



Appeal Decisions

Site visit made on 10 June 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 June 2025

Appeal A Ref: APP/E0535/X/23/3318097

Land adjacent to Sandfield Bungalow, Mill Road, Fen Drayton CB24 4ST

- 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 Sydney Barnett against the decision of Cambridgeshire County Council.
- The application ref CLE/094/19, dated 19 December 2019, was refused by notice dated 8 February 2023.
- 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 storage of inert building site waste and occasional processing incidental thereto.

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Appeal B Ref: APP/E0535/C/24/3346147

Land adjacent to Sandfield Bungalow, Mill Road, Fen Drayton CB24 4ST

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Sydney Barnett against an enforcement notice issued by Cambridgeshire County Council.
- The enforcement notice was issued on 5 June 2024.
- The breach of planning control alleged in the notice is *Without Planning Permission: The unauthorised material change of use of agricultural land to a use for the storage and processing of waste.*
- The requirements of the notice are:
Step 1: Cease the deposit and processing of all waste materials on the site.
Step 2: Remove all waste materials and items and machinery associated with the waste uses from the site and restore the land to a condition suitable for agriculture.
- The periods for compliance with the requirements are: Step 1 within 2 months of the notice taking effect; and Step 2 within 4 months of the notice taking effect.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. Pursuant to the application considered under Appeal A, the appellant sought to confirm that use of the appeal site for the storage and occasional processing of inert building site waste was immune from enforcement, and therefore lawful. This application was refused as the Council concluded that the appellant's evidence was insufficient to demonstrate the site had been used in this way for a continuous period of at least ten years prior to the date of application.
2. Following refusal of the LDC application, the Council issued an enforcement notice in respect of similar development within the appeal site. Appeal B concerns an appeal against this enforcement notice.

3. In terms of development description, the LDC application describes the processing of waste materials as being incidental to the storage of those materials, whereas the enforcement notice alleges a mixed use for the storage and processing of waste. Notwithstanding the difference in terminology used, the appellant maintains that the processing of waste, whilst intermittent, has been a key part of the use of land throughout his ownership. Substantively, the overarching use of land is therefore similar in respect of both appeals, and I have assessed them accordingly.
4. As per s171B(3) of the 1990 Act, no enforcement action can be taken in respect of an alleged breach of planning control after ten years beginning with the date of the breach. The Council accepts that a material change of use of the appeal site has occurred, but says it did not take place until sometime in 2016. Conversely, the appellant says the development has been ongoing since 1984, when his mother first purchased the land. In turn, the appellant says the use is immune from enforcement, and therefore lawful.
5. To succeed on Appeal A, the appellant would need to demonstrate that the use had been ongoing continuously and uninterrupted for a period of at least ten years prior to the date of application, being 19 December 2009 (or before). To succeed on Appeal B, the appellant would need to demonstrate that the use had been ongoing continuously and uninterrupted for a period of at least ten years prior to the date of the enforcement notice, being 5 June 2014 (or before).
6. Planning merits are not relevant to either appeal and the burden is on the appellant to demonstrate their case, on the balance of probability. In the case of Appeal A, which relates to the LDC application, Planning Practice Guidance says 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. This approach is consistent with the evidential principles established in *Gabbitas*¹, and is therefore equally applicable to consideration of the evidence under Appeal B.

Main Issues

7. In this context, the main issues are:
 - Appeal A: whether use of the appeal site for the storage of inert building site waste and occasional processing incidental thereto had been ongoing continuously and uninterrupted for a period of at least ten years prior to the date of application; and
 - Appeal B: whether use of the appeal site for the storage and processing of waste had been ongoing continuously and uninterrupted for a period of at least ten years prior to the date of the enforcement notice.

Reasons

8. The appellant's mother acquired the appeal site from South Cambridgeshire District Council in 1984, and in 1996 the appellant then purchased it. Since his mother acquired the site, the appellant says he has used it to store inert building

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

site waste. When sufficient material has built up, this stored material is reprocessed, which includes the crushing of brick and concrete rubble and soil screening. Once it has been reprocessed, the stored material is either sold or used offsite.

9. When the appeal site was sold to the appellant's mother in 1984, the conveyance described the land as "*part of a disused gravel pit*". Whilst not determinative of use, this description is indicative of the land's former use being similar in kind to the use which is said to have taken place since that acquisition. This adds coherence to the appellant's narrative.
10. Numerous letters and public comments from local people confirm that the site has been used for the storage and processing of inert building site waste throughout the appellant's ownership. Whilst not sworn testimony, these letters and comments are from nearby local residents and users of the appellant's business who have first-hand knowledge of the site. In turn, they are still helpful in establishing how the site has been used.
11. The letter from the appellant's accountant, Thomas Quinn Chartered Accountants, confirms their belief that the appellant's business has operated from the appeal site since 1984. This letter describes the nature of the appellant's business and says it includes the "*storage of inert building waste [...] and the crushing and screening of inert waste from building sites*". This again supports the appellant's description of how the site has been used throughout the relevant periods.
12. The accounting data annexed to the accountant's letter demonstrates income has been received in conjunction with the appellant's business throughout the period between June 2005 and July 2018 (which would likely have been the last available accounts preceding the LDC application). In each of these years, the bulk of the appellant's income is attributed to contract work and plant hire. This is consistent with how the appeal site is said to be used to generate income.
13. The accounts also show deductions each year relating to the associated costs of plant hire. Once again, this supports the narrative of the appeal site having been used for the processing of waste materials throughout this period, given plant is said to be hired for this purpose when sufficient material has built up. Various invoices for plant hire dating back to 2013, which specifically reference "*crushing concrete at Fen Drayton*" further attest to this.
14. Aerial photographs of the appeal site are again consistent with it having been used for the storage and processing of inert building materials. Photos from as far back as 1997 show materials being stored within the site, with the access track also evident. Photos of the site at various points since 2007 continue to evidence the same, with the site's overarching footprint appearing similar throughout. Whilst the extent of materials within the site may have fluctuated at various points, the photos are nonetheless consistent with the use having taken place continuously throughout the relevant ten-year periods.
15. Whilst machinery for the processing of waste is not always evident in these photos, this is not unexpected, given processing is said to be intermittent. Although processing may not have been continuous in and of itself, the evidence referred to does suggest processing has continuously formed a key component of the overall land use during the relevant periods.

16. Overall, I am therefore satisfied that the appellant has demonstrated, on the balance of probability, that the appeal site had been used continuously and uninterrupted for the storage of inert building site waste and occasional processing thereto, for a period of at least ten years prior to the date of the LDC application. The Council has presented little evidence to contradict the appellant's version of events, nor make it less than probable
17. Similarly, I am satisfied that the appellant has also demonstrated, on the balance of probability, that the appeal site had been used continuously and uninterrupted for the storage and processing of waste for a period of at least ten years prior to the date of the enforcement notice.
18. In accordance with s171B(3) of the 1990 Act, the use in either case has therefore become immune from enforcement, and pursuant to s191(2) of the 1990 Act, is lawful.

Other Matters

19. Whilst the appellant's description of use may have varied at different points in the years preceding the LDC application, the overall substance of the land use has remained broadly consistent throughout. Any slight variance in terminology does not undermine the appellant's overarching narrative of use.
20. The Council refers to the possibility of the development having previously fallen within the scope of permitted development rights, which allow the deposit of waste materials on agricultural land². However, for such rights to apply, any such use must be reasonably necessary for the purposes of agriculture within the unit. There is little to suggest the waste materials within the appeal site have ever been necessary for an agricultural purpose, and such rights would therefore not be relevant. Given my conclusions regarding continuous and uninterrupted use, temporary use rights would also not be applicable.

Conclusions

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the storage of inert building site waste and occasional processing incidental thereto was not well-founded and that Appeal A should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).
22. For similar reasons, I conclude that Appeal B should succeed on ground (d). The enforcement notice will therefore be quashed.

² Class B, Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Formal Decisions

Appeal A

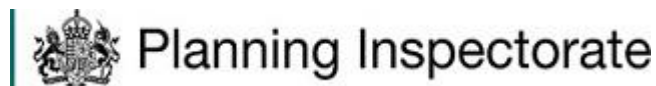
23. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Appeal B

24. The appeal is allowed and the enforcement notice is quashed.

Mr James Blackwell

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 December 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in red on the plan 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:

On the balance of probability, the evidence demonstrates that the use had been ongoing continuously and uninterrupted for a period of ten years or more, prior to the date of application.

Signed

Mr James Blackwell

Inspector

Date: 19 June 2025

Reference: APP/E0535/X/23/3318097

First Schedule

Storage of inert building site waste and occasional processing incidental thereto.

Second Schedule

Land at Land adjacent to Sandfield Bungalow, Mill Road, Fen Drayton CB24 4ST

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or 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: 19 June 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

Land at: Land adjacent to Sandfield Bungalow, Mill Road, Fen Drayton CB24 4ST

Reference: APP/E0535/X/23/3318097

Scale: Not to Scale

