



Appeal Decision

Site visit made on 30 March 2026

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 02 April 2026

Appeal Ref: APP/J1860/X/25/3363143

Land At (Os 7739 5363), Brockamin Lane, Leigh, Worcestershire WR6 5JZ

- 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 Guy Sterry against the decision of Malvern Hills District Council.
- The application ref M/24/01757/CLE, dated 16 December 2024, was refused by notice dated 6 February 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 the existing use of land for storage of materials and equipment associated with a landscaping business

Decision

1. The appeal is allowed insofar as it relates to the front section of the land, but is dismissed in all other respects. Attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. Section 191(2) of the Town and Country Planning Act 1990 (the 1990 Act) states that uses 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.
3. Section 171B of the 1990 Act sets out the relevant timescales within which enforcement action must be taken. For a material change of use of land, as in this case, s171B(3) specifies that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Thus, for a certificate to be granted, the appellant must demonstrate that the use claimed has subsisted without significant interruption, for a period of at least ten years prior to the date of the LDC application, that is 16 December 2014.
4. The burden of proof in LDC cases lies firmly with the appellant. Their evidence does not need to be corroborated by independent evidence to be accepted. Where the Council has no evidence of its own, or from others, to contradict or otherwise undermine the appellant's account, and provided the appellant's evidence is, on the balance of probabilities, sufficiently precise and unambiguous, the application should not be refused.
5. For the avoidance of doubt, the planning merits of the use are not relevant. The decision is concerned solely with factual evidence, the history and planning status

of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issue

6. The main issue is whether the Council's refusal to grant an LDC was well-founded. This turns on whether, on the balance of probabilities, the land has been used for the storage of materials and equipment associated with a landscaping business for a continuous period of at least ten years prior to the date of the application, without any material interruption or intervening uses, and is therefore lawful under section 191(2) of the 1990 Act.

Reasons

7. The appeal site comprises a modest sized parcel of land situated north of an unnamed road, close to Brockamin Lane. It previously formed part of 1 Dale Cottages, a residential property located approximately 100m to the west, before being separated in 2007. The appellant states that the land has been used in association with their landscaping business since 1997, primarily for the storage of tools, machinery, and landscaping materials. It is claimed that this use has continued uninterrupted through to the date of the application.
8. The appellant relies on a notarised statutory declaration made under the provisions of the Statutory Declarations Act 1835, setting out the nature and duration of the use, including the types of materials stored and the pattern of visits associated with the business. This sworn first-hand evidence is supported by a series of aerial images from 2013 to 2023. While the level of detail in the images varies, as would be expected from periodic aerial capture, the images consistently show discernible storage activity on the land. Collectively, they provide objective, timestamped confirmation that aligns with and does not contradict the account given in the statutory declaration.
9. Additional support is found in historic correspondence from 2007, in which the Council's enforcement team acknowledged the use of the land for storage associated with the appellant's landscaping business. A letter from 2011 concerns untidy land with reference to items including fence panels, paving slabs, plastic tubs and sandbags as well as some household items. Although these records predate the relevant ten-year period, they demonstrate that such use had long been established and was known to the Council, with no enforcement action subsequently pursued. It seems to me that this background is consistent with a longstanding and continuous pattern of use.
10. The Council's delegated report for the LDC application also refers to evidence from a neighbouring occupier who, while expressing concern regarding the potential brownfield planning status of the land, confirms that the site has been used for storage of landscaping materials and equipment for at least 27 years. This third-party account provides further corroboration of the appellant's case.
11. The Council argues that the evidence is insufficiently precise and unambiguous to demonstrate continuous use of the land for the requisite period. It contends that the aerial imagery does not clearly show the specific equipment claimed; that the items visible might instead be waste; that the historic letters fall outside the relevant period; and that gaps between aerial images, particularly from June 2023 to December 2024, cast doubt on continuity.

12. Aerial images will rarely display detailed characteristics of stored objects and gaps in coverage, which is normal for aerial surveys, do not, of themselves, indicate an interruption of use. The decisive question is whether, taken as a whole, they show a pattern consistent with the claimed use. In this case, the images show repeated presence of stored materials in the same location over many years, which is broadly consistent with the ongoing business use described. Although the Council suggests that the stored items could be waste, this is unsupported by any substantive evidence. The appellant's statutory declaration provides a clear and credible explanation of the nature of the materials, and there is no contradictory evidence to suggest a credible alternative use.
13. During my visit, I observed quantities of materials and equipment characteristic of landscaping activity within the front section of the site. These included various types and styles of paving slabs, irrigation pipes, a small digger, large stones, cut vegetation, plant pots, wooden crates, business signage, and a truck and trailer marked with the appellant's business branding with services advertised including decking, walling, water features, planting, fencing, rockeries. There was also a timber shed positioned to the front of the site that, according to the appellant, was erected in 2022. The rear section of the land, by contrast, was free from stored items, comprising rough grass and trees, and a small fenced area suggestive of former cultivation. My observations align with the presented aerial images which show a concentration of items towards the front of the site and open land to the rear.
14. Taking account of all the above, I find that on the balance of probabilities, the use of the front section of the appeal site for storage of materials and equipment associated with a landscaping business commenced at least ten years before the date of the application and has continued without significant interruption. However, the evidence does not demonstrate with the same degree of precision that this use extended across the entirety of the site. The lawful area can therefore be clearly delineated on a plan reflecting the extent of the use demonstrated.

Conclusion

15. Section 193(4)(a) of the Act allows for a certificate to be issued for the whole or part of the land specified in the application. For the reasons given above, and based on the evidence before me, the Council's refusal of the application was well-founded insofar as it related to the whole site. To this extent the appeal does not succeed, and I will exercise my powers under section 195(3) of the Act. However, the Council's decision was not well-founded insofar as it related to the lawfulness of the use on part of the land. To this extent the appeal succeeds, and I will exercise the powers transferred to me under section 195(2)(a) of the Act.

S A Hanson

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 16 December 2024 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated that, on the balance of probabilities, the land identified as hatched in black on the plan attached to this certificate is used for the storage of materials and equipment associated with a landscaping business. It has been established that the use has continued substantially uninterrupted for a period in excess of 10 years, and that the use was lawful on the date the application for a lawful development certificate was made.

Signed

S A Hanson
INSPECTOR

Date 02 April 2026

Reference: APP/J1860/X/25/3363143

First Schedule

Existing use of land for storage of materials and equipment associated with a landscaping business

Second Schedule

Land at: (Os 7739 5363), Brockamin Lane, Leigh, Worcestershire WR6 5JZ

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 would have been 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 development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or development 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 02 April 2026

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Scale: Not to scale

