



Appeal Decision

Site visit made on 1 September 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2026

Appeal Ref: APP/H1515/X/25/3369334

Old Goat Yard/Land to the West of Days Lane, Doddinghurst Road, Brentwood CM15 0RZ

- 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 Marius Rimkunas of MM Cars Ltd against the decision of Brentwood Borough Council.
 - The application ref 25/00065/S191, dated 20 January 2025, was refused by notice dated 27 May 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 storage of motor vehicles.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a LDC is well-founded.

Reasons

3. Section 191(1)(a) of the Town and Country Planning Act 1990 (as amended)(the Act) provides that if any person wishes to ascertain whether any existing use of buildings or other land is 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.
4. 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.
5. 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 development would have been 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.

6. Section 171B(3) of the Act sets out that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The main thrust of the appellant's case is that the land has been used continuously for storage of surplus building materials for 17 years, which is a B8¹ use and, as the current use (storage of cars) is a B8 use, a 'new use' has not been created.
7. Section 55(1) of the Act sets out that, subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development", means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
8. Section 55(2) specifies certain operations or uses of land which shall not be taken for the purposes of this Act to involve development of the land, including (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.
9. For the appeal to succeed the appellant will need to show, on the balance of probabilities, that the material change of use occurred on or before 20 January 2015² and, if so, that it continued without significant interruption for at least 10 years thereafter and that any resultant use rights have not been lost by way of a subsequent material change of use. A lawful use must be 'affirmatively established'. A use can only become lawful if it continues throughout the ten³ year period, to the extent that the Local Planning Authority could have taken enforcement action at any time.
10. The land was owned by an individual, whom I shall refer to as CS, between 2008 and 2022. The individual has provided an affidavit, which states that they continuously used the yard for storing surplus building materials. They also confirm that throughout their ownership, they allowed a local owner of goats to place them on the land to eat down any weeds and brambles from time to time. The land was sold in 2022 to a company, TNS 111 Limited. An individual who operated the site, whom I shall refer to as SR, has provided an affidavit in support of the appeal. SR states that the company continuously used the yard for storing surplus building materials and that the company had goats to eat down any weeds and brambles.
11. I don't disagree that such documents should be afforded weight⁴, however, it is not clear what either CS or SR mean by the term 'continuously', what surplus building materials have been stored at the site and in what quantity and at what point there was a significant difference in the character of the activities from what had gone on previously, as a matter of fact and degree. A few tiles located in a corner of the site, for example, is unlikely to have resulted in a material change of use of the land. In this regard, I find the evidence given by CS and SR to be imprecise and ambiguous.
12. Aerial photographs have been provided, which show the land in 2006, prior to its use for storage, in 2008, when the site is stated to have been cleared and fenced, in 2010, 2013 and 2022, when the site is stated to have been cleared and being

¹ Use for storage or as a distribution centre: Town and Country Planning (Use Classes) Order 1987 (as amended)

² Namely 10 years prior to the issue of the enforcement notice.

³ The relevant immunity period

⁴ As suggested in respect of appeals APP/N5660/X/12/2178832 and APP/H4505/X/23/3330380

used for storage and in 2025, with the current occupant in place. Although it is possible to see what appears to be a green container in the 2010 and 2013 aerial photographs and what is asserted to be the shadow of a storage rack in 2022, it is very difficult to understand from the photographs provided, how the site was actually being used at that time. The fact that the land has been fenced off is not, of itself, indicative of a storage use, since land may be fenced off for all sorts of reasons, including simply to delineate ownership.

13. Google Street View photographs have been provided showing the entrance to the site. In the April 2009 photograph, an access leading into the site can be seen, along with palisade fencing and gates. There appear to be limited items within the appeal site, which appears mostly laid with grass. In the photograph dated July 2014, the access appears overgrown, with vegetation beyond the gates, suggesting it is not accessed with any regularity.
14. It is not clear from the 2014 photograph whether anything was stored in the appeal site at that time. Within the photograph dated November 2020, it is possible to see into the site, which appears mostly covered by fallen leaves. There are no obvious signs of builders materials being stored within the site at that time. Within the photograph dated July 2024, wooden boarding has been erected to the gates, significantly limiting views into the site. While each photograph provides a snapshot in time, in my judgement, the photographs provided do little to support the appellant's case and in some cases, point towards there being very little activity within the site (or items stored), if any.
15. Sales listings, dated 2022, include a photograph of the site, which shows an IBC container, a couple of pallets and two fenced off areas, within which items are located. In one of the photographs provided by the appellant, what appear to be two goats can be seen within the site. A number of interested parties suggest that the site has been used for agriculture, with some, including individuals who state they have lived opposite the appeal site, referring to goats being kept on the land, as well as making reference to a goat shelter and feeding the goats.
16. 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. Agriculture is excluded from the definition of development by virtue of section 55(2)(e) of the Act.
17. The appellant suggests that the use of the site for the keeping of goats would have been impossible due to farming standards and the size requirement for the keeping of goats. Furthermore, the appellant points out that there has been no stable or shelter and the land is not registered with DEFRA as a farm, nor have animals been registered. However, while the site is limited in size, for an agricultural use to exist, the land does not need to meet the definition of an agricultural unit and, as set out above, both CS and SR advise that goats were placed on the land to eat down weeds, which suggests the keeping of livestock (even if not owned by the landowner) for the purposes of grazing (whether the purpose was to eat weeds or some other vegetation within the site).

18. Photographs provided by interested parties, as well as the appellant, show goats within the appeal site at various times. Within one of the marketing photographs provided by the appellant, what appear to be two goats, as well as what is likely to be carrot and other vegetables can be seen. A photograph provided by an interested party shows a goat with a carrot in its mouth.
19. I note the appellant's concerns regarding the representations made by interested parties, including their relevance and accuracy. While some of the interested parties making representations may live some distance from the site and be unable to see the site from their respective properties, given the position of the appeal site off Doddinghurst Road, residents are likely to have been able to see the appeal site when passing it on foot or by vehicle.
20. Although vegetation may have limited views into the site during the summer months, views into the site are likely to have been possible from the footpath opposite the site when trees are not in leaf. Furthermore, some of the comments regarding goats are supported by photographic evidence. In my view, the evidence provided points towards the land having been used for agriculture during the relevant immunity period.
21. I have been provided with an invoice, dated 27 May 2010, from EDF for trenching and 'OH services', an invoice, dated 12 November 2008 from Three Valleys Water PLC, to lay a pipe and a water bill, dated 24 April 2010. A receipt for an office unit, dated 16 September 2022 has also been provided. The appellant suggests that the existence of water, shipping containers and power are relevant to the argument that the site is not in agricultural use.
22. I acknowledge that water, power and shipping containers may be used in association with a storage use. While the age of the documents does not, of itself, limit the weight that should be afforded to them, such matters may also be used in association with an agricultural use. A water connection, for example, is likely to be required where animals are kept, as they are likely to need a source of fresh drinking water. Some sort of power connection is also not unusual in association with an agricultural use, particularly where tools are used.
23. During my visit I saw that there is a small office within the site. However, from the evidence, it seems this was not brought to the site until 2022, long after the material change of use is stated to have occurred. While a shipping container can be seen in the site in some of the Google Earth photographs, shipping containers are, in my experience, commonly used as part of an agricultural use, for the storage of tools and equipment and so the presence of a shipping container is not determinative of a storage use.
24. The appellant states that the current use of the site is for the storage of motor vehicles. Vehicles are stored in the yard and, I am told, occasional work is undertaken to them, such as starting the ignition, changing a tyre and valeting. Vehicles are sold via an online marketplace, and the purchaser will come to site to inspect the vehicle, finalise the payment and depart in the vehicle. The appellant states that no ad hoc prospective car buyers are permitted to visit the storage yard before a vehicle is agreed to be purchased online and no car inspections are undertaken by prospective buyers as all transactions are undertaken online.
25. The Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO) sets out that no class specified in the Schedule includes use for the sale or

display for sale of motor vehicles (my emphasis). The appellant states that once a vehicle is sold from the online marketplace, the purchaser will come to the site to inspect the vehicle, finalise the payment and depart in the vehicle. While ad hoc prospective car buyers are not permitted to visit the yard before a vehicle is agreed to be purchased online, it seems to me that the use of the site includes the sale of motor vehicles and is therefore a *sui generis* use.

26. Although it seems unlikely to me that the current use falls within class B8, for a material change of use to have occurred, there must be a significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. However, I have very little evidence regarding the character of the use prior to the current use and, as set out above, it has not been shown that a storage use (whether as a single primary use or a mixed use) continued without interruption for at least 10 years prior to the date of the application.
27. I note that prior to the purchase of the site, the appellant sent an email to the Council asking to speak with somebody about the land and that the appellant did not receive a response. However, the Council's failure to respond to the email did not prevent the appellant from taking professional advice or from making further enquiries. As set out above, the burden of proof in an LDC is firmly on the appellant.
28. Although the land has clearly been fenced off and utilities provided to the site, even if a storage use of some sort has been carried out at the site prior to the current use, it seems unlikely that there has not been a subsequent material change of use. The character of the activities, including vehicle movements and visual impacts are, in my view, likely to be significantly different to what has gone on previously. The appellant has therefore not shown, on the balance of probabilities, that at the date of the application, the use of the land for the storage of motor vehicles was immune from enforcement action and so the appeal must fail.

Conclusion

29. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the storage of motor vehicles 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