
Appeal Decision

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2025

Appeal Ref: APP/X1545/X/24/3344527

Land Adjacent To 17 Brickwall Close, Burnham-On-Crouch, Essex CM0 8HB

- 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 (LDC).
 - The appeal is made by Mr & Mrs J Thornton against the decision of Maldon District Council.
 - The application ref 24/00140/LDE, dated 19 February 2024, was refused by notice dated 15 April 2024.
 - The application was made under section 191(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 the erection of a detached garage.
-

Decision

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

Preliminary Matter

2. The outcome of the appeal turns on considering relevant aspects of planning legislation including evidence provided of the alleged development and not on assessing matters of planning merit that would normally require a visual site inspection of the premises. I have therefore been able to determine the appeal without a site visit. Neither side has been prejudiced by this course of action.

Main Issue

3. The main issue, as usual in LDC appeals, is whether the Council's decision to refuse a LDC is well-founded.
4. S171B of the Act sets the time limits or immunity periods for enforcement action and therefore lawful development. Although the immunity period is now 10 years¹, the transitional arrangements confirm that for unauthorised works of operational development it remains at 4 years where such works were completed before 25 April 2024, which is the allegation here.
5. LDC applications and appeals are determined on the balance of probability and the onus is firmly on the appellant to establish the lawfulness of the development. If the LPA has nothing to contradict the appellant's submissions or otherwise make his version of events less than probable, it should grant the LDC provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability.

¹ As introduced by the Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

Reasons

6. The Council has refused the application on the basis of a change of use of the appeal land from residential to Class B8 storage, despite paragraph 1.1.2 of the officer delegated report stating that a LDC should be granted. It asserts this on the basis that the appellants, who owned and lived in the adjacent house at 17 Brickwall Close as well as owning the land adjacent on which they erected the kit garage, completed in August 2019, subsequently (on 15 November 2019) sold the house but kept the adjacent land (the appeal site) and the garage on it. That is borne out by the original and current Land Registry Titles and Maps submitted by the appellants.
7. On this basis the Council argues, in paragraph 5.1.9 of the officer report, that the domestic garage is no longer associated with No 17, the use of the land on which it sits no longer has an incidental use with that dwelling and as such a change of use has occurred from residential (Class C3) to storage (Class B8). It also states that the 4-year rule no longer applies and the 10-year rule was therefore 'triggered', and that the application site and garage no longer benefit from permitted development.
8. There seems to have been some confusion or misinterpretation by the Council of various legislative elements here. The Council does not assert, as far as I can make out from its submissions, that the garage, when it was erected, was not part of the curtilage of No 17, or allege that its use, when completed, was not used as a domestic garage and for purposes of domestic storage by the appellants when they lived at No 17. There is no suggestion by the Council that it breached any of the measurement restrictions in E.1. of Class E of Part 1, Schedule 2 of the GPDO². Hence it was permitted development (PD) when it was erected in August 2019 because it was used at the time for a purpose incidental to the enjoyment of the house at No 17 – as a domestic garage and for the storage of domestic items.
9. A building or structure that was PD when it was erected cannot over time fail to be PD due to changing circumstances. The garage was PD when it was completed and remains so now and for as long as it remains standing, and the Council does not dispute when it was completed or what it was used for. The LDC application is for the operational development of erecting the garage. There is no dispute that it was completed more than 4 years before the submission of the application. Consequently, the garage building must be lawful.
10. Although the Council suggests that the garage is used for Class B8 purposes, it provides no reasoning or evidence to justify this, beyond the agreed facts that the appellants sold and moved out of No 17 in November 2019. Class B8 is a business use and the appellants state that it remains in use as a domestic garage by themselves, who appear to have downsized to a smaller property only 200m away on the High Street, which has no on-site parking, storage or useable external amenity space.
11. Even if the Council did have any evidence of such a B8 use, there is nothing to prevent it serving an enforcement notice on the appellants requiring such a use to cease, if such a use was causing harm to neighbouring residents or for some other good planning reason. Indeed, the appellants indicate that such an enforcement notice has been served on them, although I have not been provided with a copy of it by either main party.

² The Town and Country Planning (General Permitted Development) (England) Order 2015

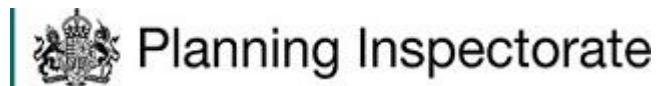
12. In any case, whether or not there has been a change of use of the land, be it a material change of use or otherwise, is for the Council and not for me to determine, because the LDC application in this appeal is simply for the erection of the garage, which is lawful for the above reasons.

Conclusion

13. So, for the reasons given above, I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development for the erection of the garage was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Nick Fagan

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 19 February 2024 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 plans attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The garage was completed in August 2019, more than 4 years from the submission of the LDC application on 19 February 2024.

Signed

Nick Fagan

Inspector

Date: 8 September 2025

Reference: APP/X1545/X/24/3344527

First Schedule

Erection of a detached domestic garage

Second Schedule

Land Adjacent To 17 Brickwall Close, Burnham-On-Crouch, Essex CM0 8HB

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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 plans. 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.

Plans

These are the plans referred to in the Lawful Development Certificate dated: 8 September 2025

by Nick Fagan BSc (Hons), DipTP, MRTPI

Land at: Land Adjacent To 17 Brickwall Close, Burnham-On-Crouch, Essex CM0 8HB

Reference: APP/X1545/X/24/3344527

Scale: Not to Scale

