

Appeal Decision

Site Visit made on 19 May 2026

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st May 2026

Appeal Ref: APP/T5150/X/24/3353660

9 Bryan Avenue, Brent, London NW10 2AA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Adnan Al-Killidar against the decision of the Council of the London Borough of Brent (the LPA).
 - The application ref 24/1433, dated 24 May 2024, was refused by notice dated 22 July 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is use of flat roof to ground floor extension as a balcony.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the LPA's decision to refuse the LDC application was well-founded.

Reasons

3. S191(2) of the Act is clear that uses are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. The LDC application was made under S191(a) of the Act and seeks to establish that the use of the flat roof of the ground floor extension at 9 Bryan Avenue as a balcony is lawful, within the meaning of S191(2) of the Act, as the time for taking enforcement action has expired.
5. The appellant's and the LPA both indicate that the relevant time period for taking enforcement action is four years. However, S171B of the Act states that a period of four years for taking enforcement action relates to a breach comprising of the carrying out of operational development and a change of use of any building to use as a single dwellinghouse. Neither of those are relevant here.
6. The use of the flat roof of the rear extension as a balcony would fall to be considered under the relevant time limit in S171B(3) of the Act, which states that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. For the appeal to therefore succeed, it is necessary for the appellant to demonstrate, on the balance of probabilities, that

the use of the flat roof as a balcony began on or before 24 May 2014 and continued for 10 years thereafter.

7. The appellant states that the ground floor extension was built in 2005 following a grant of planning permission (LPA ref: 04/03656). It is then said that the balcony was used from around 14 years ago (circa 2010 given the date of the appeal submissions). In a further letter dated October 2024, the appellant states it has been continuously used as a balcony for the last ten years.
8. However, there is little substantive evidence to support the proposition that the flat roof has been used as a balcony continuously since 2010. The appellant does not make the claim in the form of a statutory declaration. Moreover, whilst there are photographs provided showing the roof with timber decking and balustrading on it, they are undated.
9. I note the provision of a door to access the flat roof from within the property. However, there is no substantive evidence of when it was installed. In any event, the fact that the roof was capable of being accessed is not sufficient to demonstrate that the space was actually used as a balcony for the relevant period.
10. A letter is provided from the neighbouring property No 11 in respect of a previous application for a conservatory at the appeal property. The appellant submits that the neighbouring occupier states the balcony has been in use from before the relevant date. However, in that letter, the author simply refers to “the application to build a conservatory on the roof of the extension that they built around 7 years ago.” Since it was dated 31 December 2023, this infers that the extension itself was built around 2016. It does not support the appellant’s case that the flat roof of said extension has been used as a balcony since on or before 24 May 2014. Moreover, the neighbouring occupier goes on to state that, “years after completing the extension, he turned one of the existing windows into a door to access the roof”. Again, that does not support the appellant’s case that it has been used as a balcony since on or before the relevant date. Evidence regarding the discussions with the LPA and planning applications for a first-floor conservatory above the extension do little to assist in the matter before me.
11. On that basis, I find that the appellant’s evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the use of the flat roof of the rear extension as a balcony commenced on or before 24 May 2014 and continued thereafter for 10 years without interruption, such that enforcement action may not have been taken against it at the date the LDC application was made. Consequently, at the date of the LDC application, the use was not lawful within the meaning of S191(2) of the Act.

Conclusion

12. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development for use of flat roof to ground floor extension as a balcony was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in S195(3) of the 1990 Act (as amended).

J Whitfield

INSPECTOR