



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2025

Appeal Ref: APP/X0415/X/24/3336769

Midsummer Lodge, Heath End Road, Great Kingshill HP16 0EB

- 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 & Mrs A Taylor against the decision of Buckinghamshire Council - East Area (Chiltern).
 - The application ref PL/23/3112/EU, dated 27 September 2023, was refused by notice dated 9 January 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which an LDC is sought is builders yard/storage.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.

Reasons

3. Midsummer Lodge is a dwelling and is one of a group of buildings on the south side of Heath End Road. A driveway leads to the buildings from an access off the road. The Appellants purchased agricultural land to the west of the driveway in 2007. On this land, close to the road frontage, is an L-shaped building with three elements, each with a shallow mono-pitched roof. The Appellants claim that the building and land close to it have been used for the storage of building materials, machinery and equipment continuously since 2007. They claim that the use of the building and land close to it as a builders yard is therefore immune from enforcement action.
4. To be immune from enforcement action the claimed use, in accordance with the provisions of Section 171B(3) of the Town and Country Planning Act 1990 (as amended), must have subsisted continuously for a period in excess of ten years. The ten-year period does not have to be but, for the purposes of the appeal, is the ten years prior to the date of the application; 27 September 2023. For an LDC to be granted there must therefore be sufficiently precise and unambiguous evidence to demonstrate that, on the balance of probability, the land was in use as 'builders yard/storage' between 27 September 2013 and 27 September 2023.
5. The location plan submitted with the application shows an area of land, with a red line, that encompasses Midsummer Lodge and an area of agricultural land to the west of about 2 hectares. This is likely to be the Appellants' landholding and is not the area

of land that they claim has been in builders yard/storage use. This area is identified, on the same plan, with a green line and encompasses the aforementioned building and an 'existing allotment and polytunnel', though this is indicated as '(not used in association with the builders yard)'. It is the green edged area, excluding the allotment and polytunnel, that is the land that is the subject of the appeal.

6. In 2015 planning permission was granted, on appeal, for 'replacement tractor store', on the basis that it would support agricultural activity on the Appellants' land. The proposed development was for the replacement of the building that is on the appeal land. Further planning permissions, for the same development, were granted in 2016 and 2020. The site in each case was the Appellants landholding and it is not surprising therefore that the site was stated to be 'a parcel of agricultural land'. None of the planning permissions were implemented. The Inspector who determined the appeal in 2015 commented in the Decision on the use of a tractor for maintaining the agricultural land and it is not surprising therefore that he found the replacement tractor store to not be inappropriate development in the Green Belt. Condition 3 of the 2016 planning permission cannot be enforced because the permission was not implemented.

7. Mr Taylor is a director of a construction company, Libroze Ltd, which, before 2012, was Hodson Taylor Developments Ltd. In his sworn and dated statutory declaration he states that "Since 2007 I have continuously used the land...for the external storage of plant, machinery and building materials..." and "...I have continuously used the...(building)...for the storage of building materials, machinery and equipment for use by my construction company". Mrs Taylor corroborates her husband's statements in her sworn and dated statutory declaration, as does Mr Hodson, Mr Taylor's former business partner, in his sworn and dated statutory declaration.

8. Photographs taken on 7 September 2023, 20 days before the date of the application, clearly show the building to be in use for the storage of building materials, machinery and equipment and that external storage of similar items was also taking place at that time. But these photographs do not corroborate the claimed longstanding use of the appeal land as a builders yard/storage, though they are instructive in other respects. One of the photographs shows a steel container close to the road boundary, which, given its condition and the state of grass around it, had clearly been in place for a considerable period.

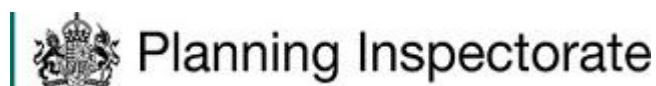
9. Historical photographs, taken in August 2013, show metal containers to be on the land along with building materials and equipment. Two photographs show a container being craned into place, a not inconsiderable operation which indicates that the containers were intended to be in place at least semi-permanently. It is probable that there have been containers on the land for the ten year period prior to the date of the application and, if this has been the case, it is probable that the external storage of building materials, machinery and equipment has also occurred throughout this period.

10. There are no historical photographs of the interior of the building but, taking into account the probable use of the land outside the building for the storage of building materials, machinery and equipment, it is equally probable that the building was used for secure storage of the same items. Taking into account the three properly made statutory declarations there is sufficient precise and unambiguous evidence to demonstrate that, on the balance of probability, the land was in continuous and uninterrupted use as 'builders yard/storage' between 27 September 2013 and 27 September 2023.

11. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for builders yard/storage at Midsummer Lodge, Heath End Road, Great Kingshill was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 27 September 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black 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:

The use subsisted continuously for the ten year period prior to the date of the application.

Signed

John Braithwaite

Inspector

Date: 31 October 2025

Reference: APP/X0415/X/24/3336769

First Schedule

Builders yard/storage

Second Schedule

Land at Midsummer Lodge, Heath End Road, Great Kingshill HP16 0EB

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 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: 31 October 2025

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Land at: Midsummer Lodge Heath End Road, Great Kingshill HP16 0EB

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Scale: Not to Scale

