



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 17 December 2025

Appeal Ref: APP/J4525/X/24/3355200

Land Adjacent to The Hawthorns, Springwell Village, Gateshead NE9 7NL

- 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 Alan Barber against the decision of Sunderland City Council.
 - The application ref 23/02303, dated 28 October 2023, was refused by notice dated 28 December 2023.
 - 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 HGV, trailer and plant parking.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use 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. The location plan submitted with the application identified land, with a red line, to the south of The Hawthorns and Hawthorn Terrace and to the north of Hunter's Terrace. Within the land is an area cross-hatched in red. The Appellant made it clear at application stage that it was the cross-hatched area that is the land for which he is seeking an LDC for HGV, trailer and plant parking. He has made no claim that the land edged red has been so used. However, the Council refused the application because "The Applicant has not demonstrated on the balance of probability that the specified use of the land outlined in red on the location plan...is lawful".
4. The reason for refusal flowed from the Application Assessment in the Delegated Report on which the Council relies. In the assessment it is acknowledged that "Within the application form it is stated that the land hatched red, has been used for HGV, trailer and plant parking since 2008..." and "The location plan submitted with the application actually highlights the area used for storage via a red hatched area within the red line boundary...". Despite this acknowledgement the assessment concludes that "The applicant has not demonstrated...that the specified use of the land within the red line boundary is lawful". This is not surprising given that he made no such claim.
5. The appeal will be determined on the basis that the Appellant is seeking to establish that the use of the red hatched land on the location plan for HGV, trailer and plant parking is immune from enforcement action. To be immune from enforcement action and thus lawful the Appellant must provide sufficient precise and unambiguous

evidence to justify a conclusion, on the balance of probability, that the land was used continuously for a ten year period prior to the date of the application.

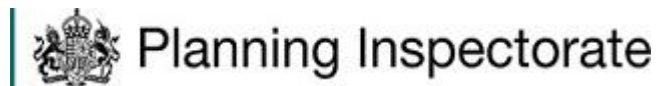
6. The Council has accepted, in the reason for refusal of the application, that “In this case the breach of planning control occurred on an unknown date during 2008”. A Google Streetview image taken in November 2008 shows there to be plant on the land. Other images taken in May 2009, September 2009, March 2010, April 2015, September 2020, March 2021 and November 2022 also show there to be plant on the land. Other similar images taken since 2008 are inconclusive because they were taken during summer months when foliage obscured views across the land. The Streetview images do show continuity of use of the land for parking since 2008.

7. The Council has not submitted an appeal statement and has not submitted any evidence to make the Appellant’s evidence less than probable. The Appellant has provided sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the cross-hatched land was used continuously for HGV, trailer and plant parking for a ten year period prior to the date of the application.

8. For the reasons given above, and on all the evidence now available, the Council’s refusal to grant an LDC for HGV, trailer and plant parking on land adjacent to The Hawthorns, Springwell Village, Gateshead 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 28 October 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 has subsisted continuously for ten years and is immune from enforcement action.

Signed

John Braithwaite

Inspector

Date: 17 December 2025

Reference: APP/J4525/X/24/3355200

First Schedule

HGV, trailer and plant parking

Second Schedule

Land adjacent to The Hawthorns, Springwell Village, Gateshead NE9 7NL

IMPORTANT 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: 17 December 2025

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Scale: Not to Scale

