



Appeal Decision

Site visit made on 21 October 2025

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 November 2025

Appeal Ref: APP/V2635/X/25/3369802

Land between 30 & 32 Winch Road, West Winch, Kings Lynn, Norfolk, PE33 0ND

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr John Wood of J C Wood Ltd against the decision of King's Lynn and West Norfolk Borough Council.
- The application ref 24/02139/LDE, dated 2 December 2024, was refused by notice dated 29 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 was originally described as: Builders Yard. There has been no storage of Asbestos or petro-chemical or burying of waste. Carriers licence reg.CBDU99127 (EA). Activities: Storage of plant and equipment between contracts. Storage of scaffolding, ladders and equipment between contracts. The storage of small quantities of rubble, earth and timber to accumulate until collecting by a grab lorry - can be arranged, small sites especially. The storage of container, when needed. Storage of skips to take particular types of rubbish or accumulate from more than one site. A point to receive deliveries of timber, bricks and other outside storage items. An area for prefabrication of timber items. To receive clay and concrete items. To sort mixed rubbish into categories for recycling. A base for the servicing and repair of plant, excavators, dumpers, transport and tyre fitting. Meeting point for staff and sub-contractors to collect stores.

Summary of decision: The appeal is dismissed.

Preliminary Matters

1. I note the appellant has also appealed against the Council's refusal to grant planning permission for the erection of a cottage and garage on the Land (appeal reference APP/V2635/W/25/3366725). That appeal is not before me for consideration.
2. The appellant requested the written representations procedure, but both parties have been given the opportunity to comment on whether the appeal should be considered through the Inquiry procedure, to allow for the testing of the evidence and formal questioning under oath. Neither party considered an Inquiry to be necessary, and I have therefore considered the evidence put before me through the written procedure.

Main Issue

3. The main issue is whether the Council's decision was well founded.

Reasons

4. Section 191(2) of the Act states that uses and operations are lawful at any time if 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 they do not constitute a contravention of any of the requirements of an enforcement notice then in force.

5. Neither party has advised or claimed that any enforcement notice was in force, at the time the application was made, or at any time since the use began.
6. Until the use occurred, the Land was part of a parcel of land in use as a dwellinghouse. The use is development for the purposes of the Act, being materially different from use as a dwellinghouse, and required planning permission under Section 57 of the Act. There is no 'permitted development' for such a use and no party have claimed that planning permission has been granted for it.
7. The appellant's case is that the time for taking enforcement action has expired. Under Section 171B of the Act no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The onus is on the appellant to demonstrate, on the balance of probabilities, that the use was lawful on the date the application was made.
8. The appellant states that the use began on 23 May 2013 and continued for a period of more than 10 years up to the date the application was made on 2 December 2025. The relevant period is therefore 23 May 2013 to 23 May 2023, although I have also considered whether any continuous 10 year period of the use has been demonstrated prior to the date of the application.

The appellant's evidence

9. The appellant's evidence includes a Statutory Declaration, land registry documents and invoices.
10. On the appellant's case, in or around April 2013 the Land begun to be used for the storage of builder's waste and a trailer, and for the receipt of deliveries associated with his work as a builder. At that time, and until 18 December 2018, the Land was part of the dwelling at 32 West Winch Road ("No.32"). The appellant's evidence is supported in part by that of a Parish Councillor / former resident who confirms that while the appellant lived at 32 West Winch Road ("No.32") he stored his building materials and plant on the rear garden area.
11. In or around 2018 the appellant states he widened the access to allow for better access and visibility, and at the end of that year sold the house but retained the Land at the rear with a 3m wide right of access. The appellant's and the Parish Councillor's statements state that the appellant continued using the subdivided land as a 'builders yard' after the sale of the dwelling.
12. In his statutory declaration the appellant also refers to the storage of 'plant' in the form of two diggers and a dumper, along with two trailers and scaffolding and other materials 'when not in use on various sites.' That particular statement was made in the present tense, and it is not clear when each was on the Land.
13. He advises that he has 'now removed' one storage unit from the land, but has not specified when that occurred, or the extent to which the use of the land is or was continuing.

The period from April 2013 – 18 December 2018

14. There are several elements to the use described by the appellant, and for which a certificate is sought. The bulk of the supporting evidence is in relation to deliveries of building materials, the delivery and collection of hired plant and equipment, and the collection or delivery of skips.
15. There were a number of deliveries of purchased building materials, tools and equipment to No.32 between June 2013 and November 2018. Some related to relatively small items, and as the stated delivery address on each was No.32, it is likely that the house may have been involved in some or all of these deliveries. This part of the evidence may therefore be indicative of a mixed use occurring at that time, rather than one which was physically and functionally separate from the dwelling.
16. The evidence shows that hire plant or equipment were delivered to 'No.32' at least once in most, but not all, years between 2014 and 2018, and collected from 'No.32' by a plant hire company on an unspecified number of occasions between May 2013 and September 2016.
17. Skips have been delivered to or collected from 'No.32' for general/construction waste between two and seven times per year between 2013 and 2018. But I have not seen evidence to demonstrate whether there was a skip or skips on the land permanently during this period.
18. Regarding storage, the appellant's declaration refers to delivery of a 'metal storage container' and a 'smaller storage shed'. But in terms of use other than waste, the only references to storage are to vehicles and trailers, and 'scaffolding and other materials when not in use on various sites'. The delivery of some bulky building materials is demonstrated in the purchases noted above, but there is no evidence of equipment or materials stored on the land, and no corroborating evidence other than a general statement by the Parish Councillor. Although it is likely that some storage occurred during this period, the general nature of the evidence and the absence of any other corroborating evidence, such as photographs, means that it is not clear what the nature and degree of that storage was.
19. In relation to servicing and repair of plant, excavators and dumpers, a small number of parts invoices have been provided in evidence, including two in 2017. Two are also submitted with the 2014 evidence but one does not state the delivery address or year and the date is not shown at all on the other. The purchase of JCB buckets in 2018 may also have been additional attachments rather than repair. There is no evidence of tyre fitting. Overall, this evidence amounts to the delivery of parts to the Land around once per year, but does not demonstrate where any repair took place.
20. There is no evidence before me demonstrating that the Land was used for the meeting of staff and sub-contractors to collect stores. And no evidence of pre-fabrication of timber items.
21. Overall, during this period there is evidence of use greater than that incidental to the dwelling, albeit not encompassing all aspects of the use claimed by the appellant. However, it has not been demonstrated whether that use was an independent use on a separate planning unit, or whether the use of land was a mixed use also incorporating the dwelling.

The period from 19 December 2018 - 23 May 2023

22. There is significantly less evidence for this period, which follows the sale of the dwelling and the relocation of the appellant's residence elsewhere.
23. Skips were delivered to or collected from the Land in most, but not all, years up to a maximum of four times in 2021 and 2023. The purchase of building materials, tools and equipment appear to have reduced significantly, with evidence of only three times in total. Only one hire equipment delivery is evidenced, and there is no evidence of vehicle parts or repair.
24. The Council's evidence is that an officer visited in April 2019. They recorded that the Land had been cleared, with large piles of branches etc on the land together with machinery. It is not made clear what machinery was present, but the Council concluded the site was not being used as a builder's yard and that there was no material change of use of the land.
25. Although the Council have not provided any photographic evidence, their account appears to accord with evidence of a much diminished and/or discontinuous use of the land during this period. If any of the activities have taken place continuously on the Land throughout a 10 year period from April 2013, then the evidence suggests it was at a low level, and different from the use alleged by the appellant.
26. The sparsity of the evidence also suggests that had the Council sought to take enforcement action against the use at times throughout the period there may well have been insufficient evidence of the alleged use occurring. That is supported by the Council's conclusion in April 2019.
27. On the balance of probabilities, and as a matter of fact and degree, it has not been demonstrated that the use had occurred continuously on the Land for a period of ten years beginning with the date of the breach, or at any time up to the date the application was made.

Evidence since May 2023

28. Given the limited evidence for the period to May 2023, the later period from May 2023 to the date of the application in December 2024 does not assist the appellant. In any case, the only evidence for that period is of one delivery of purchased building materials, tools and equipment in April 2024.
29. There were a number of building-related items on the land at the time of my site visit, but there is no evidence before me that that has been the case continuously throughout the relevant period or for a period of 10 years.
30. Overall, on the balance of probabilities, the appellant has not evidenced that the Land has been used as described for a continuous period of 10 years from the date the use began or at any time before the date the application was made. Neither has it been demonstrated that the use was lawful for any other reason.

Conclusion

31. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use described as,

"Builders Yard. There has been no storage of Asbestos or petro-chemical or burying of waste. Carriers licence reg.CBDU99127 (EA). Activities: Storage of

plant and equipment between contracts. Storage of scaffolding, ladders and equipment between contracts. The storage of small quantities of rubble, earth and timber to accumulate until collecting by a grab lorry - can be arranged, small sites especially. The storage of container, when needed. Storage of skips to take particular types of rubbish or accumulate from more than one site. A point to receive deliveries of timber, bricks and other outside storage items. An area for prefabrication of timber items. To receive clay and concrete items. To sort mixed rubbish into categories for recycling. A base for the servicing and repair of plant, excavators, dumpers, transport and tyre fitting. Meeting point for staff and sub-contractors to collect stores."

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).

Decision

32. The appeal is dismissed.

Peter White

INSPECTOR