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## Appeal Decision

Hearing held on 31 January 2017

Site visit made on 31 January 2017

**by Chris Preston BA(Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 8 February 2017**

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**Appeal Ref: APP/W1850/X/16/3160127**

**Wyeside Eign, Outfall Works Road, Hereford, Herefordshire HR1 1XY**

- 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 Mr Stanley Kenneth Williams against the decision of Herefordshire Council.
  - The application Ref 160624, dated 29 February 2016, was refused by notice dated 07 July 2016.
  - 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 general industrial (B2) and ancillary storage (B8).
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### Decision

1. The appeal is dismissed.

### Main Issue

2. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or uses would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the use are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The main issue is whether the Council's decision to refuse to grant a LDC was well founded.

### Reasons

4. The application form (box 8) described the use for which a LDC was sought as general industrial, steel fabrication, within use class B2, with ancillary storage to the steel fabrication that takes place on the remainder of land occupied by Mr Williams, as shown green on the plan submitted with the application. In effect, that description mirrors the description of the use given by the Inspector who considered an appeal against an enforcement notice that was issued by the Council in 2005 (the 2006 appeal)<sup>1</sup>. The parties have also confirmed that the boundary of the site plan relating to the LDC application is the same as the

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<sup>1</sup> Planning Inspectorate reference: APP/W1850/C/05/2003276

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- plan that was attached to the enforcement notice in relation to the 2006 appeal.
5. The description of the alleged breach given within that notice was; *"Without planning permission, unauthorised change of use of the land for general industrial and storage purposes falling within Use Classes B2 and B8 of the Town and Country Planning (Use Classes) Order 1987"*. The Inspector considered that the storage use was ancillary to the industrial use of the planning unit and not a separate element of a mixed use and he corrected the description<sup>2</sup> and upheld the notice in his decision, dated 29 September 2006.
  6. Thus, the Inspector found that a breach of planning control had occurred relating to the; *"unauthorised change of use of the land to a use for general industrial and ancillary storage purposes, and the erection of three metal storage containers"*. The requirements of the notice were to; *"Cease the use of the land for general industrial and ancillary storage purposes and permanently remove all metal storage containers and other associated materials, plant and machinery from the land"*.
  7. It is common ground that the containers were removed from the land but the appellant maintains that the use of the land has continued since that time and the basis of his application for a LDC is that the use has continued for a period of more than ten years, such that it is immune from enforcement action as a result of the time limits for taking enforcement action imposed by section 171B of the Town and Country Planning Act 1990 (the Act). In the case of an unauthorised change of use, s171B(3) applies and states that no enforcement action may be taken after the end of a period of ten years beginning with the date of the breach.
  8. The Council served an enforcement notice and thereby took enforcement action in 2005 in respect of the unauthorised change of use. The use that has continued since that time is not a different or new breach of planning control; it is the same breach against which enforcement action has been taken. It appears to me that the appellant has considered that taking enforcement action equates to being prosecuted for non-compliance with the enforcement notice. However, a failure to prosecute for non-compliance does not mean that the Council failed to take enforcement action within the required period. The Council took enforcement action by serving the enforcement notice in 2005. That notice was upheld, as corrected. The ground (d) appeal was dismissed and the Inspector concluded that the appellant could not demonstrate that the use had acquired immunity as a result of the passage of time.
  9. Although the appellant may have partially complied with the notice, with regard to the removal of the containers, it seems to me that the notice remains in force. Section 181(1) of the Act states that compliance with an enforcement notice shall not discharge the notice and section 181(2) states that any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently.
  10. In other words, once served, an enforcement notice has continuing effect. There is nothing before me to suggest that the notice is no longer in force. Section 191(2) of the Act states that uses and operations are lawful at any time if:

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<sup>2</sup> As set out at paragraph 28 of the Decision letter

- (a) No enforcement action may 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 for any other reason); and
  - (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.
11. In this case, the continued use of the land for general industrial and ancillary storage purposes represents a clear breach of the terms of an enforcement notice that remains in force and, having regard to s191(2)(b), the use cannot be considered as lawful, regardless of the passage of time since the notice was upheld.
12. Even if I were incorrect in my interpretation of the continuing effect of the enforcement notice, the LDC application was submitted to the Council on 29 February 2016, less than ten years from the point at which the 2006 appeal decision was issued. Even if the clock was 'reset' once the notice came into force less than ten years had passed and the use could not have been lawful at the point the LDC application was made. However, for the reasons given, I am not satisfied that would be the correct approach. The current use of the land is not a new breach but is the same breach against which enforcement action has been taken. That action was taken within the requisite ten year period and the notice continues to have effect such that the use cannot be considered lawful.
13. Accordingly, the Council's decision to refuse to grant a LDC was well founded and I shall dismiss the appeal.

*Chris Preston*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

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| Mr S K Williams   | Appellant          |
| Ms Marjory Harris | Research Assistant |

FOR THE LOCAL PLANNING AUTHORITY:

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| Mr Hulse | Of Counsel |
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