



Appeal Decision

Site visit made on 8 June 2026

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 June 2026

Appeal Ref: APP/H0520/X/24/3351889

Rig House, Thurning Road, Winwick, Huntingdonshire, PE28 5PW

- 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 Robin North of North Equipment against the decision of Huntingdonshire District Council.
- The application ref 23/00396/CLED, dated 3 March 2023, was refused by notice dated 2 April 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) (“the Act”).
- The use for which a certificate of lawful use or development is sought is use for industrial processes (B2).

Summary of decision: The appeal is dismissed.

Preliminary Matters

1. Section 191 of the Act enables any person who wishes to ascertain whether any existing use of buildings or other land is lawful to make an application. Any such application, and any subsequent appeal, is limited to whether that use is lawful. The planning merits (including any impacts of the use) are not for consideration.

Main Issue

2. The main issue is whether the Council’s decision to refuse the application was well founded.

Reasons

The legal framework

3. The relevant matter is whether, on the date on which the application was made, the use was lawful. The onus is on the appellant to demonstrate that.
4. Section 191(2) of the Act states 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.
5. No party has advised that any enforcement notice was in force on the date on which the application was made.
6. Section 171B sets out time limits within which any enforcement action must be taken. In respect of a use of land, other than a change of use of any building to

use as a single dwelling house, Section 171B(3) states that no action may be taken after the end of the period of 10 years beginning with the date of the breach.

7. The appellant's case is that the Land has been in industrial use falling within Class B2 of the Use Classes Order 1987 for more than 10 years.

Historic use of the land

8. The evidence is that the Land was part of a wider parcel operated by Listers (Sussex) Ltd and used for the production of grass pellets for animal feed. With the evidence before me the planning unit at that time comprised the Land subject to this appeal, along with the land and buildings adjoining to the north.
9. That original use started in 1970 and developed under the ownership and control of the Lister brothers, one of whom was an engineer. The evidence is that he designed production machinery, installed in and around a series of buildings on the land, some of which are shown in exhibited photographs.
10. At that time grass was brought onto the land, harvested by the company and others. It was dried, ground, and re-formed into pellets for animal feed, which was sold commercially by others. The entire process from receipt of the grass to the packaging was undertaken on that parcel of land, with different operations and activities taking place in different buildings and parts of the land.
11. Site facilities included an electricity sub-station, internal and external flues, a large chimney, compressor house and other structures typical of a manufacturing facility, along with a maintenance workshop and warehousing. An historic sign remains on the land, which describes it as a food production site and gives instructions to visitors similar to those commonly found on industrial sites.
12. The Use Classes Order defines an industrial process as:
"a process for or incidental to any of the following purposes:
(a) the making of any article or part of any article ...;
(b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or
(c) the getting, dressing or treatment of minerals;
in the course of any trade or business other than agriculture, and other than a use carried out in or adjacent to a mine or quarry".
13. Agriculture is defined in Section 336 of the Act as including:
"horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock ..., 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".
14. For the purposes of other governmental functions, the definitions of industry and agriculture may differ. On the evidence, the use of land which occurred from the 1970s or 1980s until around the year 2020 was one associated with agriculture, in that it utilised an agricultural produce and generated animal feed for use in agriculture. But, for the purposes of the Planning Act 1990 and the Use Classes Order 1987, it was not part of an agricultural trade or business and was an industrial process rather than an agricultural one.

15. Class B2 of the Use Classes Order relates to use for the carrying on of an industrial process, other than one falling within the uses described in Schedule 2, Class E(g). The Class E(g) exception relates to a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. That does not apply in this case, and the original use therefore fell within Class B2.
16. Article 3(3) of the UCO clarifies that any use which is included in and ordinarily incidental is not excluded from the use. In this case, the original use comprised manufacturing alongside incidental and ancillary functions such as a workshop and warehousing, but the use of the land as a whole was industrial use.
17. This finding accords with the views of the Council's Land Charges and Elections Officer and planning and enforcement officers in emails in 2020. And with the action of the Council in 2021 in disposing of a planning application on the basis that the existing use of the land was use within Class B2.
18. The original industrial use was therefore a use falling within Class B2 and, on the evidence, had become lawful under Section 191(2) of the Act¹, having occurred continuously without enforcement action for a period exceeding 10 years from the date it commenced.
19. Unless that use had been lost, the change of use of the land to any other use falling within Class B2 was not development by virtue of Section 55(2)(f) of the Act.

Use of the Land from 2020 to the date of the application (3 March 2023):

20. By the date of the application the original use had ceased and the appellant's company occupied the part of the Land subject to the application.
21. The sale of the Land, and its operation independently of the remainder of the original parcel of land, resulted in the creation of a new planning unit. But Article 3(1A) of the UCO confirms that the subdivision of the land into one or more separate uses in the same use class is not development.
22. Therefore, if the change of use, which occurred in 2020 and continued until the date the application was made, is in the same use class as the previous use, then that change of use was not development for the purposes of the Act and the use was lawful. That would be the case even if that use was more intensive or had greater effects than the previous one.
23. The appellant was advised to make an application for a LDC in 2020, but I note that it was the appellant who sought B2 use of the land. At the time of writing the LDC officer report the Council stated that, "no detailed evidence has been submitted to demonstrate the use of the site following the change in ownership in 2020". Although that evidence is not needed in order to establish whether a continuous period of 10 years has elapsed, it is necessary to demonstrate that the use by North Equipment Ltd was (at least up to the date of the application) also a Class B2 industrial use.
24. The appellant describes the business as one of, "construction equipment sales, rental and hire in particular piling rigs, drilling and foundation equipment". And the appellant's statement states he was advised to apply for a change of use to

¹ There is no evidence before me that any enforcement notice was in force at any time against the original use.

industrial B2 use to allow the use of the site for the storage of plant and machinery. But storage is generally within Class B8, rather than B2. And sales, rental and hire, and mixed uses are *sui generis*, in a class of their own.

25. I have no doubt that some elements of the use occurring at the time of my site visit would be uses typically found to be within use class B2. The largest building was in use for maintenance, and two large items of machinery appeared to be being maintained externally. And although a sign near the entrance stated all visitors must report to the site office, the site did not appear to be set up for regular sales or hire visitors, or visitors generally.
26. But notable elements of the current use of the site appear to be the parking and storage of vehicles, machinery and equipment. On the concrete hardstanding there were piling rigs and equipment, vans, a forklift truck, a telehandler and a 360-degree excavator. There were also a number of shipping containers, and parts and machinery attachments appeared to be stored on the hardstanding or on racks or stillages.
27. Neither party have suggested that the current use of the Land differs from that which occurred from the year 2020 to the date of the application. But I have not seen any evidence as to whether the maintenance and parking/storage elements of the use I identify above comprise two primary uses (or more with sales, rental and hire), and whether the land operates as a mixed use or if one of the uses is ancillary to the other.
28. Overall, in relation to the nature of the use occurring since 2020, the evidence is limited. But it appears that the use operating from 2020 was not one falling within Class B2 and was materially different to B2 use of the Land.

Whether enforcement action may be taken:

29. The relevant date for lawfulness for the purposes of this appeal is the date on which the application was made, that is 3 March 2023.
30. By that date, the evidence before me suggests that a Class B2 use had occurred and had become lawful. But also, that a subsequent material change of use then occurred on the Land to a use not within Class B2.
31. On the date the application was made enforcement action may therefore have been taken in respect of existing use of the Land for industrial purposes (Class B2). That is the case as the change to the existing use constituted development without planning permission and there is no evidence that resumption of B2 use would not constitute development requiring planning permission.
32. I note that under Section 57(4) of the Act, where an enforcement notice has been issued, planning permission is not required for use of the land for the purpose for which it could lawfully have been used if that development had not been carried out. But no such notice has been issued, and that provision therefore does not apply.
33. In conclusion, it has not been demonstrated that, on the balance of probabilities, use of the land for industrial processes (Class B2) was (or would have been) lawful on the date the application was made. The Council's decision to refuse the application was therefore well founded.

Conclusion

34. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use for industrial purposes (B2) 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).

Decision

35. The appeal is dismissed.

Peter White

INSPECTOR