



Appeal Decision

Site visit made on 22 December 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 April 2026

Appeal Ref: APP/Z1510/X/25/3367468

Yorneys, Shalford Green, Shalford, Essex CM7 5AY

- 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 Paul McLaren against the decision of Braintree District Council.
- The application ref 25/00534/ELD, dated 12 March 2025, was refused by notice dated 24 April 2025.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is storage, timber frame shed and container.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On their application form, the appellant ticked that they are applying for an existing use and detail the relevant use class as 'B8 – Storage or distribution'. In their grounds for application for a lawful development certificate, the appellant ticked 'The building works were substantially completed more than 4 years before the date of the application'. The appellant states that a LDC should be granted because the timber framed shed was substantially completed over 4 years ago and has been in continuous use for storage over this period and the container has been on site for over 6 years and has been in continuous use for storage over this period. The appellant suggests that the description of the site as Class B8 was a mistake and that the land is agricultural. I sought clarity from the appellant as to exactly what it is they are seeking a certificate for, and the appellant has confirmed that the appeal is for operational development for the timber shed and container. The Council has had the opportunity to comment on this during the appeal and so I shall consider the appeal on this basis.
3. Planning permission for the retention of the building subject to this application, and the change of use of the land upon which it stands to residential garden land associated with the host dwelling, was refused under 23/02563/FUL and dismissed at appeal, reference APP/Z1510/W/24/3341213.

Main Issue

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

Reasons

5. Section 191(1)(b) of the Act provides that if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are

lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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 ii) They do not constitute a contravention of any enforcement notice then in force.

6. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be 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.
7. Section 171B(1) of the Act provides that, where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the period of four years, beginning with the date on which the operations were substantially completed, where substantial completion took place before 25 April 2024. The phrase substantially completed is generally held to mean a fully detailed building of a certain character.
8. The main thrust of the appellant's case is that the timber frame building and storage container have been *in situ* for more than 4 years by the date of the application and are therefore immune from enforcement action by virtue of section 171B of the Act. The appellant suggests that '*there is no question that the Use class of the plot is Sui Generis, agricultural land*'. However, the Council disputes this and advises that it considers it is not clear what agricultural use the building is supporting, nor is it clear what has been stored and its relation to agriculture.
9. While the appellant's case is made on the basis that the operational development would be immune from enforcement action by virtue of section 171B(1), this is dependent on the four year immunity period being the relevant period. It is a well established principle that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the material change of use, the enforcement notice may require that the ancillary or incidental works are removed in order that the site is restored to its previous condition and the breach is remedied. There are limits to this principle where the works represent something which would have been obvious and should have been dealt with within the prescribed time limits. Nevertheless, in my view, it is necessary for me to consider the use of the land and whether this would prevent the appellant's appeal from succeeding, since a material change of use is subject to a ten year immunity period, as set out under section 171B(3) of the Act.

The timber building

10. Photographs, which appear to have been taken on a mobile phone, appear to show the timber building being constructed in 2020. By November 2020, the building appears to be being fitted out internally, with external cladding and electricity connection seemingly complete. An email from an individual confirms

that they were involved in laying a concrete pad at the appellant's property in May 2020. The individual does not identify where the concrete pad was located, nor is the document signed or witnessed. I have also been provided with an invoice, dated 23 September 2020, for the 'supply and install' of 3 layer torch on felt Ash felt roof, email correspondence from the occupants of Little Martins and Chapel Cottage.

11. Although these documents are not signed and witnessed, nor do they provide a plan showing the building in question, they are consistent with the photographic evidence provided by the appellant. Significantly, the Council has confirmed that if the use of the timber building is for agricultural purposes, this would be consistent with the use of the land (presumably the lawful use), there would be no material change of use and the operational development would satisfy the four year immunity rule.

The container

12. Within the appeal site, I saw that there are three containers, the appeal container, which is a ARMU 22G1 container and two modest green containers, located beyond an oil tank. With respect to the appeal storage container, the appellant states that the container was on the plot in 2018 when they purchased the property and has been in position to date. The appeal container is a substantial structure, which appears to rest under its own weight. It is not clear how the container was brought to site, or whether it was constructed at the site from a flat pack.
13. The appellant has provided a number of Google Earth images, which are asserted to show the container on site in June 2018, April 2020, June 2023 and January 2025. However, the images are simply not clear enough to show that the appeal container which was present on those dates. Some sort of container is visible in the mobile photograph, dated 20 September 2020, however, it is not possible to see the numbering on the side of the container and so it is not clear that the container *in situ* on that date is the same as the appeal container, or whether it has been moved.
14. It is stated within the appellant's appeal statement that the container was 'on the plot and as been in position to date'. However, it is not clear whether this means it has been moved within the plot, or if once erected, it has stayed in exactly the same position, without being moved. My attention has been drawn to appeal APP/Z1510/X/23/3331926, where it was concluded that the siting of a storage container did not amount to a building operation but instead was a use of land. I do not have full details of that case before me and cannot be sure that it is comparable to the appeal container.
15. Nevertheless, whether a container is a building or constitutes a use of land is a matter of fact and degree, having regard to the size of the structure, permanence and physical attachment. However, the evidence before me is not sufficiently precise and unambiguous to show that the container is a building for the purposes of the Act, or, if it is, that it was substantially completed on or before 12 March 2021.

The use of the land

16. As set out, the appellant's case is that the Use Class of the plot is Sui Generis, agricultural land. The Act sets out that "agriculture" includes horticulture, fruit

growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly.

17. The timber shed and container are located within an area which, at the time of my visit, was generally bound by fencing, and was neatly mown, with a modest number of trees and children’s play equipment (a trampoline). It did not appear characteristic of agricultural land. While there is land within the appellant’s ownership, beyond the application site, which had a more overgrown appearance, it is not clear, either from the evidence provided, or from my inspection of the site, how this land has been used.
18. I have been provided with a series of photographs, which show the inside of the timber shed. Photo 5 is labelled as ‘Personal items in storage area’. It is not clear from the photograph precisely what these items comprise since some are in boxes or bags, nevertheless, a child’s ride-on toy is clearly visible. The Inspector in respect of APP/Z1510/W/24/3341213 explains, during their visit, that the building was used as a store/workshop in connection with the appellant’s business. They go on to explain that this use would be more akin to general storage or an ancillary residential use.
19. Reference is made in the Council’s Officer Report (the OR) to a covering letter in the 2023 application (the subject of the aforementioned appeal), which, it is stated *‘At present and since we purchased the site [1st June 2018] the application land has been used as part of the garden of Yorneys.’* If the use of the land was in association with the residential use of Yorneys, it seems likely to me that there would have been a material change of use of the land upon which the building is sited. Such a use is likely to be unlawful, since no planning permission has been granted for such a material change of use and so the Council may be able to take enforcement action.
20. During my visit, I was able to see inside both the timber building and the container. The container, for example, contained furniture, such as chairs, a sideboard, a headboard, mattress toppers and children’s play equipment. The timber shed contained woodwork machinery, tools and equipment, as well as various tins of paint (for internal walls and ceilings) and a number of bags of cement. While some of the items stored could be used in association with an agricultural use of land, I consider it unlikely that the furniture, children’s play equipment, mattress toppers and internal wall and ceiling paint would be used in association with an agricultural use.
21. Furthermore, while some woodwork may be expected in association with an agricultural use, it is unusual, in my experience, for agricultural buildings to be so well equipped with woodwork equipment. It seems more likely that the equipment is used in association with some other trade or business. While my visit was some time after the application was made, I note the visit carried out by the Inspector in respect of APP/Z1510/W/24/3341213 was carried out on 28 October 2024, before the LDC application was made. It seems unlikely that the container and timber building have been used for agricultural purposes only, if at all.

22. Although the last lawful use of the land may be agricultural, the appellant has provided limited evidence to show how the land and buildings have actually been used. It seems unlikely that the appeal buildings would have been fundamental to or causative of any material change of use, were they used in association with the residential use of Yorneys. I may of course be wrong, because I have so little evidence as to how the buildings and the land has actually been used. Nevertheless, as set out above, the burden in an LDC is firmly on the appellant.
23. As set out above, I have found that it has not been shown that the container is a building for the purposes of the Act, or, if it is, that it was substantially completed on or before 12 March 2021. While the timber building may have been substantially completed for more than four years by the date of the application, it has not been shown with evidence which is sufficiently precise and unambiguous, that the Council could not issue an enforcement notice in respect of a material change of use of the land and require that the timber building and container are removed in order that the site is restored to its previous condition. Consequently, the appeal must fail.

Conclusion

24. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for storage, timber frame shed and container 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).

M Savage

INSPECTOR