



Appeal Decision

Site visit made on 18 March 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2025

Appeal Ref: APP/E2001/X/24/3347082

12 Main Street, Coniston, East Riding of Yorkshire HU11 4JR

- 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 Richard Richardson of Coniston Self Storage against the decision of the East Riding of Yorkshire Council.
 - The application ref 24/00500/CLE, dated 15 February 2024, was refused by notice dated 18 April 2024.
 - 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 'certificate of lawfulness for the continued use of the land as storage (use class B8).'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description on the original application form essentially describes the use by Coniston Self Storage. I have therefore used the description from the appellant's appeal form and the Council's decision notice in the banner heading above, since that better reflects what the appellant is seeking to establish.
3. Section 191(2) of the 1990 Act states that uses are lawful at any time if 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, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. The Council commented that the appellant has put forward additional evidence in support of their case beyond that submitted as part of the application. However, in section 195 appeals, the parties and interested persons may submit additional evidence which was not before the authority at the time of its decision.
5. An Inspector should consider any relevant new evidence advanced at the appeal, since the purpose of the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.
6. The appellant's case is essentially that the lawful use of the land is for Class B8¹ purposes and that the current use of the site falls within that same use class.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO).

7. The issue to be determined in this appeal is whether the use for Class B8 purposes was lawful on the date the application was made, that is, 15 February 2024.
8. For the appeal to succeed, the appellant would need to demonstrate that the site has been used for Class B8 purposes on a substantially uninterrupted basis for not less than ten years (section 171B(3) of the Act).
9. The planning merits of the development are not relevant to this appeal, my decision rests on the facts of the case. As such, that the site is clean and well maintained, there have been no objections from residents or the Parish Council, and that the use is meeting a local need, are matters which have no bearing on this appeal. Similarly, the appellant's misgivings about how the Council dealt with the application have no bearing on my decision.
10. Where an LDC is sought, the onus of proof is on the appellant and the standard is the balance of probabilities.

Main Issue

11. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

12. In 1978 the Council granted planning permission for the use of the land for agricultural contractors' plant maintenance and sales and the land was leased to Coniston Plant Services LTD at that time. There is no suggestion, nor do I consider, in the absence of substantive evidence, that the use for agricultural contractors' plant maintenance and sales would constitute a Class B8 use.
13. The appellant stated that Coniston Plant Services LTD ceased trading in around 2010 but had been using the site for outdoor storage of portable buildings since around 2008.
14. According to the appellant, a company called Portable and Modular Services LTD leased the site for storage of modular buildings from 18 December 2012 to April 2021. In April 2021 the company moved out, with the last of the modular buildings being removed from the site in August 2021 – shown in a mobile phone image. Coniston Self Storage, the current occupants, started clearing the site in April 2021 with their containers arriving in September 2021. The appellant stated that their business started before Portable and Modular Services LTD vacated, such that the use as outdoor storage was continuous from December 2012.
15. There is limited evidence regarding precisely how the business of Portable and Modular Services LTD operated and used the land. However, the appellant stated that the business involved the hiring out of portable and modular buildings as site offices etc, which included using the yard for outdoor storage when the buildings were not hired out. It seems that this could reasonably be described as a Class B8 use, similarly, I see no reason the current use for container based self-storage and caravan storage could not be considered a Class B8 use.
16. The appellant's submissions include images which are low quality however, the Google Streetview image dated November 2008 appears to show portable buildings within the site, the Council stated in their delegated report that this also included heavy machinery. The image from August 2010 appears to show a small

- number of containers and that from May 2021 shows a portable/modular building on the land, with a further image from 2021 showing the land being cleared.
17. The Council were also provided with Google Streetview images from May 2019 which they stated showed what could be containers or modular buildings.
 18. Aerial images dated September 2019 and April 2020 show what appear to be several containers and a portable building spread across the north and south sections of the site. A further aerial image dated June 2021 show the existing building and one container or portable building, with a greater number of containers on the south side of the site in an aerial image from June 2022.
 19. I do not dispute the appellant's knowledge regarding the use of the land, and the submissions indicate that there has been some use of the land for what it appears were storage purposes. However, there is scant evidence, beyond the appellant's assertions, about the nature and scale of the use throughout the relevant period and, which demonstrates that such a use was continuous from December 2012 until the date of the application, as claimed.
 20. PPG states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
 21. Given the limited evidence about the actual use and more significantly, the continuity of the use, the appellant's case is not sufficiently precise and unambiguous. It therefore falls significantly short of being able to meet the requisite test for lawfulness.

Conclusion

22. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of; *certificate of lawfulness for the continued use of the land as storage (use class B8)* is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Felicity Thompson

INSPECTOR