

19.01.2026

**APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE IN RESPECT OF LAND AT WEST CORNER OPPOSITE 151 DERBY ROAD, KIRKBY IN ASHFIELD, NG17 9AT NOTTINGHAMSHIRE**

Dated 04/01/2026

The application is by Stephen Paul Brealey

Who seeks confirmation that the use of the land at 'West Corner' opposite 151 Derby Road, Kirkby in Ashfield, Nottinghamshire' for storage purposes is Lawful.

A previous application was made and refused with the Council stating that the reason for the decision was that the identified site has not been in use as Storage Land for more than 10 years before the date of the application.

The Officer's Delegated Report of 04/07/2025 states that 'the use must have continued for at least 10 years prior to the date of the application without material interruption and without enforcement action. However, the evidence submitted is insufficient to demonstrate, on the balance of probability, that the land has been in continuous storage use for the requisite 10-year period.'

The applicant claimed continuous use from before 2015 to 2025. This was without material interruption and without enforcement action.

#### CONTEXT

The lack of enforcement action is not in dispute and the applicant and witnesses' statements both claim that the storage use had taken place on the land for a number of years prior to 2015 when the applicant took possession of the freehold. A witness, Mrs Cooper, testifies that her husband, Peter, was the previous occupier and used the land continuously between 2010 – 2015 for storage of containers and vehicles in connection with his fencing business. The land evidently had received planning consent in 1993 (V/1993/0069) and been operated as a Market Garden by a B A Calladine and one can postulate that it might even have sold or stored fencing materials plant and equipment. In 1975, from the 1250m OS Map, it can be seen that numerous buildings were recorded on the land. The public records relating to applications in the 1990s refer to the location as Storage land opposite 151, Derby Road, Kirkby in Ashfield, and it is understood that the land was occupied by a Market Garden. This would seem to support an established long-term mixed use and its established use as Storage Land at least 15 years ago in a prominent location that one would expect to be known to the LPA. A material interruption, cited by the Planning Officer, would be hard to define in connection with Storage Land. Most occupations would be likely to create some form of storage use in conjunction with other activities. In the respect of the use by the most recent occupiers of this site, the storage purposes have been very similar. Materials, plant, machinery and vehicles have been stored by both Mr Cooper and the applicant whose uses were ancillary to other activities

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elsewhere. The use to which the land is put has been made possible by its availability and this has continued from at least as far back as 2010 and was clearly evident to the producers of the sales brochure in 2015. The use requires vehicular access (which has been available from at least as far back as 1975) hardcore, fencing and gates (of which there is evidence in maps, invoices, photographs and personal experience).

Upon acquisition the applicant arranged the clearance of the old lorry containers on the site and commenced storage of his own vehicles, plant and materials in conjunction with his construction business. Two plant hire companies engaged by the applicant at that time, have attested to this fact.

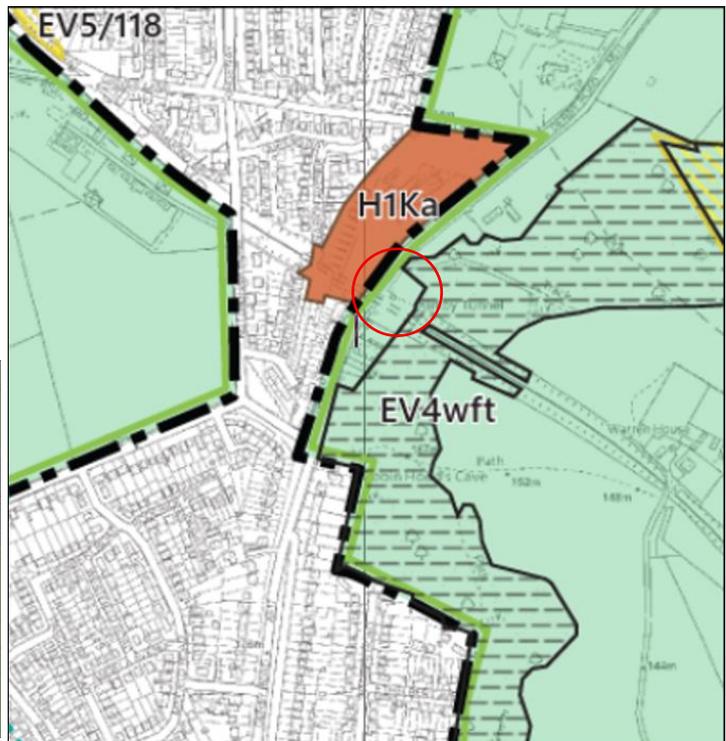
Questions were asked by Council representatives in 2017 and there was some correspondence from the applicant to Mr Wells in which he advised them of what his existing business intentions were for the land. This did not lead to any enforcement action and indeed there was a subsequent rates requirement determined by the Council whereby the applicant was advised of his SBR. On the 2020/2021 demand, the description of the property was put as 'Land Used for Storage and Premises'. This alone would seem to indicate an acceptance that the legitimacy of the use of the land was official and uncontested.

The earlier use between 2010 and 2015 had been in connection with storage relating to a nearby fencing business. 'Coopers Fencing', a family business, which occupies a site at 109 Derby Road and Mr Cooper used the appeal site as storage land for about 5 years prior to the applicant's acquisition by purchase in 2015. After that it remained as storage land in connection with the applicant's business in construction. There are other established businesses alongside, using land fronting the Derby Road for both storage and for permanent buildings. Dropped kerbs have been provided by the Highways Authority recognising the business activity and use of the land by giving the applicant's land access at three points to the highway. The nature of the applicant's business, and that of the predecessor's, dictates that vehicles and items for storage come and go intermittently and in relation to the business activities elsewhere. Photographic evidence exists showing a well-used access to the land, fencing and locked gates both before and after the dropped kerbs were installed.

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The LPA proposals map shows that appeal site together with the other frontage sites alongside have been excluded from the nature designated land to the east. This exclusion would seem to have been determined at least as early as 2002 (the date of the Local Plan Map).



It would seem likely that the Market Garden was well established on the east side of Derby Road by the date of the Local Plan map and that a number of other 'enterprises' had also appeared alongside. It is likely that none of these occupiers or their successors today have been authorised by planning approvals. None of them appear to be Market Gardens. Some of them have substantial buildings and there are many stored vehicles. It is understandable that these sites, adjacent to Derby Road, have been excluded from the Nature Designated Area (EV4wft) in response to their land uses. It is also understandable that businesses have been located there as a sustainable location. The designated housing land (H1Ka) will significantly extend the built-up area. Whilst the Green Belt washes over the former Market Garden this has not prevented the establishment of all these business premises and storage lands and none of them are believed to have been the subject of enforcement. When LPA mapping has taken place it has clearly indicated that the land has established uses outside the nature area. By implication these are seen to be business uses. Under current government proposal the Local Authority could feel encouraged to recognise this series of plots as either previously developed 'brown' land or 'grey land' for development purposes.

**CONSIDERING THE BALANCE OF PROBABILITIES**

With specific regard to the Appeal site, the following matters are relevant in understanding its status:

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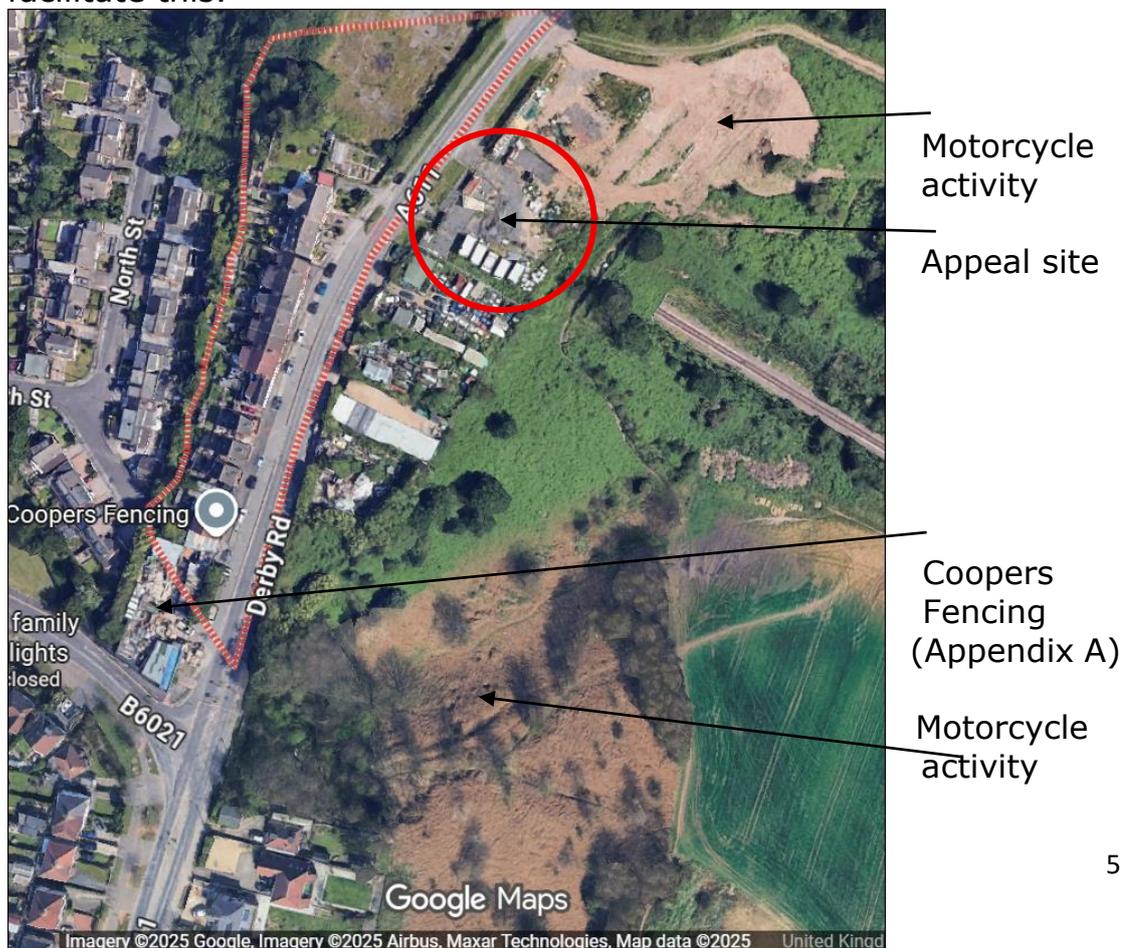
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- 1) When it was acquired and used in conjunction with Cooper's Fencing it was a logical and convenient place for storage purposes. Mrs Cooper recollects the storage use even before her husband rented the land in 2010 and in her statement she pointed out some of these memories including: previous storage of diggers, machinery and road working items. She says that her husband paid rent for the land and stored things in lorry body containers and various brick out buildings and sheds. In addition she recalls a variety of vehicles being stored. The physical relationship between Coopers Fencing Premises and the Storage Land is shown in ref 8. Coopers Fencing intensively uses its site at the junction of Derby Road and Nottingham Road. There is very little room for delivery or service vehicles to manoeuvre so close to a junction or within the site. Since Peter Cooper gave up the land and his storage site was sold, family members, who continue to run the fencing business, have developed at least one other intervening site fronting Derby Road and erected a Storage facility on it. With Mrs Cooper's evidence of the commercial use and the evident need for storage arrangements we respectfully suggest that, just as she has testified, the land was used for storage throughout the 5 years before the appellant acquired it.
- 2) In 2015 the freehold of the Derby Road site was offered for sale with particulars which clearly stated it was Storage Land. Whilst the agent's description was of open land this did not infer that its planning status was countryside and unused, rather it was clearly purported that the land had been used for storage of plant and machinery since November 2006. The site was stated to be secured by palisade fencing and having a hardcore base. It also mentioned the main road frontage and a licence to occupy. The applicant bought the site at auction for £50,000 understanding that the land would be beneficial to his business and suitable for further investment.
- 3) Stephen Brealy is a property developer with sites and interests in the Mansfield and Nottingham area. He purchased the site specifically to provide off-site storage for his development business. This involves maintaining an accessible and convenient parcel of land for him to bring materials, equipment and vehicles to as part of his operation. It is important to have sufficient space available for immediate use as required by the operational needs of his various sites at their various stages of development. Even if the land were to be empty from time to time it is still storage land. If it was full it would be less useful in support of his business. It goes without saying that such an operation requires flexibility and is also subject to outside factors affecting intensity of use such as planning approvals (see Nelsons letter 17 September 2015 ref. 13 for example), purchases, sales etc.

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sets out the Timeline of his ownership and occupation of the land. See an earlier transaction by the appellant of a development site in progress at the beginning of 2015 in Sandon Street, New Basford completed and sale agreed on 24 March 2015. This property was sold and subsequently in April 2016 a development site at 16-22 Abbey Street Lenton was purchased. The transactions led to storage of surplus building materials, plant and vehicle storage on the site at Kirkby in Ashfield. Details of a further transaction with similar needs for storage both during the construction works and afterwards are shown in respect of properties in Newstead acquired in June 2017.) The acquisition of the Storage land led immediately to security improvements evidenced in Annex B by the Invoice dated 12 January 2015. This was for the supply and fitting of 30m of temporary fencing to the rear of the Storage Land for the sum of £1800. The fencing enabled the appellant to grow his business appropriately and effectively in accordance with the existing development operation. When he started using the site in 2015 he was able to plan for growth and efficiency. Since then he has been able to economise through reusing materials and reducing waste from his site activities elsewhere. He has been able to introduce more environmentally friendly processes within his development business. He has his own transportation and licensed processing equipment with which he can facilitate this.



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The applicant wrote to Mr Wells at Ashfield District Council on 6 November 2017 a polite letter regarding the site. "We are intending to maintain its long established use of Storage...as part of our ongoing modernisation program of our portfolio of houses in and around the Ashfield areas." Alongside the email is a photograph of storage on the site from that time.

- 4) The applicant was advised on refusal that there was insufficient evidence presented and that the Council took into account a series of photographs taken from Google earth for the years between 2008 and 2020. He felt disappointed with this information and wrote by email on 17 July 2025 setting out his reasons for disputing this evidence. Clearly the dates on these photographs are not reliable and should not have been used in evidence by the Council. It cannot be said, from these limited number of incorrectly dated photographs, that the site was 'vacant or not in use for storage during several years from the start of the 10year time frame' concluding that the storage use lapsed.
- 5) During the past few years the applicant's business has fostered an ethos which is environmentally conscious. He has licences from the Department of Environment Food and Rural Affairs for his waste processing and carrying (CBDU221646) and he is registered with them to store waste at the site, to recover scrap metal and to use construction Waste (WEX384547).



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He has helped the community, by using his earthmoving equipment, to stabilise nearby publicly used land in his ownership alongside the railway and has endeavoured to be a good neighbour. The adjoining land, some of which is owned by the applicant, some by network Rail and some by the local golf club, is relatively open and accessible and gets used by motorcycle riders for casual and regular off roading. He wishes to do more work providing fencing and landscaping and in conjunction with the golf course owners (see Appendix B) would seek to improve the immediate environs of the Storage land. This has been discussed with golf course members, however the applicant does now have concerns that the Council have not recognised the legitimacy of his longstanding business activities and those of previous owners.

- 6) The Highways authority has in the past provided crossovers recognising the accesses to businesses on the east of Derby Road. Photographs of the access points to the Storage Land from the past show evidence of vehicle movements to storage areas through gateways.
- 7) The rating authority has assessed the business for rates as Storage Land. The Council has adopted this description as did the Estate Agents at the point of sale in 2015 which no doubt referred to the Storage use which Cooper's Fencing had put the land to during the preceding years.



OS Map 1975

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- 8) The 1250 OS map from 1975 shows some significant built development having taken place on the applicant's land in the past. A timeline has been established covering the most recent period of 15 years when we know from witnesses' evidence that the use was for Storage of plant, machinery, vehicles and materials relating to construction. We are able to show how this storage land related to business development off-site by both Mr Cooper and by the applicant and how the acquisition of local construction sites and development of local construction projects have taken place within the applicant's business growing from year to year. The investment of acquiring and operating with a storage land facility has been part of a business venture. Being deprived of the use of this land would have serious financial repercussions on the operation of the business and its employees.

**RESPONSE TO THE REASONS FOR THE REUSAL**

Specifically, the Officer's Report singles out a lack of third-party evidence such as dated photographs, independent witnesses, and full utility bills covering the full 10-year period. Whilst such evidence was presented with the application, the Officer appears to require more in order to be convinced. The Officer has himself put forward questionable speculation of long-term disuse of the land by introducing dated aerial images which are clearly of the same photograph year after year after year. In order to contradict this wrong impression, the Applicant now provides more evidence of the 'Timeline' of his business development over the 10 years since his acquisition together with further details of the relationship between the storage land and the fencing business during the preceding 5 years. There is now fuller information regarding his business and commercial use. Those third party businesses, which the applicant engaged to fetch and deliver materials and vehicles to the site are just part of the early evidence relating to the storage use which is now more fully explained in terms of its growth. There is evidence witnessed by a solicitor which attests to the continuing lawfulness from a legal standpoint.

Whilst in the earlier years the business did not have mains electricity connected to any of the storage facilities, it was installed (shown in correspondence in in 2017). The Business rates were levied from 2020. The applicant's business supports a number of jobs and contributes to the local and national economy. In 2017 an approach from a Council Officer was received by the applicant enquiring about the use of the site. The applicant responded in writing enclosing a plan showing the extent of the land and explaining that his company intended to maintain its long-established use

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of storage on the land (which at that time he believed went back to the 1970s). He explained that he intended to undertake fencing work and place around five shipping containers for 'all weather' storage and asked for written confirmation that this would be approved. A photograph was subsequently taken of the fence and containers. (By April 2024 when the rules changed from 4 to 10 years these and other containers had stood on the site for 6 years and the Council in the knowledge of this may well have formed a conclusion in respect of 'the balance of probability'). No written approval was given but no enforcement action was taken.

In 2024 the Applicant was asked to 'regularise' his use of the land by applying for a Certificate of Lawful Use. Details were submitted to Ashfield District Council on 11/03/2025. A refusal followed and the applicant hoped for a review to rebut evidence to the detriment of his case (wrongly dated photographs) which had been provided by the Council. In an email to the case officer, the applicant pointed out that the photographs provided in evidence were, in each case, either not conclusive or were misleading as they displayed false dates.

On the 24 July 2025 the case officer responded that the evidence provided in the application had not been sufficient to determine that the land had been in continuous storage for 10 years. He suggested that an appeal could be submitted. It is surprising that he made no reference to Mrs Coopers report relating to the period between 2010 and 2015. In order to prove the truth in this matter she has had her evidence notarised.

The applicant hopes to show through this appeal and related evidence that the land has been recognised as storage land for many more years than 10.

The basis of its use approved by planning consent in 1993 goes back to a market gardening enterprise which would have involved, as well as vehicles, sheds (premises), containers, plant and machinery on the land for the purposes of growing and supplying products to be used off site. Through the passage of time and changes in users, the land simply became recognised as used for storage purposes and premises and, for the last 15 years or more, has been used and made available for vehicles, plant and machinery and construction products to be held in readiness until needed elsewhere. By the nature of such a situation, there will be times when more or less capacity will be available. The investment has been made to provide this commercial storage space on land as and when it is needed. Local Authority's recognition of this has given rise to the demand for business rates on 'land used for storage and premises'.

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There seems to be no doubt that the land which is the subject of the application had become known as 'Storage Land'. It was described as storage land between 2010 and 2015 by Mrs Cooper in her statement referring to her recollection of storage containers and various sheds which were part of Peter Cooper's commercial rented use. The sales agents in 2014/5, importantly, described for sale the 'Storage Land' a term which was in common use. This is what Peter Cooper had used the land for until he was required to vacate by the then owner. The Applicant paid the sum of £50,000 to purchase the land, immediately following this, for that same storage purpose. It was immediately fenced and its improvement and ongoing use as storage land thereafter has been described by two Plant Hire operators, the electricity supplier and the Council rating department and observed by an officer in the Planning Department.

Reference has been made by the Case Officer to the need to demonstrate continuous storage use for the requisite 10year period. As such the capacity of storage and frequency of use is not defined and these depend in respect of the appellants business on the frequency, size and extent of use needed for the stored items at the appellants construction sites elsewhere. Moving the stored items on and off the land is an operational matter and a part of his business for which he has his own transportation. There are no Highways or Public Health issues to give cause for concern and if there were such the Local Authorities could address the issues by various means. Previously the applicant, in good faith, applied for a lawful development certificate because he was urged to do so by officers of the Council and he expected the lawfulness of his business operation to be upheld.

There is no evidence that the use has changed over the past 15 years whilst there is clear evidence of the Authorities acceptance of the use as Storage Land.

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SCHEDULE OF ATTACHMENT PROVIDING EVIDENCE

- 1 Mrs Colleen Cooper's statement
- 2 OS Map from 1975
- 3 Public records in 1990s refer to 'storage land'
- 4 Sales Brochure in 2015
- 5 Plant hire companies in 2015
- 6 Correspondence with Mr Wells of Ashfield District Council
- 7 Rates determination as 'storage Land'
- 8 Relationship of the land to Coopers fencing premises
- 9 Personal Statement of the Applicant
- 10 Applicants purchase and use of the land in 2015
- 11 Images on Google showing use of gateway and dropped kerbs
- 12 Interpretation of local authority proposals maps is included in this statement
- 13 Evidence of the applicants related business which leads to the storage use
- 14 Evidence of his willingness to help and cooperate with adjoining owners.
- 15 The LPA's purported photographic evidence and the applicants view of the reliability of images
- 16 Department of Environment Food and Rural Affairs licensing and registration to store on site.
- 17 Correspondence relating to the mains electricity installation.
- 18 Correspondence with the Council where the applicant explained his view
- 19 Timeline set out