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## Appeal Decision

Hearing held and site visit made on 11 March 2025

**by Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 27 March 2025**

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**Appeal Ref: APP/W9500/X/24/3354531**

**Whin Covert, Riggs Head, Scarborough, North Yorkshire YO12 5TG**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal in part to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Ms Louisa Smith against the decision of North York Moors National Park Authority.
  - The application ref NYM/2024/0526, dated 18 July 2024, was refused in part by the Authority by notice dated 9 October 2024.
  - The application was made under section 191(1)(a) and (b) of the Act.
  - The use and operations for which an LDC are sought is buildings and container (trailer) used for storage and workshops.
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### Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use and operations which are found to be lawful.

### Preliminary Matters

2. The description of development set out above is taken from the application form. The Authority granted an LDC with an alternative description of 'the operational development of the four timber buildings and their use for internal storage.' I find that to be a more accurate representation of the buildings and their use.
3. As part of its decision, the Authority refused to grant an LDC in respect of 'the lorry body storage container and its internal storage use.' While the appellant disputes the description 'the lorry body storage container,' both parties are evidently referring to the same thing. I consider the alternative description of 'the use of the land for the stationing of 1 enclosed lorry trailer for internal storage' to more closely reflect what the evidence shows, and I shall describe it as such, or as 'the trailer' for brevity.

### Main Issue

4. The main issue is whether the Authority's refusal in part to issue an LDC, specifically for the use of the land for the stationing of the trailer for internal storage, was well founded. The responsibility for providing sufficient information to support an LDC appeal primarily rests with an appellant. However, if no other evidence contradicts or otherwise makes their version of events less than probable, and provided their evidence is sufficiently precise and unambiguous, there is no good reason to withhold an LDC.

## Reasons

5. Section 191(2) of the Act provides that “For the purposes of this Act uses and operations are lawful at any time if:
  - (a) No enforcement action may then 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 or for any other reason); and
  - (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.”
6. It is agreed that the trailer has been stationed on the land since 2009 and the appellant states precisely and unambiguously that it had been continuously used solely for internal storage purposes from 2010 until the date of the application. There is no evidence to contradict or make her version of events less than probable and the time for enforcement action had therefore expired when the application was made, as section 191(2)(a) requires.
7. However, the Authority considers the trailer is not lawful by reason of section 191(2)(b) of the Act because it contravenes the requirements of an extant enforcement notice issued on 7 February 2007.
8. As corrected, the breach of planning control that this notice enforces against is “the change of use of the land from forestry and agriculture to forestry, agriculture and the external storage and deposit of household waste materials, cardboard and other scrap items.” The notice has 2 requirements:
  - Cease using the land for the storage and deposit of household waste, cardboard and other scrap items stored externally.
  - Remove all household waste, cardboard and other scrap items stored externally from the land.
9. The trailer is stationed on land that is affected by the notice. Accordingly, if it constitutes the external storage or deposit of household waste, cardboard or other scrap items, it would be in contravention of the requirements of the notice.
10. The Authority accepts that the trailer did not conflict with the requirements of the notice when it was first stationed on the land. However, it contends that owing to deterioration of its fabric, the trailer had become an ‘other scrap item’ by the time the application was made, thus contravening the notice’s requirements.
11. While reference has been made to the trailer’s roadworthiness as part of this argument, I do not find that relevant because there is no evidence that it was stationed on the land with the intention of being taken on any road. Neither am I convinced that whether the trailer had become a scrap item should turn on its perceived monetary value. Rather, it is necessary to make an objective assessment of whether it still served an internal storage purpose, and thereby facilitated the claimed use, when the application was made.
12. The trailer’s usefulness is a matter of judgement. The Authority contends that it was initially used for furniture storage, but this had reduced to “putting something in it.” There is merit in this concept because it seems to me that the trailer’s

usefulness for internal storage purposes will decline as its fabric deteriorates. An obvious change would occur if it began to let in rain, thus limiting the range of items that could safely be stored inside. Subsequent physical deterioration would increasingly expose any stored items to the elements, thus reducing the range even further. Eventually, as and when the trailer collapsed, any remaining items would be susceptible to becoming covered by vegetation, at which point there would be little difference from, or discernible advantage over, open storage.

13. The trailer's chassis, floor, roof and sides are intact, and I saw no sign of water ingress. The door is not locked, to avoid damage if theft occurs, so it is unsuitable for storage of high-value items. However, it is holding items that the appellant wishes to keep and is therefore providing the internal storage she requires of it. Accordingly, the trailer serves a purpose in facilitating the claimed storage use and cannot be waste or an 'other scrap item'. As such, it did not contravene the requirements of the notice on the date the application was made.

### **Conclusion**

14. For the reasons given above I conclude, on the evidence now available, that the Authority's refusal in part to grant an LDC in respect of the use of the land for the stationing of 1 enclosed lorry trailer for internal storage was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

*Mark Harbottle*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Louisa Smith

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mark Hill DipURP, MRTPI

Head of Development Management, North York  
Moors National Park Authority

Chris France BSc, MRTPI

Director of Planning, North York Moors National  
Park Authority

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## 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

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**IT IS HEREBY CERTIFIED** that on 18 July 2024 the operations and use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and in the approximate positions marked 'Buildings' and 'Trailer' in green on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The operational development of the erection of 4 timber buildings was substantially completed on or before 18 July 2020, 4 years before the date on which the application for an LDC was validly made. The use of the 4 timber buildings for internal storage and the use of the land for the stationing of 1 enclosed lorry trailer for internal storage was instituted on or before 18 July 2014, 10 years before the date on which the application for an LDC was validly made and continued thereafter for not less than 10 years without substantial interruption.

Signed

*Mark Harbottle*

Inspector

Date: 27 March 2025

Reference: APP/W9500/X/24/3354531

### ***First Schedule***

The operational development of the erection of 4 timber buildings and their use for internal storage and the use of the land for the stationing of 1 enclosed lorry trailer for internal storage.

### ***Second Schedule***

Land at Whin Covert, Riggs Head, Scarborough, North Yorkshire YO12 5TG

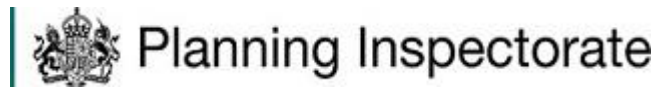
IMPORTANT NOTES – SEE OVER

## 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 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.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: **27 March 2025**

by Mark Harbottle

Land at: **Whin Covert, Scarborough, YO12 5TG**

Reference: **APP/W9500/X/24/3354531**

Scale: Not to Scale

