



## Appeal Decision

Site visit made on 9 July 2025

**by John Whalley**

**an Inspector appointed by the Secretary of State**

**Decision date: 21<sup>st</sup> July 2025**

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**APP/U2370/X/24/3341834**

**41 Stoneway Road, Thornton Cleveleys, Lancashire FY5 3AU**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Wyre Borough Council to grant a certificate of lawful use or development, (LDC).
- The appeal was made by Mr Leo McCarter.
- The application, reference 23/01054/LAWP, was made on 22 November 2023. It was refused by a notice dated 15 March 2024.
- The Application for a Certificate of Lawful Development was made under s.192(1)(a) of the Act in respect of the property at No. 41 Stoneway Road, Thornton Cleveleys, Lancashire FY5 3AU for the proposed change of use of garage from domestic use to mixed use (C3 and B8).

**Summary of decision: The appeal is dismissed.**

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### Appeal property and application

1. The appeal dwelling, No. 41 Stoneway Road, is a 2-storey house at the southern end of a block of 3 houses close to the junction with Meadowcroft Avenue. There is a paved parking area, a high fence and gate to an accessway at the side of the house. There is a large domestic garage at the rear.
2. The Applicant, Mr Leo McCarter, applied for: "*Certificate of lawful development for the proposed change of use of garage from domestic use to mixed use (C3 and B8).*". A C3 use as set out in The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010, (the Order), denotes dwellinghouses. A Class B8 use is for storage or as a distribution centre, (including open air storage).
3. Mr McCarter appears to be operating a small furniture removal business from his home at No 41. Google photos taken in May 2022 show a van parked at the rear of the house at No. 41 and a similar van parked on the other side of the road, both with large lettered signs '24 HOUR REMOVALS' on their sides. The same, or similar vans were parked in a like manner at the time of my visit. The extent of that use, its lawfulness or otherwise are not matters before me. The LDC proposal was for use of half of the domestic garage at the rear of No. 41 for the storage of furniture that Mr McCarter intends to buy and sell. He said the removal vans would be occasionally used to carry such furniture.

### Town and Country Planning Act 1990 as amended, (the Act)

4. S.192(1)(a) of the Act provides that if any person wishes to ascertain whether (a) any proposed use of buildings or other land is lawful; .. .. may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question. Where that application is refused or deemed to have been refused and an appeal made, the burden of proof to show the decision was not well founded lies with the appellant. In an LDC application and any subsequent appeal

the onus is on the applicant/appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit are not relevant. There is no deemed planning application.

5. As an LDC cannot be subject to conditions, the application must relate to a specific use, operation or breach of condition. It is not open to an applicant to pose a general enquiry as to what is or might be lawful. However, Mr McCarter's application states: "... *proposed change of use of garage from domestic use to mixed use (C3 and B8).*" It is inappropriate that the proposed use is described solely or entirely on the basis of a use class or classes.
6. There are some changes within the Order that are permitted, for example, a change from a C3 dwellinghouse use to a C4 house in multiple occupation use, (and vice versa), and from a B2 general industrial use to a B8 storage or distribution use. A change of use from a C3 use to a B8 use or from a C3 use to a mixed C3/B8 use is not permitted by the Order. Such a change of use would be unlawful unless the subject of a grant of planning permission. Mr McCarter's LDC application cannot succeed on the basis of the description of the proposed use.
7. Any use of the dwelling and its curtilage at No. 41 Stoneway Road for a storage and/or distribution use such as proposed here that is material, that is, where the activity is to a more than an insignificant degree, would bring about an unlawful change of use of the property. For a storage and/or distribution use to be of no significance it would have to be so rarely carried out or of such a minor nature as to be virtually unnoticeable. In that instance, there would have been no material change of use, no development requiring planning permission or a certificate of lawfulness.
8. It was held in the case of *Saxby v SSE* [1998] JPL 1132 that making an application under s.192 is the only procedure available to obtain a determination as to whether planning permission is or is not required. However, in my view, that route as taken here was of no utility to Mr McCarter. It is clear there was no prospect of success in the way this LDC application and appeal process was described and pursued.
9. Alternatively, Mr McCarter might have applied for planning permission where the description of the use could have been defined with precision, perhaps following an indication from the Council as to whether any level of furniture storage/distribution use at No. 41 was likely to be conditionally allowed.

## FORMAL DECISION

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for the proposed change of use of garage from domestic use to mixed use (C3 and B8) in respect of the property at No. 41 Stoneway Road, Thornton Cleveleys, Lancashire FY5 3AU was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*John Whalley*

INSPECTOR