

Appeal Decision

Site visit made on 23 September 2026

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 9 October 2026

Appeal Ref: APP/L3245/X/25/3372891

Gulf Bungalow, Sutton Road, Tern Hill, Market Drayton, Shropshire TF9 2JH

- The appeal is made by Richard Hemmings of Tern Valley Storage Ltd under section 195 of the Town and Country Planning Act 1990 against a refusal by Shropshire Council to grant a lawful development certificate.
 - The application Ref: 25/01643/CPE, dated 30 April 2025, was refused by notice dated 3 July 2025.
 - The application was made under section 191(1)(a).
 - The development for which the certificate is sought is "Certificate of Lawfulness for existing use of land as a Storage Site under Use Class B8 Storage/Distribution".
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Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the use of the site at the time of the application. The planning merits of the use of the site are not relevant to the appeal and there is no planning application before me.
3. The Council refused the application for the following reason: -

"The existing use being applied for is B8 storage and distribution, the land relates to a former oil storage depot and dwelling house, to use all or any part of the site outlined in red for permanent B8 use is considered to be a material change of use. There have been no applications for planning permission approved for any part of the site to be used for B8 use, and permanent use of the site for that purpose is not deemed to be permitted development.

The information submitted is not considered sufficient to satisfactorily demonstrate on the balance of probabilities, that either the whole or any part of the land outlined in red on the submitted plan has been used permanently for B8 use for a continuous period of more than 10 years. Furthermore, the evidence is therefore imprecise.

The information before Officers demonstrate the site as detailed on the submitted block plan consists of two planning uses, C3 residential and Sui Generis Oil Storage Depot.

Therefore the existing use of land as a Storage Site under Use Class B8 Storage/Distribution is deemed to be unlawful."

4. The reason for refusal describes the application land as relating also to a dwelling house. In fact, the application land surrounds the dwelling house and the red lines on the application plan exclude the dwelling house from the application. In 1999 (refs. NS/99/10631/LDC and N/E/99/442/SU/118), the dwelling house was granted a certificate of lawfulness which permitted its continued occupation as a separate and self-contained dwelling without association with the oil storage depot; it is currently occupied as such independently from the existing uses of the former oil storage depot.
5. The principal planning permissions granted for the oil storage depot are N/65/2717/SU/118 - conversion of existing RAF building and erection of a bungalow for security guard, for oil storage depot use - which was approved in 1965, and NS/79/0719/FUL - installation of underground petrol storage tank (6,000 gallons) and new gas oil tank (10,000 gallons) and erection of loading gantry - which was approved in 1979. Copies of these planning permissions are not available and there are no further details on the Council's planning applications website. Details of the planning conditions imposed on the permissions are also not available.
6. I understand that the oil storage depot site included the current application site together with adjoining land that is not included in the current application and is now being used for road haulage and other commercial purposes. The planning history supplied by the Council contains a series of permissions between 1979 and 1999 all of which concern development relating to the oil storage depot, some of which were issued after the ownership of the depot is understood to have been split between two separate oil-related businesses in 1991. The planning history supplied ends in 2007 with the refusal of an application for a lawful development certificate for the continued use of the adjoining land as a business park (ref. NS/07/00123/LDC). The planning authority at that time indicated that the lawful use of the site was as an oil storage depot, deriving from the 1965 planning permission, and that the business park had not been in existence for the requisite period of ten years.
7. The representations I have received from the parties about the planning history of the application site discuss two potential scenarios: -
 - (i) On the one hand, that the site's use as an oil storage depot and its current use as a storage site both fall within Class B8. In this event, planning permission would not be required for the current use, because section 55(2)(f) of the 1990 Act states that development is not involved "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". At the time when the principal planning permissions were granted, Class B8 did not exist. The nearest equivalent under the Use Classes Orders then in force was

Class X "Use as a wholesale warehouse or repository for any purpose". This evolved under the 1987 Use Classes Order into the present Class B8 "Use for storage or as a distribution centre".

(ii) Alternatively, that the oil storage depot was a *sui generis* use, in which case planning permission is required for the current use of the site as a storage site unless the change of use did not amount to a 'material change of use' within the meaning of section 55(1) of the Act. This term is not defined in planning law; it is a question to be determined in each case as a matter of fact and degree. For a material change of use to occur, there must be a significant difference between the character of the authorised activities and the current activities that would result in a discernable land use impact in planning terms.

8. In both of the scenarios, to enable an assessment to be made, adequate information must be made available about the actual activities that have previously taken place on the site and those that are now taking place on the site. However, the information available to me from the parties is limited predominantly to a discussion about the legal significance of the planning history. It does not provide enough factual information about the actual uses to which the site has been put. A factual focus is needed in this instance, which should at least describe the actual uses of the site in detail, explain any gaps in usage or intervening uses, describe alterations in the appearance of the site that have occurred and identify the on-site and off-site planning impacts arising in relation to traffic, noise and amenity.
9. It is the responsibility of the applicant to provide sufficient information for an adequate assessment to take place and this responsibility has not been discharged. The Council should for their part supply all relevant information in their possession, but there is no indication in the material I have received that they have failed to do so; their refusal of the application on the basis of insufficient information was well-founded in the circumstances. The appeal has therefore been dismissed.

D.A.Hainsworth

INSPECTOR