



Appeal Decision

Site visit made on 24 November 2025

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date 05 December 2025

Appeal Ref: APP/Y5420/X/24/3343502

39 Bracknell Close, Wood Green, London, N22 5RE

- 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 Jeff Gillett against the decision of the Council of the London Borough of Haringey.
- The application ref HGY/2023/1753, dated 3 July 2023, was refused by notice dated 25 August 2023.
- The application was made under section 192(1)(b) of the Act.
- The development for which a certificate of lawful use or development is sought is 'enlargement of the loft space to provide additional bedroom and en-suite bathroom'.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. The Council's decision notice used 'proposed additional storey under Class AA', but I have not been informed that the appellant agreed to this description. Indeed, the appeal form contained the same description as the appellant used in the application form which I have therefore also used, as set out in the banner above.

Main Issue

2. The main issue is whether the Council's decision to refuse the application for a lawful development certificate (LDC) was well-founded.

Reasons

3. The LDC application was made to ascertain whether the proposed enlargement of the loft space to provide *[an]* additional bedroom and en-suite bathroom would have been lawful if begun on the date of the application (3 July 2023, the relevant date). For the appeal to succeed, the onus and burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that this development would have been lawful.
4. The nub of the dispute is whether this enlargement of this mid-terrace house by the construction of one additional storey would have been permitted development by virtue of Article 3(1), Schedule 2, Part 1, Class AA¹.
5. There is little evidence that any provision of paragraph AA.1 (development not permitted) is invoked. Amongst other things, this development is then permitted by Class AA(a) subject to condition AA.2(3)(a). It provides that before beginning the development, the developer must apply to the local planning authority for prior approval having regard to matters (i) to (iv) set out therein. By virtue of paragraph AA.3(1), the prior approval procedure includes paragraph AA.3(5), that the local

¹ Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

planning authority must notify each adjoining owner or occupier about the proposed development and give an opportunity for representations to be made.

6. It is common ground that in determining and refusing the appellant's two previous applications, for Class AA prior approval for proposed development at the house, the Council did not undertake this notification². The appellant submitted an appeal against each decision; one was turned away by PINS as out of time and the other was dismissed³.
7. In essence, the appellant contends that due to the Council's alleged procedural failure to notify, the refused prior approval application, dismissed on appeal, should instead have resulted in deemed prior approval for that proposed development to begin with (ie irrespective of the reasons why it was refused by the Council or the appeal was not successful). On this basis, that the Council should have issued a LDC in response to the application that is now before me, to the effect that the proposed development in this application was lawful.
8. However, there is little objective evidence to substantiate that absence of this notification 'invalidated' the Council's decision to refuse this application for prior approval. Nor that it resulted in a deemed prior approval, or that this has occurred for any other reason, including with regard to the time period for issuing the Council's decision.
9. Fundamentally, there is no provision for a deemed grant of prior approval where, as in this case, the application relates to Class AA. By virtue of paragraph AA.2(3)(a) the application is for prior approval of the matters set out in (i) to (iv) of this condition, not a determination as to whether prior approval is required. The effect of Paragraph AA.3(13) is that the development must not begin before the applicant has received written notice of the local planning authority's prior approval, or such approval gained on appeal. On the evidence before me, the requisite prior approval is not present in this case.
10. I then do not have jurisdiction to deal with the submissions of both main parties as to whether the Council 'erred in law' or acted outside its powers in refusing either prior approval application. The proper course for the appellant would have been to challenge those decisions by way of judicial review.
11. Notwithstanding the above, and in any event, I appreciate that the proposed developments are under the same umbrella of Class AA enlargement by construction of an additional storey. But there are no comparison plans and little else to show that either of the previous prior approval applications were for the same development as described in the LDC application now before me. One was 'construction of an additional storey which extends 1.87m above the existing roof height' and the other was 'construction of an additional storey which extends 2.45m above the existing roof height'. On the face of it, 'enlargement of the loft space to provide additional bedroom and en-suite bathroom' is distinctly different.
12. Taking account of all the above, as a matter of fact and degree, the appellant has not demonstrated on the balance of probabilities that the proposed development would have been Class AA permitted development. It was not, therefore, lawful at the relevant date.

² HGY/2022/4540, HGY/2023/0986

³ APP/Y5420/D/23/3328014

Other Matters

13. The appellant is dissatisfied with the outcome of his previous appeal. But planning merits are not relevant to a LDC application or, therefore, my decision. Alleged discrepancies or errors in the previous appeal decision are not within my remit or the scope of the current appeal, though the appellant could have pursued judicial review in these respects.
14. There is little evidence that the proposed development (as opposed to other works at the house) has begun. Damage to other property as a result of development is a matter for the respective parties. Some temporary noise or disturbance during construction works is inevitable but not permanent and can usually be ameliorated by appropriate means. Whether or not the appellant should have purchased the house to begin with or another one is a private matter.

Conclusion

15. For the reasons given above, and on the evidence now available, I am satisfied that the Council's decision to refuse to grant a lawful development certificate for enlargement of the loft space to provide *[an]* additional bedroom and en-suite bathroom was well-founded. Accordingly, the appeal does not succeed and I will exercise the powers transferred to me under section 195(3) of the Act.

Formal Decision

16. The appeal is dismissed.

Robin Buchanan

INSPECTOR