



Appeal Decision

Site visit made on 22 April 2026

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

an Inspector appointed by the Secretary of State

Decision date: 19th May 2026

Appeal Ref. APP/T5150/X/24/3355591

48 Clifford Gardens, London NW10 5JD

- 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 Tim Poultney against the decision of the Council of the London Borough of Brent.
 - The application ref. 24/0754, dated 20 March 2024, was refused by notice dated 15 May 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 was described on the application form as *Conversion of existing loft with rear dormer and front skylights*.
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Decision

1. The appeal is dismissed.

Matters of clarification

2. The date of the Council's decision on the decision notice is 15 May 2024 and not 15 June 2024 as stated on the appeal form at section C.
3. The Council adopted a fuller description of the proposal on its decision notice thus: *Certificate of lawfulness for proposed rear dormer to main roof, dormer and flat roof addition to the rear outrigger, 2 x front rooflights and removal of 2 x chimneys to dwellinghouse*. I do not know whether such a description was previously agreed to by the appellant, especially as the first box of section E on the appeal form simply contains the word *Dwellinghouse*, instead of providing a description of the proposal.
4. 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.
5. 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.
6. 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 development would have been lawful on the date of the application, 20 March 2024. That being the case, my decision is based on the REV 5 plans (dated 15 March 2024) as submitted with the application and listed on the decision notice.

7. Within the appeal papers, I noted a set of REV 6 drawings dated 20 November 2024 and a set of REV 13 drawings dated 13 November 2024. The REV 13 drawings (at D10) include detailed volume calculations although no such detailed volume calculations appeared on the REV 5 or REV 6 drawings.
8. The REV 6 and REV 13 drawings postdate the application by about 8 months and the Council's decision notice by about 6 months and the Council has not agreed to the consideration of those plans for the purposes of this appeal. There is an added complication. There was a material change in circumstances when, according to the Council's Questionnaire, the appeal property was actually included within the Kensal Rise Conservation Area on 28 May 2024, thereby restricting permitted development rights for roof extensions, shortly after the Council's decision on the application was taken and well before the REV 6 and REV 13 drawings were produced. All these factors further confirm that the relevant plans to focus on are the REV 5 plans.

Main issue

9. The main issue is whether the Council's decision to refuse to grant a certificate in respect of the proposed development was well-founded. This will turn on whether the proposed enlargement of the dwellinghouse consisting of additions and alterations to its roof 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, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

10. Somewhat deceptively, on first sight no. 48 appears to be a semi-detached 2-storey house paired with no. 46. However, it stands at the end of a terrace of 12 houses. To be clear, no. 48 was not in a conservation area at the time of the application or the decision made upon it. There is decorative pargeting to the advanced front gables of the houses. The rear elevations are dominated by long 2-storey, gabled outriggers. There is no dispute that the outrigger at no. 48 was part of the original design. The elements of the proposal pertaining to the conversion of the existing loft with a rear dormer are as set out in the Council's description above.
11. The Council refused to issue a certificate for the following reason: *The proposed development does not comply with the requirements of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and is not permitted development. Therefore planning permission would be required for the proposed development.*
12. The document published by the Government titled "*Permitted development rights for householders Technical Guidance*" 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, such as roof lights. Class G covers the installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse.

13. Reading the Council's delegated report, I note that the 2 front skylights and the removal of the 2 chimneys (even though such removal was evidently not intended) were not found to lie beyond the relevant permitted development rights of the GPDO, with reference to Class C and Class G respectively.
14. The same report provided volume calculations based on the stated measurements on the submitted REV 5 elevation plans which demonstrated that the proposal would not comply with the limitation at B.1(d); this provides that development is not permitted by Class B if the cubic content of the resulting roof space would exceed the cubic content of the original roof space of a terraced house by more than 40m³. I can understand why the Council found that the development would fall foul of B.1(d), especially as the appellant did not submit any detailed volume calculations of his own with the application. If anything, the Council's calculations may have underestimated the volume by rounding off the individual measurements. For the calculation of the *Dormer to rear outrigger*, the Council seems to have transposed the width and height measurements but that did not affect the overall calculation.
15. The Council note in their report that "*...the proposed roof plan does not correspond in depths of the dormers as shown on the submitted proposed elevations.*" The appellant says that the Council did nothing to seek verification with himself or his agent but the Council points to its letter acknowledging receipt of the application that explains how it is important that all relevant information is provided, including calculations where necessary. I note also, from the application form, that whilst it may not be compulsory, pre-application advice was not sought in this case. The Council were not obliged to pursue the matter with the appellant and could have potentially rejected the scheme on the basis of inaccurate and inconsistent plans but decided to consider and examine the very detailed measurements set out on the elevations. That was not an unreasonable approach to take in the circumstances.
16. I am aware that the volume calculations on the REV 13 plans pitch the scheme at just under 40m³. I have already explained why I cannot take that drawing set, produced on 13 November 2024, into account in this appeal. Even if the Council's volume calculation was incorrect for any reason and the volume limitation was met, the application scheme still eschewed Condition B.2 (b) (i) in Class B.
17. For clarity, this Condition states that:
"the enlargement must be constructed so that –
(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension –

(aa) the eaves of the original roof are maintained or reinstated; and

(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves;..."
18. The REV 5 plans show that firstly the side eaves (which should amount to more than just guttering) along the original, rear 2-storey outrigger would not be clearly maintained or reinstated (requirement (aa)) and secondly that the edge of the enlargement closest to the same eaves would not be kept at least 0.2m from the eaves, when it would appear practicable to do so (requirement (bb)).

19. As such, I agree with the Council that there would have been a failure to meet a relevant condition in respect of the full-depth, flat-roofed addition to the rear outrigger.
20. To sum up, I find that the proposed development would not amount to permitted development and would not benefit from the planning permission granted through the GPDO. On the balance of probability, and taking into account all other matters raised by the parties in the written evidence, I find that the proposed development, as presented to the Council, would not have been lawful if begun at the time of the application.

Other matters

21. Although I appreciate that a lack of communication by the Council may have been evidently frustrating, how the application for a certificate is dealt with by the Council is outside my remit. There are other avenues where such procedural matters can be more formally explored. This would not, however, affect my conclusion on the main issue in this appeal.

Conclusion

22. For the reasons given above, I conclude that the Council's refusal to grant a certificate in respect of the *Conversion of existing loft with rear dormer and front skylights* is well-founded. The appeal should fail and I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Andrew Dale

INSPECTOR