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## Appeal Decision

Site visit made on 18 August 2025

**by David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 25 September 2025**

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**Appeal Ref: APP/K2420/X/23/3330026**

**Wide View, Fenn Lanes, Fenny Drayton, Leicestershire CV13 6BJ**

- 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 K Fisher (Lindley Hall Farms Ltd) against the decision of Hinckley and Bosworth Borough Council.
  - The application ref 22/01121/CLE, dated 22 November 2022, was refused by notice dated 23 May 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 described as the "Use of land for storage of agricultural machinery, vehicles and materials".
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded.

### Reasons

3. Section 191(2) of the 1990 Act sets out that 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.
4. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. The onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development was lawful at the time of the LDC application. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
5. The appeal site is a parcel of land located to the east of a detached residential property known as Wide View. The site is enclosed by low-level post and rail fencing and has been surfaced with compacted gravel. Vehicular access is afforded from Fenn Lanes. At the time of my site visit, machinery, a lorry and trailer, cars, vans, and other materials were situated on the land.

6. The appellant contends that the use of the land is lawful as it has existed for a continuous period of at least ten years, and therefore the time to take enforcement action has expired. The only evidence provided in support of the application is a document titled “statutory declaration by Mr Kenneth Fisher” dated 21 November 2022.
7. The document sets out that the land was purchased by the previous owners in 1994 and subsequently used for storing machinery and waste recycling. It goes on to state that in 2016 Lindley Hall Farms Ltd rented the land and used it for the storage of agricultural machinery, with some lorry access for repairs. In 2020 the land was purchased by Mr Kenneth Fisher who continued to use it for the storage of agricultural machinery and supplies plus lorry parking. Consequently, the appellant states that the land has been in its current use since 1994.
8. A statutory declaration is a formal statement made under the provisions of the *Statutory Declarations Act 1835* to affirm that something is true to the best knowledge of the person making the declaration. A statutory declaration must be witnessed by and signed in the presence of a solicitor or other authorised person, who should add their signature and details. It should also include the form of words set out in the Schedule to the 1835 Act.
9. However, the document submitted does not refer to the 1835 Act or contain the form of words set out in the Schedule. Furthermore, whilst there is a signature of a witness on the document, it does not detail whether that person is a solicitor or other authorised person. The document cannot therefore be given any greater weight than that of a standard written statement or letter.
10. The Council disputes the appellant’s position and has produced a Google Earth image dated 20 April 2016 which shows the appeal site to be grassland with no machinery, vehicles, or materials stored on it. This image appears to directly contradict the appellant’s version of events as set out in his written submission.
11. In any event, the Council has also provided me with an enforcement notice dated 5 November 2021 (“the 2021 notice”) relating to the appeal site, which alleged *“Without planning permission, the material change of use from agricultural land to storage (B8 Storage & Distribution), and the creation of a new vehicular access from the land onto Fenn Lanes, which is a classified road”*. The notice had four requirements:
  - Cease the use of the land for the storage of agricultural machinery, vehicles and materials.
  - Remove from the land all machinery, vehicles and materials associated with the unauthorised use.
  - Cease the use of the land for the purposes of vehicular access and egress from/to the classified road (Fenn Lanes).
  - At the site of the vehicular access, return the land to the profile that it was immediately prior to the works undertaken to create the new access by the planting of trees and shrubs within the planting season immediately after the date this notice takes effect.

12. There is no evidence before me to demonstrate that the 2021 notice was appealed against or that it does not remain extant. As set out above, section 191 of the Act makes clear that for something to be lawful, it must not constitute a contravention of **any** of the requirements of **any** enforcement notice then in force (my emphasis added). Even if the development was carried out a significant time ago, if it constitutes a contravention of the requirements of an enforcement notice in force, the development cannot become lawful by virtue of the passage of time.
13. The use of the land for the storage of agricultural machinery, vehicles, and materials clearly constitutes a contravention of the requirements of the 2021 notice which, amongst other things, required the very same use to cease.
14. Thus, I find on the balance of probabilities, at the date of the LDC application, the use of the land for the storage of agricultural machinery, vehicles, and materials was not lawful and the appeal must fail.

### **Conclusion**

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land for the storage of agricultural machinery, vehicles and materials is well-founded and that the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*David Jones*

INSPECTOR