



Appeal Decision

Inquiry held on 28 October 2025

Site visit made on 28 October 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2025

Appeal Ref: APP/W0530/X/25/3368711

Shepherd's Wood, Main Street, Caldecote CB23 7NU

- 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 A. Grey against the decision of South Cambridgeshire District Council.
- The application ref 25/00496/CLUED, dated 10 February 2025, was refused by notice dated 8 April 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 Class B8 storage use.

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.

Application for costs

2. At the Inquiry, an application for costs was made by the appellant against South Cambridgeshire District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Evidence was taken under affirmation at the Inquiry. The applicant's costs application was made in writing during the Inquiry. The Inquiry was kept open to allow the Council to respond to the application and to enable the applicant to respond to Council's response in writing. The Inquiry was closed in writing.
4. The application form identifies the appeal site as 'Shepherd's Wood, Main Street, Caldecote, CB23 7NU'. The Affidavit of Adrian Grey refers to 'Shepherd's Wood'. The Council describes the appeal site as 'Land at Clare Farm Main Street...'. The appellant states it should be referred to as 'Shepherd's Wood' and this name has now been agreed by both parties. I shall therefore use this address in the banner heading above.
5. The application form identifies the use class as B8 – storage or distribution. The description used in the form refers to document ref 5423 Affidavit of Adrian Grey and a Planning Statement. I raised with the parties what the description should be, and it has been agreed that I should describe it as Class B8 storage use. I shall therefore use this description in the banner heading above and consider the appeal on this basis.

6. The appellant submitted a location plan, which shows a blue line around the site owned by the appellant, and a red line around the building, access and a limited area of land leading up to and in front of the building. Within Ms Gomez-Duran's proof, three plans have been provided: Appendix A, drawing number 23.065-SL-000, Appendix B, drawing number 23.65-SL-000-A and Appendix C, drawing number 23.065-SL-000-B. The plan at Appendix A was submitted in support of a previous LDC application (not the subject of this appeal) and shows a red line drawn around the land owned by the appellant. The plan at Appendix B was submitted in support of that same LDC application and shows a blue line around the land owned by the appellant, and a red line around a smaller area, which incorporates the pedestrian and vehicular access to the appeal site, as well as an area of land around the building. The plan at Appendix C was submitted in support of the LDC application, which is the subject of this appeal, and shows a blue line around the land owned by the appellant, and a red line around a much smaller area, which incorporates the building, the vehicular access and a limited area of land to the front of the building.
7. Section 191(4) of the Act states that, if, on application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application. The appellant requests that I use my powers to modify the description to certify the wider site, i.e., the extent of land shown in Appendix A of Ms Gomez-Duran's proof, is lawful. However, my powers under section 191(4) are discretionary and relate to modification of the description, rather than the extent of the land. Section 193(4) provides that a certificate under either of those sections (191 or 192) may be issued for the whole or part of the land specified in the application. I shall therefore limit my consideration to the extent of land applied for in the application.

Main Issues

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

Reasons

9. An application under section 191(1)(a) of the Act¹ seeks to establish whether (a) any existing use of buildings or other land is lawful. Section 191(2) 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.
10. Section 171B of the Act sets out time limits for taking enforcement action. Section 171B(3) of the Act provides that, in the case of any other breach of planning control no enforcement action may be taken after the period of ten years beginning with the date of the breach. The main thrust of the appellant's case is that the material change of use from residential to storage took place more than 10 years before the date of the LDC application and that the storage use is now lawful.

¹ Town and Country Planning Act 1990 (as amended)

11. 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. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development is lawful. 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.
12. The appellant made the application on 10 February 2025, so the appellant will need to show, on the balance of probabilities, that the material change of use occurred on or before 10 February 2015 and continued for a period of at least 10 years without significant interruption. The main thrust of the appellant's case is that they have used the building and site for storage purposes in connection with his listed building restoration business since he acquired the site in 1991 and that this use continues.
13. The appellant purchased the property known as 'Clare Barn' in 1988, which they bought to be their home. At that time, the appeal site was in separate ownership. The appellant purchased the plot known as Shepherd's Wood (as shown by the blue line on Appendix C of Ms Gomez-Duran's proof) on 7 February 1991, which they state was then being used for storage. In the early 1990s, the appellant had a listed building restoration business and used the appeal building to store materials for their business. The appellant carried out works to the roof in 2005, replacing an asbestos roof with a metal one. No further maintenance is stated to have taken place since this time, though nothing in particular turns on this point.
14. The appellant states that they moved away from 'Clare Barn' in August 2008 but still own the appeal site and have continued to use the building for storage purposes in connection with their restoration business. During my site visit, I saw that various items were stored inside the building, such as furniture, wood, window frames and doors, with a few items stored outside, close to the building. The appellant confirmed during the Inquiry that the items stored at the time of my visit were typical of the sort of items they have previously stored at the site.
15. Significantly, the Council does not dispute that the building has been used for storage, rather its case is that it has not been demonstrated that the use of the land surrounding the building has been used for storage purposes or used in association with the storage use of the building for a continuous period of more than 10 years.
16. When considering whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The general rule is that the materiality of change should be assessed in terms of the whole site concerned. In *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
17. Three broad categories of distinction have been suggested when considering the planning unit:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;

- A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
18. The unit of occupation is the wider site (which I shall refer to as 'The Site'), which incorporates the appeal site. The appellant occupies The Site and, from the evidence provided, seems they have done so since their purchase of it in the early 1990's. In the early 1990's, the appellant owned and occupied both The Site and Clare Barn. The appellant states that they created a vehicular access into The Site after their purchase of the plot and, during their occupation of Clare Barn would access The Site on foot and using a vehicle, depending on the items being taken to the site. Although the remains of an old dwelling can still be seen within the wider site, from the evidence it seems there has been no residential use of the site for a significant period of time².
19. The Site is physically separate from Clare Barn, with Clare Farm located between The Site and Clare Barn and is bound by a mix of vegetation and fencing, which, physically delineates it from the land beyond. From the evidence provided, it seems likely that, prior to 2008, The Site was physically separate to Clare Barn and was occupied for different and unrelated purposes. The Site itself comprises a modest building constructed of wood, and a metal roof. There are various trees and other vegetation within the site, including trees close to the access. Although this makes manoeuvring a vehicle within the site more challenging, I saw that it is possible to access The Site with a vehicle.
20. During their occupation of The Site, the appellant states that they have used it for the storage of materials and items in association with their business, albeit storage of items has been largely confined to the building. The appellant explained during the Inquiry that this has continued and that since 2015, they have driven into The Site once a week, unless on holiday, to pick something up, or drop something off. They further explained that, apart from a brief period when they had to replace the roof, items have always been stored within the building. When the roof was replaced, items were moved outside and placed under a tarpaulin.
21. The Council has provided me with a number of Google Street View images, which show the access to The Site. The Council raises concern as to when the access was first installed, or whether it was used for a continuous period of more than 10 years. While development involved in the creation of the access is not the subject of this appeal, should the evidence show that the access has not been used, this would undermine the appellant's suggestion that The Site has been used for storage use continuously since the early 1990's.
22. Within a photograph dated August 2008, the access is visible, with 2 trees within the site, within the site, which appear likely to restrict vehicular access (the trees are also visible in more recent Google Street View images). Those trees were present during my visit. I saw that, whilst they limit how a vehicle can manoeuvre within the site, they do not prevent a vehicle from using the access. During the Inquiry, the appellant explained how they let the accesses (pedestrian and

² Prior to the appellant's purchase of the property.

- vehicular) grow over because they were concerned about break-ins, and to prevent trucks and caravans from going into the site.
23. Nevertheless, the appellant states that they have never not been able to drive in and out of The Site and that they would do so once a week, unless on holiday. This, in my view, seems like a plausible explanation. Indeed, Mr Chenery conceded, under Cross Examination, that given the evidence heard during the Inquiry regarding the use of the access, it is likely that they would have granted the certificate for the area shown in Appendix C of Ms Gomez-Duran's proof.
24. The appellant states that they have used the land around the building for access, for limited storage and they have maintained the land, planting hedges and other vegetation, including domestic fruit trees. The appellant explained during the Inquiry that they spend time at the appeal site with their son and have taught their son to lay hedges. They also described how their son makes jam using blackberries.
25. The Council suggests that, while there was a material change of use of the building to a storage use, The Site must have split into separate planning units and that the land did not enter a storage use. It is asserted that the evidence shows that there was a separate primary use on the land. In the alternative, the Council suggests that, if I find The Site to be a single planning unit, then it is in a mixed use and that the appropriate course of action would be to grant a mixed use comprising internal storage use and private amenity use of the land³.
26. Whether a material change of use has occurred is an objective question. While the appellant may have taken pleasure from maintaining the land around the building, this, in my view, does not necessarily mean that such activities constitute a primary use of the land. The primary use of land or a building will be the main use of activity that is carried out by the occupier. An incidental use is one which is functionally related to the primary use and should be one that is normally found and not based on the personal choice of the user.
27. The Council refers to Google Satellite imagery, which, it is asserted, do not show any obvious signs that the land around the building has been used for the storage of materials. During the Inquiry, the appellant confirmed that the land around the building has only been used to store items occasionally due to the risk that items stored externally may be stolen. The appellant states that they have used the land around the building mainly for loading and unloading of items stored in the building.
28. Planting within The Site appears to be sporadic, and of limited density. Such planting has not changed the character of the land, nor is it, in my view, a primary use. It is not unusual for land around a storage building to be maintained, even where this includes planting. While the appellant may have used the laying of a hedge as an opportunity to teach their son, this in itself does not mean that such an activity is not incidental. The appellant confirmed that they eat the fruit picked and their son has made jam from the berries picked. However, the appellant's use of blackberries growing within the site is unlikely, in my view, to constitute a primary use, given the limited extent of brambles within the site.

³ This description was discussed during the Inquiry and the appellant confirmed they would be happy for me to certify this use, were I minded to do so.

29. Although the appellant has planted trees and plants, I consider this is likely to have been incidental to the primary storage use. While planting and levels within the site (trees, shrubbery, holes) are likely to make moving materials around the site difficult, incidental uses may fluctuate without there necessarily being a material change of use of the planning unit. From the appellant's evidence, it seems likely that the material change of use occurred soon after their purchase of the site in 1991.
30. My attention has been drawn to an appeal, reference APP/W0530/A/07/2057875, which was issued on 2 April 2008, which concerned the proposed erection of a replacement two-storey dwellinghouse at the appeal site. Reference is made to a demolished cottage, the remains of which are still evident within the site and a prefabricated former temporary dwelling, used for storage. The Inspector in that case stated that they think the use of the site for residential purposes to be abandoned and commented that there has been no substantive intervening use of the site.
31. However, it is not clear to me what evidence was before the Inspector in that case. Although the appellant is described as contending that the use of the pre-fabricated building for storage is ancillary to residential use, as pointed out during the Inquiry, the appellant is not a planning consultant, nor were they well-placed to understand the arguments advanced in respect of the replacement dwelling in 2008. It seems unlikely the Inspector in that case had sufficient evidence before them to determine whether any storage use of the building at that time was ancillary to a residential use. This, to my mind, does not make the appellant's version of events less than probable.
32. From the evidence provided, from what I have heard at the Inquiry and my own inspection of the site, I consider, as a matter of fact and degree, that The Site comprises a single planning unit, which is in storage use. Although the appellant has carried out maintenance at the site, I consider this is likely to have been incidental to the storage use. The appellant's evidence shows that the storage use has continued without significant interruption for a significant period of time, far more than the 10 years required by section 171B(3) of the Act.
33. I therefore find that the appellant has demonstrated, on the balance of probabilities, that the material change of use of the appeal site occurred on or before 10 February 2015 and continued without significant interruption for at least 10 years thereafter.

Conclusion

34. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for Class B8 storage use is 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).

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

R C Shrimplin: Advocate for the appellant

Adrian Grey: Appellant

Tanis Gomez-Duran: Architect

FOR THE LOCAL PLANNING AUTHORITY:

John Fitzsimons of Cornerstone Barristers

Tom Chenery Senior Planning Officer for South Cambridgeshire District Council

DOCUMENTS

1. Opening on behalf of the appellant
2. *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207
3. Opening on behalf of the Council
4. Closing on behalf of the Council
5. Costs application on behalf of the appellant

Plan

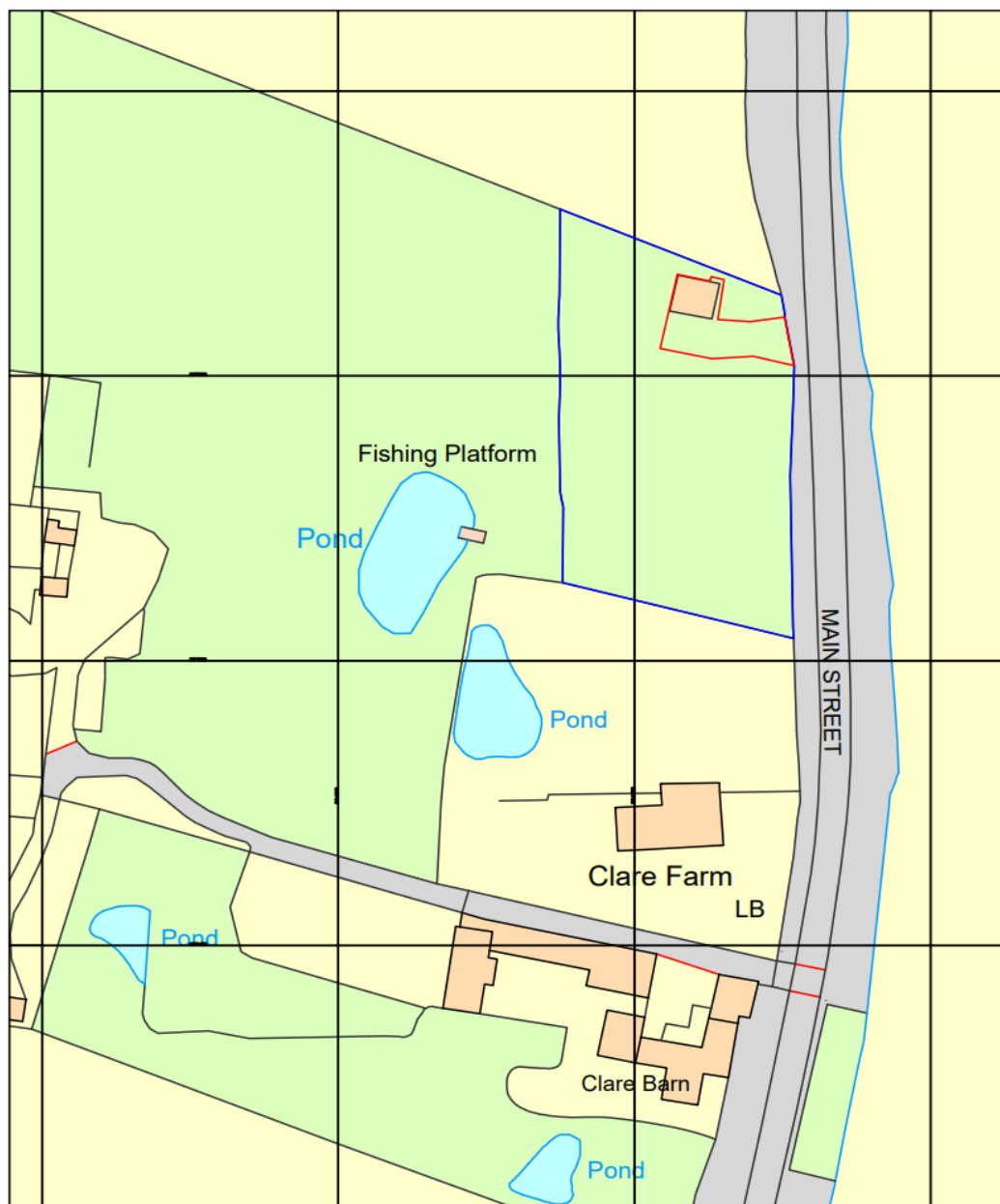
This is the plan referred to in the Lawful Development Certificate dated: 16 December 2025

by M Savage

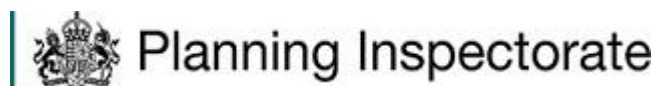
Land at: Shepherd's Wood, Main Street, Caldecote CB23 7NU

Reference: APP/W0530/X/25/3368711

Scale: Not to Scale



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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 10 February 2025 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:

The appellant has shown, on the balance of probabilities, that the use of the site for storage purposes began on or before 10 February 2015 and continued for at least 10 years without significant interruption and, at the date of the application, was therefore immune from enforcement action by virtue of section 171B(3) of the 1990 Act.

Signed

M Savage

Inspector

Date: 16 December 2025

Reference: APP/W0530/X/25/3368711

First Schedule

Use of the land for Class B8 storage use

Second Schedule

Land at Shepherd's Wood, Main Street, Caldecote CB23 7NU

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations 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.