
Appeal Decision

Site Visit made on 3 November 2025

by **J Whitfield BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th November 2025

Appeal Ref: APP/W4515/X/25/3360583

**Land Opposite Fenwick Pit Site, East Holywell, Earsdon to Backworth Link,
Newcastle Upon Tyne NE27 0JW**

- 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 Vas Mukhtar against the decision of North Tyneside Council (the LPA).
 - The application ref 24/01633/CLEXIS, dated 13 December 2024, was refused by notice dated 24 January 2025.
 - 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: “land use for storage (across whole site as a single planning unit itself, under one title and one ownership)”.
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Decision

1. 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.

Applications for costs

2. An application for an award of costs was made by Mr Vas Mukhtar against North Tyneside Council. The application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the LPA’s decision to refuse the application for an LDC was well-founded.

Reasons

4. The LDC is sought for the use of the land for storage on the basis that the use commenced in October 2014 and has continued without interruption for 10 years thereafter, such that its lawful, within the meaning of S191(2) of the Act, because enforcement action may not be taken against it.
5. The parties agree that the land subject of the LDC, that being the land edged in red on the submitted plan, constitutes a single planning unit. I have no reason to disagree. An aerial photograph from 2009 appears to show the land in use at that time for the tipping of colliery spoil. This is supported by a planning permission granted in June 2008 for the reclamation of former colliery land including extinguishing combusting colliery spoil, treatment of slurry lagoons, re-grading of slopes and landscaping¹.

¹ LPA Ref: 08/01094/FUL

6. The subsequent aerial photograph provided from 2015 shows the land as relatively flat with little of the previous spoil contours apparent. The land is also covered in grass and vegetation and there is no evidence of any use of the site as colliery land or for the disposal of colliery spoil.
7. In that 2015 aerial photograph, it is evident that several pieces of steel framework had been placed on a small part of the land in the south-east corner. The LPA measures this part of the land as around 700m², equating to around 4% of the site's total area. Whilst disputing its relevance, the appellant does not dispute the accuracy of this figure. This accords with the appellant's submission that the use for the storage of the steel commenced in October 2014, when the LPA's records indicate it was brought to its attention.
8. In the subsequent aerial photograph from 2017, the steel framework can be seen. It quite clearly appears to be the same materials which were present in 2015, sited in the exact same location. Moreover, the subsequent photographs from 2020 and 2024 show the steel framework again in exactly the same position. I observed the same on my site visit. Throughout the period, no additional framework appears to have been brought onto the site, no framework appears to have been taken away and the framework that is there, has not been moved.
9. Two rectangular shapes appear on the site in the 2024 image. The LPA suggests they are containers. I saw two containers in the same location on my site visit. However, there is no photographic or documentary evidence before me which demonstrates that they relate to any storage use, either in connection with, or unrelated to the storage of the steel framework. In any event, given they do not appear on the aerial imagery until 2024, they do little to support the submission regarding the immunity of the storage use on the land.
10. As a consequence, it is apparent that the small part of the land in the southern-eastern corner of the site has been used for the storage of steel framework since October 2014. The LPA accepts that there is sufficient evidence to show the materials have been present on the site for over 10 years.
11. The LPA argues that this evidence is nevertheless insufficient to show a material change of use has taken place. However, the purpose of an LDC, as set out in S191(1)(a) of the Act, is for any person to ascertain whether any existing use of land is lawful, not whether a material change of use of the land is lawful. Uses of land are lawful if, as defined in S191(2) of the Act, (a) no enforcement action may 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.
12. Consequently, if I were to agree with the LPA's conclusion that the storage of the steel framework from 2014 onwards did not constitute a material change of use of the Land, then the corollary would be that the storage of the steel framework does not constitute development for which planning permission is required. Thus, it would have been lawful at the date of the LDC application because no enforcement action may then have been taken in respect of it, because it did not involve development. S55(1) of the Act defines development as the making of any material change in the use of any land.

13. Subsequently, whether because the use of that part of the land did not constitute development for which planning permission is required or because it did constitute development but the time limits for taking enforcement action had expired, the use of that part of the Land for the storage of steel framework would be lawful within the meaning of S191(2) of the Act.
14. The LPA argues that the placing of the items can not properly be characterised as storage. Whilst I note that one would expect a storage use to comprise putting an item away for use at a later date, there is nothing to suggest that is not the case here. Simply because the items have been in situ since 2014, does not mean their placement on the land does not constitute storage. I cannot accept the LPA's submission that the items were simply forgotten and abandoned, since there is no evidence to that effect.
15. Nonetheless, the evidence before me shows that the storage use on the land has constituted nothing more than the same collection of steel framework, confined to a small corner of the site. There is no evidence of blanket use of the entire site for general B8 storage.
16. In *R (oao North Wiltshire DC) v Cotswold DC* [2009] EWHC 3702 (Admin) the Court held that, "a local planning authority must when issuing a certificate of lawfulness take care to do so in terms no wider than the use which the evidence has satisfied it, is the lawful use".
17. To that end, an LDC should not be issued in terms wider than the use which the evidence shows to be lawful. Indeed, the purpose of the LDC is in essence to be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a "material" change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude).
18. Indeed, the Planning Practice Guidance states that, "precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it" and "a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class". It also states that "the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to spell out the characteristics of the matter so as to define it with precision." An LDC must therefore be precisely drafted in all respects.
19. Accordingly, it would be beyond the scope of my power to issue an LDC confirming the lawfulness of the land as a whole for B8 storage and distribution. That would in essence grant an LDC for a far wider use than the evidence demonstrates has occurred. Regardless of whether or not the site is a single planning unit, the evidence does not support the use of the entire site for the storage of steel framework or indeed for the storage of anything else. Rather, the evidence points towards only part of the site in use as such.
20. In an existing use case, the LDC should describe the activity that was, on the evidence, actually carried out during the ten year period. Hence, I can issue an LDC on the basis that it has been demonstrated, on the balance of probabilities, that the use of part of the land (identified on the plan I will attach to the LDC) for

the storage of steel framework was lawful at the date of the LDC application because no enforcement action may have then been taken in respect of it (whether because it did not involve development or because the time for enforcement action has expired or for any other reason); and, there is no evidence that such use constituted a contravention of any of the requirements of any enforcement notice then in force.

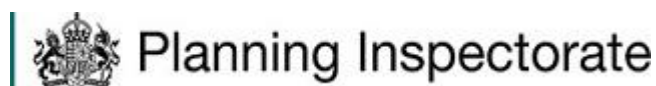
21. S191(4) of the Act allows the LPA to modify the description of the existing use, operation or other matter. An Inspector may exercise this power on appeal and is indeed obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence. Thus, it is within the power afforded to me by S191(4) to modify the description accordingly.

Conclusion

22. For the reasons given above, I conclude that the LPA's refusal to grant a certificate of lawful use or development for the use of part of the land for the storage of steel framework was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

J Whitfield

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 13 December 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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:

At the date of the LDC application, the use of part of the land for the storage of steel framework was lawful within the meaning of S191(2) of the 1990 Act because no enforcement action may have then been taken in respect of it (whether because it did not involve development or because the time for enforcement action has expired or for any other reason); and, there is no evidence that such use constituted a contravention of any of the requirements of any enforcement notice then in force.

Signed

J Whitfield

Inspector

Date: **7th November 2025**

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First Schedule

Use of that part of the land edged in blue on the attached plan for the storage of steel framework.

Second Schedule

Land at Land Opposite Fenwick Pit Site, East Holywell, Earsdon to Backworth Link,
Newcastle Upon Tyne, NE27 0JW

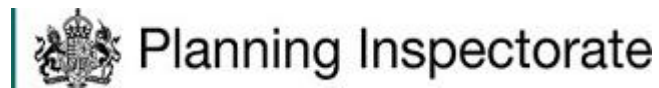
IMPORTANT NOTES – SEE OVER

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 /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: 7th November 2025

by J Whitfield BA(Hons) DipTP MRTPI

Land at: Land Opposite Fenwick Pit Site, East Holywell, Earsdon to Backworth Link, Newcastle Upon Tyne NE27 0JW

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Scale: Not to Scale

