



Appeal Decision

Site visit made on 12 January 2026

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 21 January 2026

Appeal Ref: APP/R3705/X/25/3370755

Bottom Yard, Stipers Hill Farm, Kisses Barn Lane, Warton, B79 0JS

- 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 T&CPP Limited against the decision of North Warwickshire Borough Council.
 - The application ref PAP/2025/0206, dated 8 May 2025 was refused by a notice dated 6 August 2025.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is described as, “the continued siting containers within the land edged red on the attached plan.”
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by T & CPP Limited against North Warwickshire Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. Once the appeal had been lodged it became apparent that the Council’s decision notice did not contain any reasons for their refusal to grant a Certificate of Lawful Use or Development (LDC). Article 39(13) of the Town and Country Planning (Development Management Procedure) (England) Order 2015/595 requires the notice of a decision on an application for a lawful development certificate to state clearly and precisely the authority’s full reasons for their decision. Nevertheless, a refusal notice has been issued, and a valid appeal lodged. In the absence of any reasons for the refusal being provided on the Decision Notice, the parties have agreed that the appeal should be dealt with as a failure case (non-determination). The Council Officer’s Report and their Statement of Case clearly set out the reasons why they believed the LDC should be refused, and the appellant has had an opportunity to comment on those reasons and so has not been prejudiced. I have dealt with the appeal on that basis.

Main Issue

4. The application was submitted under s192(1) of the Town and Country Planning Act, 1990, as amended (the Act). Thus, the question to be asked is whether the proposed use or operation would be lawful if ‘instituted or begun’ on the date of the application. The application describes the proposal as seeking a LDC for the continued siting of containers within the land edged red on the attached plan. The

grounds for the application are given as “The proposed continued siting of the containers on site would be lawful as they have been on site continuously for a period in excess of four years and remain on the site today”¹.

5. The application is clear that the LDC applied for is for operational development and not the use of Land. The appellant is seeking a LDC to ascertain that the siting of the existing containers on the land is lawful because the time for enforcement action has expired and no enforcement action may be taken in respect of them. On that basis, it is the appellant's case that the siting of the containers on the appeal site could continue and would be lawful, consequently a LDC under the provisions of S192(1) of the Act should be granted.
6. Having regard to the application made and evidence submitted, the issue is whether sufficient information has been provided to demonstrate that at the time the application was made, the operations described in the application would be lawful. The planning merits of the proposed development are not relevant in this appeal, and the burden of proof is on the appellant to make out their case on the 'balance of probability'. The main issue is whether the Council's deemed decision to refuse to grant a LDC was well founded.

Reasons

7. For the purposes of the Act, 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.
8. In support of his application for the LDC the subject of this appeal, the appellant's evidence included a site location and block plan; plans and elevations of the containers, sworn statements from the site operators; invoices; rent record; and a google image and all of which seek to demonstrate that the siting of the containers are lawful due to passage of time.
9. The block plan shows 11 containers sited around the perimeter of the appeal site. One container is shown as a 20ft container, eight are indicated as 40ft containers and another two as 45ft. One of the 45ft containers is shown as being in use as an office and is sited on top of the other 45ft container. The block plan indicated that the remainder of the appeal site is a “yard” and within the yard there is also a covered workshop.
10. The sworn statement from the Director of National Tyre Recovery Limited, dated 2 May 2025, states that he started this business on 29 September 2019 and brought the containers shown on the plan accompanying the application onto the site at that time. He states that they have remained in that location thereafter and that the containers are integral to the business.
11. Two invoices have been provided, dated August 2019 and January 2020, each of which show that a container was rented by National Tyres and delivered to the appeal site. However, the invoices only appear to relate to single containers, and they do not provide any evidence that those containers have remained on the site since they were delivered. Similarly, the submitted rent record and the invoice

¹ Section 7, Application Form.

from Gradeall International Limited, for the movement of a tyre baler, do not provide any evidence to support the appellant's assertion that the containers are buildings.

12. The April 2021 google image, submitted by the appellant, shows several containers around the perimeter of the yard. However, it is difficult to identify exactly how many individual containers there are, nor do they appear to be sited in exactly the same position as those illustrated on the submitted block plan.
13. The appellant contends that the containers are "buildings" and rely on established case law which sets out the three main factors which need to be considered in deciding whether something is a building – size, permanence and physical attachment.
14. In terms of their size, the containers currently on the land are substantial. Whilst I have not been provided with any specific evidence or details which would demonstrate that the containers are physically attached to the ground, I am aware that the courts have held that such a unit can, simply by its own weight, be fixed to the ground. However, I have not been provided with any substantive evidence which would demonstrate that each of the containers has been sited on the Land in the same location such that they could be considered to have a degree of permanence, and as suggested by the appellant to have gained the requisite four year period of immunity, i.e. sited for a period of at least four years prior to 24 April 2024.
15. The site operators' sworn statement claims that the containers were brought onto the site in September 2019 and sited in accordance with the details shown on the accompanying application/block plan. However, aerial images provided by the Council and dated April 2020 cast doubt on that evidence. The April 2020 image does not show containers sited around the whole perimeter of the site as shown on the block plan, and the number of containers on the land is significantly less than 10. Furthermore, the April 2021 image shows a different configuration and layout of the containers on the land than those illustrated on the application plan. There is no evidence that would demonstrate that, on the balance of probability, each of the containers is a permanent fixture that would meet the relevant "building" test, as opposed to the containers being moved around the site, or indeed moved on and off the site.
16. Moreover, it is understood that the lawful use of the appeal site is for use as agriculture. In August 2018 the Council granted a lawful development certificate for that agricultural use², and the appellant does not appear to dispute that the current use of the land for the storage and distribution of tyres is unlawful. From the evidence before me, including observations on my site visit, and from the sworn statement provided by the appellant, the containers are ancillary to that storage and distribution use, and they were brought onto the land for that unlawful use. Consequently, even if I were to have found that the containers are buildings and for which the four-year limit has passed, having regard to the established *Murfitt principle*³, the containers are not immune from enforcement action and thus their continued siting on the Land would not be lawful.

² Local Planning Authority Ref: PAP/2018/0410, dated 13.08.2018.

³ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 58.

17. I therefore find, on the balance of probabilities, that the continued siting of containers within the land edged red on the attached plan would not be lawful.

Conclusion

18. For the reasons given above, I conclude that the Council's deemed refusal to grant a certificate of lawful development was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act, as amended.

Elizabeth Pleasant

INSPECTOR