of the house which fronts the main highway serving the house. However, it advises that the principal elevation could include more than one wall facing in the same direction - for example, where there is an 'L' shaped frontage, with a staggered building line. In such cases, all such walls will form the principal elevation and the line for determining what constitutes 'extends beyond a wall' will follow these walls.

10. From the appellant's evidence, it is clear that the front elevation of the pre-existing garage would have formed such an L-shaped frontage with the principal (front) elevation of the main part of the house. Therefore, if the pre-existing garage was part of the original dwellinghouse, the forward extension of that garage would have constituted enlargement beyond a wall which formed the principal elevation of the original dwellinghouse. This is despite the front of the garage being set back from the front of the main dwelling. It follows that the garage extension, as a whole, would not have been permitted development, and would therefore have required express planning permission.

11. The GPDO also states that development would not be 'permitted development' if the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3 metres in the case of a non-detached dwelling. It is not known whether the pre-existing garage or a separate conservatory at the rear of the dwelling are original structures. If one assumes that these structures were not original, this means the rear extension to the garage would, when taken together with the projection of the pre-existing garage, extend beyond the aforementioned three metre threshold[2]. It would mean the development as a whole would not have been permitted development on this basis.

12. Drawing the above considerations together, the development for which an LDC is sought would not have been permitted development in the context of the GPDO, regardless of whether the pre-existing garage formed part of the original dwellinghouse or not; and on the assumption that the rear conservatory is not part of the original dwellinghouse. From the limited information before me, I conclude on the balance of probability, that the garage extension would not have been permitted development and would have required planning permission.

Whether the development is immune from enforcement due to the passage of time

13. The alternative ground of appeal is that at the date of the application, no enforcement action could be taken in respect of any breach of planning control.

[1] Permitted development rights for householders Technical Guidance – MHCLG September 2019.
[2] From measurements taken at the site visit.

S171B(1) of the 1990 Act provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of four years[3] beginning with the date on which the operations were 'substantially completed'.

14. It is therefore necessary to consider whether, on the balance of probability, the garage extension had been substantially complete for a period of four years or more prior to the date of the LDC application, that being 13 March 2025, so as to be immune from enforcement. The onus is on the appellant to demonstrate their case, on the balance of probability.

15. The appellant claims on the application form, which is dated 13 March 2025, that the garage extension was completed 4-5 years ago; however then contradicts that statement, saying that the building works were substantially completed by 26 June 2022.

16. I am mindful that planning practice guidance states *"In the case of applications for existing use, 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."*

17. Having regard to the above, the appellant's evidence is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability, on the basis of the passage of time.

Other Matters

18. The appellant has made a number of further points in support of the application. These include that the garage is set back by several metres from the front elevation of the porch; its rear elevation is in line with the neighbour's garage, and the structure does not encroach on neighbouring land.

19. However, these points relate to the merits of the development. Therefore, whilst such considerations may weigh in favour of the development, if a retrospective application for planning permission is made, they do not go to the question of lawfulness in this case.

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a garage extension is 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).

R Merrett

INSPECTOR

[3] Insofar as it relates to breaches of planning control that have taken place before 25 April 2024.