



Appeal Decision

Site visit made on 2 September 2025

by Sarah Dyer BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2025

Appeal Ref: APP/X1545/X/24/3348898

**Scrap Metal Yard, The Brambles, Southminster Road, Asheldham,
Southminster CM0 7DZ**

- 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 Mark Collier against the decision of Maldon District Council.
 - The application ref LDE/MAL/23/00487, dated 5 June 2023, was refused by notice dated 30 May 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 existing use of site to recycle scrap materials.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site address was more accurate and the description of the existing use more precise as set out in the appellant's appeal form than on his application to the Council. The site address and the existing use also reflect that which the Council used in its decision notice. Therefore I have determined the appeal on the basis of those details as set out in the appeal form and in the banner heading above.
3. Reference has been made to the suitability of the site for a scrap metal yard including the access to it by the appellant and the interested parties. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for a Certificate of Lawful Use (LDC).

Main Issue

4. The main issue is whether or not the Council's decision to refuse the application was well-founded.

Reasons

5. The appellant seeks to establish that the use of the site to recycle scrap materials is lawful. The Act establishes that uses are lawful at any time if no enforcement action may then be taken in respect of them. The appellant is not seeking to establish that the use of the appeal site does not involve development nor that it

does not require planning permission. His contention is that the time for enforcement action has expired.

6. In this case, the development would be immune from enforcement if no action was taken within ten years of the unauthorised change of use of the site for the recycling of scrap materials. Therefore, the appellant needs to show that the appeal building changed to the use described in his application on or before 5 June 2013 (that being ten years prior to the date of the LDC application) and that the use of the site for recycling scrap materials then continued for at least ten years after the date of the change, without any substantial interruption. The application form states that the use commenced in October 1989.

Evidence provided by the appellant

7. The appellant has submitted seven supporting statements, including his own. They have not been witnessed or signed by a solicitor, commissioner for oaths or notary public, there is no reference to the Statutory Declarations Act 1835 and there are no sanctions to tell the truth. As such they do not have the status of Statutory Declarations.
8. The appellant has also provided Certificates of Registration under the Control of Pollution (Amendment) Act 1989 covering the period from 7 July 1998 to 6 July 2013 with the final expiry date of registration given as 5 July 2016. In each case the certificate names the appellant as a registered carrier and provides his business address as The Brambles/rear of 1-3 Endway Cottages, Southminster Road, Asheldham, Southminster.
9. The appellant has submitted copies of a Certificate of Registration under the Waste (England and Wales) Regulations 2011 by the Environment Agency, a Scrap Metal Dealers Site Licence from the Council and an image from the Environment Agency's Public Register confirming that the appellant has a licence as a scrap metal dealer. A copy of a letter from the Council dated 5 April 2023 relating to an application for a Scrap Metal Dealers Site Licence has also been supplied.
10. Copies of letters from the Valuation Office Agency and HM Revenue and Customs, and Non-Domestic Rates Demand Notices have been submitted along with a copy of a Self-Assessment Tax Return Summary.
11. The appellant has provided a copy of a letter from The Dengie Hundred Group of Parish Councils dated 12 October 1989 which relates to the running of Asheldham Civic Amenity Site.
12. Within the appellant's statement are a number of photographs some of which are labelled as 'old images of The Brambles demonstrating use of recycling scrap materials' and others refer to the site dating back to circa 2000. One photograph is date stamped 22 November 2006. It is suggested that the age of the photographs can be ascertained from the vehicle registration plates but no explanation is provided as to how this could be achieved. There is also an undated aerial photograph identifying The Brambles.
13. Within the appellant's statement is also a series of images from Google Earth showing the site in 2005, 2006, 2009, 2017, 2018, 2020, 2021 and 2022.

Assessment of the evidence of the use of the site to recycle scrap materials.

14. The appellant says that the use commenced in October 1989. However there is limited evidence to show that was the case. The evidential value which can be attached to the witness statements is reduced because they do not equate to Statutory Declarations. Witness 1 refers to the appellant's yard and Witness 3 refers to the appellant having a yard in Asheldham but neither provide an address for the yard. Witnesses 2 and 5 provide an address for the yard, but they refer to the use being carried on for a minimum of ten years and 15 years respectively not for over 30 years as suggested by the appellant. Witness 4 does identify the address of the yard and asserts its use prior to 1995 but he only met the appellant at that time. Only Witness 6 confirms that the appellant was on the site in 1989 and that he obtained scrap there.
15. The record of Certificates of Registration under the Control of Pollution Act is comprehensive and shows that the appellant has been registered as a carrier from July 1998 to July 2016. However these do not cover the period from 1989 to 1998 during which the appellant says he was operating the business. Furthermore, whilst they list the business address the certificates do not demonstrate that the site itself was being used to recycle scrap materials.
16. The letter from the Dengie Hundred Group of Parish Councils dates from 1989 which is the time when the appellant says he commenced the use on the site. However, the letter refers to the Asheldham Civic Amenity Site not the appeal site.
17. The appellant has not demonstrated that any of the photographs which he has provided relate to 1989 when he says the use commenced and the Google Earth images do not relate to any time prior to 2005.
18. The evidence available to support the appellant's contention that the use commenced in October 1989 is limited to his own statement and that of Witness 6. However, in order to obtain a certificate the appellant can rely on evidence that the use had commenced by 5 June 2013 provided this demonstrates that the site has been used without any substantial interruption since that date.
19. The witness statements from Witness 2, Witness 4, Witness 5 and Witness 6 all identify the site and attest to it being in use for ten years or more. Witness 1 and Witness 3 do not refer to the site address, consequently they do not evidence its use specifically.
20. The Certificates of Registration under the Control of Pollution Act do not cover the period from 5 July 2016 to 5 June 2023. Therefore, even if I were to regard them as evidence of the use of the site, they do not show use for all of the relevant ten year period.
21. The letter from the Parish Councils relates to the Asheldham Civic Amenity Site. There is no evidence before me to suggest that this is the appeal site and to the contrary Asheldham and Dengie Parish Council refer to this facility being off Hall Road. Whilst the appellant may have been using the appeal site in connection with his activities at the Civic Amenity Site there is no evidence to demonstrate this or that such activities extended throughout the relevant ten year period. Indeed, although it does not provide a date, the Council states that the Civic Amenity Site closed some years ago.

22. The letters from the Valuation Office Agency, letter from HM Revenue and Customs, the Non-Domestic Rates Demand Notices and the Self-Assessment Tax Return Summary generally relate to activities in 2022, 2023 and 2024. Thus they do not provide any evidence of the use of the site prior to those years. The exception is the reference to the new entry in the 2017 rating list. This refers to the appeal site address and describes it as a 'scrap metal yard and premises'. However, even if this letter is regarded as demonstrating the use was operating in 2017, it does not provide any evidence prior to that date within the relevant ten year period i.e. between 2013 to 2017.
23. The Certificate of Registration under the Waste (England and Wales) Regulations 2011 relates to the period May 2019 to July 2022, thus it also does not cover the full ten year period. The Scrap Metal Dealers Site Licence and the image of the Environment Agency's Public Register are both undated and similarly cannot be considered as evidence of the use over the relevant ten year period.
24. Turning to the photographs and the Google Earth images. The aerial photograph and the photographs of the site, save for a single photograph, are undated. The site photographs show vehicles parked on the site with materials stacked between them. However, the photographs are not annotated to indicate which parts of the site are shown and crucially, save for reference to the use of vehicle registration plates to date them, which is not explained, they are generally not dated.
25. The Google Earth images are dated, however there are no images from the period between 2010 to 2016 and only one image from each year is provided. The images appear to show vehicles parked on the site, but they are insufficiently detailed to show whether other materials were being stored, the condition of the vehicles or whether they constituted scrapped vehicles as opposed to simply being parked. Even if the images clearly demonstrated the activities which were being carried out and those activities were consistent with the use of the site for recycling scrap materials, they do not fully cover the period 2013 to 2023 and are very limited in terms of their number.
26. The evidence which the appellant has submitted in support of his appeal is not sufficiently comprehensive to show that the use for which the certificate is sought had commenced by 5 June 2013 and continued without substantial interruption until 5 June 2023. He is almost entirely reliant on the witness statements from Witness 2, Witness 4, Witness 5 and Witness 6. However, whilst they confirm that the witnesses have known the appellant, often for many years, the witness statements are not supported by any substantive evidence.

Conclusion

27. In order to achieve success on appeal the appellant needs to show that the site has been used to recycle scrap materials for a continuous period of ten years. The Council has provided limited evidence to contradict the arguments which have been made by the appellant. However, this does not remove the responsibility from the appellant to provide evidence which is precise and unambiguous. In this case, based on my assessment of the evidence, I find that the appellant's evidence is not sufficiently precise and unambiguous such that the balance of probability rests in his favour.
28. The appellant's supporting statement and the supporting statements by the witnesses point towards the appellant carrying on a scrap metal business for a

considerable time period. However, the evidence to demonstrate the site at The Brambles has been used for recycling scrap materials since 1989 as stated by the appellant or over the period from 5 June 2013 to 5 June 2023 required for the certificate to be granted is incomplete.

29. Only some of the witnesses refer to the appeal site, the certificates which the appellant has submitted generally refer to the business address as opposed to the site being actively used for recycling scrap materials and the letters relating to rates and taxes only cover limited periods. The photographs lack explanation and a timescale, and the Google Earth images do not cover the full period June 2013 to June 2023, are limited in number and open to interpretation.
30. The focus of the appellant's supporting statement is to respond to concerns raised by interested parties and local residents. It does not explain the deficiencies in the evidence or elaborate on the submissions made for example by providing information about the content and timing of photographs.
31. The evidence in the form of the appellant's supporting statement and the witness statements do not have the status of Statutory Declarations. Also they lack reference to the evidence which has been submitted and do not provide evidence to substantiate the comments which are made.
32. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of the site to recycle scrap materials at Scrap Metal Yard, The Brambles, Southminster Road, Asheldham, Southminster CM0 7DZ 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).

Sarah Dyer

INSPECTOR