



Appeal Decision

Site visit made on 9 September 2025

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 September 2025

Appeal Ref: APP/B5480/C/24/3345970

Land at 16 Lodge Lane, Romford RM5 2EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Haddisur Rahman against an enforcement notice issued by the Council of the London Borough of Havering.
 - The notice was issued on 15 May 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of an outbuilding in the rear garden in the location as shown in grey on the plan attached as Appendix 1.
 - The requirements of the notice are:
 - i. Demolish the outbuilding in the rear garden in the location as shown on the plan as Appendix 1 and
 - ii. Remove all debris, rubbish or other materials accumulated as a result of taking step (i) above.
 - The period for compliance with the requirements is Three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
 - The appellant was notified by the Planning Inspectorate on 26 September 2024 that the appeal on ground (a) is barred because the enforcement notice was issued within the two-year period after the making of a related planning application that is no longer under consideration. In the absence of a ground (a) appeal and related deemed planning application, the planning merits of the outbuilding will not be taken into account.
-

DECISION

1. It is directed that the enforcement notice is varied in section 6 by the deletion of three months and the substitution of six months as the time for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

REASONS

Appeal on ground (e)

2. The issue for consideration in a ground (e) appeal is whether the enforcement notice was served as required by section 172 of the 1990 Act as amended.

3. The appellant's concern is not about who received a copy of the notice and how the notice was served but is about the identification of the property and the outbuilding. I will deal with the point raised even though it is not a ground (e) matter.

4. An enforcement notice must specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise¹. In this instance, the notice identifies the land in section 2 by means of the address and by reference to a plan, where the property is edged in black.

¹ Regulation 4 Part 2 The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

5. In the description of the alleged breach of planning control (section 3 of the notice) the outbuilding in the rear garden is identified on the plan attached as Appendix 1 to the notice. The location of the building is shaded grey as described and reflects the siting of the building in the rear garden, as I saw on the site visit. The appellant acknowledged the extent of the development at issue is clear. The convention of red and blue land referred to by the appellant applies to land in a planning application, not an enforcement notice.

6. I am satisfied that the enforcement notice complies with the statutory requirements and was served as required by section 172 of the 1990 Act. The appeal on ground (e) fails.

Appeal on ground (b)

7. The issue in this ground of appeal is whether the construction of the outbuilding in the rear garden has occurred as a matter of fact.

8. The appellant has accepted a structure was constructed in the rear garden, as identified in the notice. As to its description, the use of the word outbuilding can be understood to refer to a building separate from but used in association with the dwelling. Significantly the word outbuilding is used to describe the development in the application for a certificate of lawfulness made in December 2022 and the planning application made retrospectively in October 2021.

9. In conclusion, the alleged breach of control is appropriately described and has occurred as a matter of fact. The appeal on ground (b) fails. The use of the outbuilding is more appropriately considered in the ground (c) appeal.

Appeal on ground (c)

10. The issue is whether the outbuilding constitutes a breach of planning control. The onus is on the appellant to make out their case on the balance of probability.

11. The appellant considered the outbuilding is permitted development and explained why the outbuilding is required to meet the family's needs. In this way the appellant hoped to address the reason why the planning application and appeal for a lawful development certificate were not successful.

12. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission in article 3 for the classes of development set out in Schedule 2 of the Order. Part 1 of Schedule 2 concerns development within the curtilage of a dwellinghouse. Even though not specifically stated by the appellant, the planning history indicates that reliance is placed on Class E of Part 1 that permits the provision within the curtilage of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. The circumstances where development is not permitted by Class E are set out in E.1 of Part 1.

13. Outbuildings must not exceed the dimensions set out in E.1. The appellant has not demonstrated whether or not the ground coverage and height limitations are met. However, the officer report on the application for a certificate of lawfulness concluded the E.1 criteria were met. I will focus on the use and whether the outbuilding is required for incidental purposes.

14. The meaning regarding incidental use was referred to by the Inspector in the appeal decision on the lawful development certificate². An incidental use is one which is functionally related to the primary use, in this case the residential use. A functional relationship should be one that is normally found and not based on the personal choice of the user. A type of use that is integral to or part and parcel of the primary residential use is not a purpose incidental to the enjoyment of the dwelling house. Whether the building is required for a purpose incidental to the enjoyment as such falls to be judged at the time of the provision of the building.

15. The appellant's description of the purpose of the outbuilding is to provide accommodation for a range of family activities for the benefit and convenience of the whole family. The usage has not been confined to a gym and storage but has included hobbies, practical tasks and repairs, meeting friends and visitors, rituals at family weddings, children's play, recreational activities and games such as table tennis. The main dwellinghouse is said not to be of sufficient size to accommodate all these family needs. The appellant also explained why in-house space and the garage were not available for storage.

16. The appellant's description of the use of the outbuilding was consistent with my observations on the site visit. The front space was a children's play area, a table tennis table and a piece of gym equipment was in the room further back and the rear part was furnished as a lounge / sitting area. In addition, there appeared to be storage of furniture and other household and garden items.

17. The appellant also explained that as they began building the structure they realised the potential it would offer to enhance their lives and the lives of their children and friends. The probability is that the outbuilding was constructed for this wider purpose and not solely for incidental use.

18. The size of the building, including in comparison to the host dwelling, is a consideration, albeit not conclusive. Various dimensions for the single storey outbuilding were stated in the submitted documents. A footprint of 152 square metres was given in the LDC appeal. The original dwellinghouse has been extended, with the additions of dormers and a rear extension. The appellant's block plan clearly shows the outbuilding has a significantly larger footprint than the extended dwelling. The large size of the rear garden is an important factor that has enabled accommodation of the outbuilding on the plot. The size of the outbuilding is very much related to the function and purpose of the structure. The relatively large size supports the evidence the use was not intended and has not been confined to incidental purposes.

Conclusions

19. The description of the range of activities and uses leads me to conclude as a matter of fact and degree the use of the outbuilding was not reasonably required for 'a purpose incidental to the enjoyment of the dwelling house as such'. The outbuilding was intended for and was used to provide additional living space too.

20. The GPDO is specific as to the purpose of a building permitted under Class E. By failing to meet this purpose the outbuilding is not permitted development under Class E of Part 1 to Schedule 2 of the GPDO. The value of the outbuilding to home and family life is not a matter for consideration in this legal ground of appeal.

² Appeal Decision dated 2 May 2024 ref APP/B5480/X/23/3328255

21. Earlier attempts were made by the appellant to gain authorisation for the development. The Council refused to grant planning permission for the outbuilding in December 2021. The decision was upheld on appeal. In March 2023, the Council refused to issue a lawful development certificate (LDC) for the outbuilding, a decision that also was upheld on appeal. The outbuilding does not have the necessary planning permission and to date has not been shown to be lawful. A breach of planning control has occurred and the appeal on ground (c) does not succeed.

Appeal on ground (d)

22. The appellant's contention is that the outbuilding meets the requirements of permitted development and therefore is lawful. This is a similar line of argument considered in the appeal related to the lawful development certificate. However, the case on permitted development has not been successful through the ground (c) appeal. The issue in this ground (d) appeal is whether the outbuilding became lawful through the passage of time. To gain immunity from enforcement action in this way the onus is on the appellant to show the outbuilding was substantially complete before 15 May 2020.

23. The information and timeline submitted by the appellant states the outbuilding was completed in June 2020. Subsequently, an issue arose over the height of the building. Following the refusal of planning permission in December 2021 and the dismissal of an appeal against that decision in October 2022, the appellant arranged for works to be carried out to lower the height of the roof. Email correspondence with the Council confirmed the works began mid November and were complete by early December 2022. The application then was made for a lawful development certificate.

24. Information from the Council is generally consistent with events in the timeline. The Council's records of the enforcement history refer to foundations being in place in April 2020. The Council stated photographs from the owner in late May 2020 showed the building in the early stages of construction. The photographs were not submitted but the appellant has not disputed the Council's statement. The retrospective planning application was made in October 2021.

25. Conclusions. The outbuilding was under construction in May 2020. Subsequent works carried out to alter the height of the building were not complete until December 2022. Therefore on the balance of probability the outbuilding was not substantially complete by the relevant date of 15 May 2020. The outbuilding has not gained immunity from enforcement action and is not lawful. The appeal on ground (d) fails.

Appeal on ground (f)

26. An appeal brought on this ground is that the steps required to be taken exceed what is necessary to achieve the purpose of the notice. This ground cannot be used to put forward matters and argue planning merits that are appropriate to a ground (a) appeal. The absence of a ground (a) appeal and the need for precision also constrain what alternatives may be considered, within the context of the purpose of the notice.

27. The purpose of the enforcement notice is found by reading the notice as a whole. The notice is directed at remedying the breach of planning control, namely the construction of an outbuilding in the location as shown on the Appendix 1 plan. The Reasons at 4(1) refer to remedy to any injury to amenity but that is alongside remedying the breach. The reasons also state, in summary, the development is contrary to Local Plan policy and Supplementary Planning Guidance, planning

conditions could not overcome the identified harms, the outbuilding was found unacceptable and unlawful through two appeals. All these reasons are consistent with a purpose to remedy the breach. By way of a check, the report seeking authorisation of enforcement action stated in the recommendation: “To issue an enforcement notice to secure the demolition of the outbuilding.”

28. The requirements to demolish the outbuilding and remove the resulting debris and materials are not excessive to remedy the breach of planning control and to restore the land to its previous condition.

29. The appellant considers it would be reasonable to allow the outbuilding to be modified to comply with permitted development requirements. However, a requirement must be precisely worded and the appellant’s proposal is not sufficiently specific. Moreover, modifications to the outbuilding would not fulfil the purpose of the notice. Case law has confirmed the remit of an Inspector does not extend to specifying an appropriate solution or changing the purpose of the notice. There is no obvious alternative in the form of an extant planning permission for an outbuilding. The appellant’s proposed alternative routes to find a solution to the situation are a matter for consideration in the ground (g) appeal.

30. The appeal on ground (f) does not succeed.

Appeal on ground (g)

31. The issue is whether the period for compliance is reasonable and proportionate. The appellant has asked for a period of seven months to allow time to come forward with proposals for a modified development.

32. A compliance period should take into account what the recipient of the notice would have to do in practice to carry out the remedial steps. In this instance, arrangements would have to be made for demolition works and for the building to be cleared of furniture and other domestic items. The sizeable outbuilding is constructed to be permanent and its physical removal may take some time, particularly in this residential environment. To complete the works the site is required to be cleared of debris and materials. Allowance should be made for the potential very significant disruption to home and family life. All matters considered a period of six months is reasonable and proportionate. This extended period also would enable the appellant to see if an acceptable alternative solution may be agreed with the local planning authority.

33. The appeal on ground (g) succeeds to this extent.

Conclusion

34. For the reasons given above, the appeal should not succeed. I shall uphold the enforcement notice with a variation to the compliance period.

Diane Lewis

INSPECTOR