



Appeal Decision

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

an Inspector appointed by the Secretary of State

Decision date: 08 November 2022

Appeal Ref: APP/U5930/X/21/3277685

17 Clacton Road, Walthamstow E17 8AP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Louise Cullen against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 211225, dated 22 April 2021, was refused by notice dated 17 June 2021.
 - The application was made under section 192(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 loft conversion.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Procedural Matter

2. It was not necessary for me to carry out a site visit to determine the appeal. The main parties did not raise objection.

Main Issue

3. The main issue in the appeal is whether or not the Council's decision to refuse the LDC application was well-founded.

Reasons

4. Article 3(1) and Schedule 2, Part 1 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 provides general planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to limitations and conditions.
5. The Officer Report (OR) is clear that the Council finds that the proposal would benefit from such permitted development rights (and I see no reason to disagree with that assessment), except that it considers that the application does not demonstrate compliance with condition B.2.(b)(i)(bb).
6. That condition requires that the enlargement must be constructed so that – other than in the case of a hip-to-gable enlargement or *an enlargement which joins the original roof to the roof of a side or rear extension* [my emphasis] – 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.

7. However, the Council has misdirected itself as regards the application of that condition to this proposal. As I have emphasised in the wording of the condition above, it does not apply in this case – the OR itself acknowledges that:

“The proposed scheme relates to the construction of the dormer roof extension to the main rear roof and roof extension above the two-storey rear outrigger”.

The Council’s appeal statement confirms that same, stating:

“The appellant seeks to construct a rear dormer roof extension to main roof and over the two-storey rear projection, resulting in an ‘L-shaped’ dormer roof extension”.

In doing so, and as shown in the plans, the proposed enlargement joins the original roof to the roof of the two-storey rear extension. Accordingly condition B.2.(b)(i)(bb) does not apply and I am otherwise satisfied – as is the Council – that the proposal benefits from Class B rights.

Conclusion

8. For the reasons given above I conclude, on the evidence now available, that the Council’s refusal to grant a certificate of lawful use or development in respect of a loft conversion was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 22 April 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development benefits from general planning permission by reason of Article 3(1) and Schedule 2, Part 1 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Andrew Walker

Inspector

Date: 08 November 2022

Reference: APP/U5930/X/21/3277685

First Schedule

Loft conversion

Second Schedule

Land at 17 Clacton Road, Walthamstow E17 8AP

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated:08 November 2022

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Scale: Do not scale

