

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: BE/122/25/CLE

LOCATION: Land to the East of Heath Place Business Centre
Heath Place
Bersted
PO22 9SL

PROPOSAL: Lawful development certificate for the existing use of the land for the parking and storage of vehicles, trailers and lorry bodies, the siting of storage containers and portable buildings and the storage of imported inert soils for more than 10 years.

DESCRIPTION OF APPLICATION

The applicant is seeking confirmation that the following activities/uses are lawful having been on the site for 10 years prior to the date that the application was lodged:

- the parking and storage of vehicles, trailers, and lorry bodies.
- the siting of storage containers and portable buildings; and
- the storage of imported inert soils.

The submitted evidence solely comprises a Planning Statement which includes:

- quoted submissions from the Applicant, Mr Callan Wood.
- aerial photo images dated; 2001, 2005, 2007, January 2012, September 2012, June 2013, April 2015, September 2019, June 2020, August 2021, April 2022, June 2022, and August 2025.
- lidar image allegedly from pre-2001, and a second allegedly from 2020.

The Planning Statement includes a detailed commentary on why the planning unit on the first Enforcement Notice (EN) was incorrect. This is despite the second EN having corrected the planning unit to reflect what is being requested. Indeed, there is no mention in the statement of the second EN.

SITE AND SURROUNDINGS

The land in question is a large square shaped area of land behind three industrial buildings which are within Heath Place. The site is currently being used for waste disposal, with an area of hardstanding for the parking of vehicles. Prior to this unauthorised use, the land was an open amenity area, with tree and shrub planting and no defined boundaries. The land is accessed through the Heath Place industrial site.

The land is enclosed by a mixture of earth bunds and fencing to the south. There is no defined boundary to the west. On the northern boundary is a drainage ditch which like the Rife is classified as a Main River.

The site is in the Built-Up Area Boundary but part of a swathe of natural land forming a buffer to the Aldingbourne Rife. Predominantly industrial development to the west but residential dwellings to the immediate north-west. There is a caravan park beyond the Rife to the east.

RELEVANT SITE HISTORY

BE/112/25/OUT	Outline application with some matters reserved (except access, layout and scale) for 3 No class E light industrial units and associated landscaping. This application is in CIL Zone 4 (Zero Rated) as other development.	
BE/138/23/OUT	Outline application with some matters reserved (except access, layout and scale) for 3 No. light industrial/workshop units. This application is in CIL Zone 4 (Zero Rated) as other development.	Refused 23-02-24
BE/30/00/	Renewal of unimplemented planning permission BE/56/95 for erection of 3701sq.m of B1 class units together with parking	Refused 12-05-00
BE/7/00/	Storage of materials - sand, ballast, pipe fittings etc.	Refused 18-02-00
BE/56/95	Renewal of unimplemented planning permission BE/139/90 for erection of 3701.00 sq.m. B1 Class Units,together with parking for 149 cars.	ApproveConditionally 10-01-97
BE/139/90	Erection of 3701.0 sq.m B1 class units,together with parking for 149 cars.	Approved Cond 13-12-90

Planning permission was granted in 1990 for industrial buildings on the site. However, despite this being renewed in 1997, it was never implemented, and a further renewal application was refused in 2000 (BE/30/00). At the same time, an application for storage of materials on the site (BE/7/00) was also refused. Both applications were refused due to flood risk issues and there was an additional highway access reason attached to BE/7/00.

No further applications were lodged until 2023 when an outline application was made for 3 No. light industrial/workshop units. This was refused for flood risk, drainage, and biodiversity issues. A resubmission application has been made and is currently being determined.

The site has been subject to enforcement action with a Stop Notice having been served on 8 November 2022. This related to: "The use of the land for the parking and storage of vehicles, trailers and lorry bodies, the siting of storage containers and portable buildings and the storage of imported waste. The creation of earth bunds along the northern and eastern boundaries and the laying of hardstanding."

This Notice concerned only roughly two thirds of the site subject to this CLE with the northern site edge corresponding with the line of the watercourse shown on the submitted location plan. An Enforcement Notice (EN) was then also issued for the same site area and the same activities. It required compliance within 3 months of 7 December 2022. No appeal was made and therefore the EN became effective on 7 March 2023.

A subsequent EN was served on 7 November 2023 and this included the remaining third of the site area. That Notice took effect on 06/12/23 and required all works to be completed by March 2023. All matters remain outstanding and the Local Planning Authority is currently in the process of prosecuting the site owner.

REPRESENTATIONS

Representations Received:

Bersted Parish Council

Bersted Parish Council state objection on the following grounds:

- the site is in Flood Zones 3a and b of which parts of the site are for a functional flood plain.
- granting permission could result in net loss of flood storage and flow paths leading to flooding elsewhere further down the rife.
- the site flooded in 2019, 2022, 2023 and 2024.
- contaminants from vehicles, lorry bodies and other materials stored on site could seep into the rife causing damage to the water course and wildlife.
- permission has not been lodged for B8 storage use at any time and the Parish Council refute the applicants claim the site has been used for the purposes stated in the application for more than 10 years.
- the application conflicts with Arun Local Plan policies ENV DM2, ENV DM3 and ENV DM5 and Bersted NP ES2.

The Parish have included several undated photos of the site as well as two "Parish Online" hosted aerial photos from 2012 and 2018.

A letter has been received from the West Sussex Wildlife Protection (WSWP) objecting on the following grounds:

- three years ago, the land was a rich wildlife habitat of native small trees and scrubs and habitat consistent with a river flood plain habitat.
- the site was then cleared without ecological mitigation.
- the site is also a flood plain and is needed for water storage.

WSWP include two drone images purportedly from 2022 which show the land having been cleared, the presence of earth bunds to the north and east and some limited vehicle storage. They include a copy of a letter from the EA referring to the previous court action taken against the owner.

Furthermore, a local ward councillor has written in to provide the following contrary evidence:

- two drone photos purportedly taken in March and April 2021 with the comments: "Prior to the development of this land, it was a green space with shrubs and grasslands. I reject that the different colours and shades in the aerial images, mostly circled in green, "clearly" show inert soils. Their own evidence, and my photos attached taken in March and April 2021, show that the colours are the different types of flora."

- links to two YouTube videos both dated December 2019 which provide a detailed look at the land in question from the bridge along Rowan Way: <https://www.youtube.com/watch?v=JrgqmGg6DVo> (Part 1) and https://www.youtube.com/watch?v=hNLLKKbo_68 (Part 3).

- two aerial photos from 2012 and 2018 (the same ones as provided by the Parish Council).

- two further drone photos. The first, purportedly from 17 March 2022, shows the land having been cleared. The second is purportedly from 8 July 2022 and is stated to be the earliest held photo of material being brought onto site.

Comments on Representations Received:

The objections and particularly the additional evidence are noted and where material, are considered in the report's conclusions. It is only possible to determine CLE applications on whether the use is lawful having regard to the evidence. It is not possible to consider normal planning issues including flood risk, wildlife/biodiversity, or contamination.

The references in the Reps section to items being "purportedly from" is because the images are not date stamped or otherwise officially dated.

CONSULTATIONS

Consultations Responses Received:

ENVIRONMENT AGENCY - confirm that they have been aware since 2022 of the importing/storage of soils. State that the storage of materials at the site requires an Environmental Flood Risk Activity Permit. A Notice was served requiring the removal of the imported materials, as this activity was not permitted. The Notice was not complied with, and the Environment Agency successfully prosecuted the responsible party. At present, the EA have no evidence that any remedial action has been undertaken to address the matter.

Comments on Consultation Responses:

Noted.

LEGISLATIVE BACKGROUND

Section 171B of the Town and Country Planning Act 1990 states:

(1) 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 end of the period of four years beginning with the date on

which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

The relevant time period is 10 October 2015 to 10 October 2025 where the latter is the date of the application.

Section 191 of the Act states:

(2) For the purposes of this Act, uses and operations are lawful at any time-

(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.

Section 192(2) of the Town and Country Planning Act 1990 states that:

"If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

Section 191 to 195 Town & Country Planning Act 1990 have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy:

(i) What is judged on a balance of probability.

(ii) The onus of proof is on the applicant (and not the Local Planning Authority (LPA)) to adduce the evidence; and

(iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

Paragraph 006 (Reference ID: 17c-006-20140306) of the National Planning Practice Guidance (NPPG) states:

"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counterevidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise

and unambiguous to justify the grant of a certificate on the balance of probability."

Paragraph 009 (Reference ID: 17c-009-20140306) of the NPPG then states:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask, "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

CONCLUSION

The applicant's evidence has been reviewed, and the following comments are made:

- The quoted submissions from the applicant state that "... the Arun District Council have made their own red line as the containers and car storage and general storage was clearly used on this land for over 15 years. I also know this because when the land was for sale the ND autos workshop was told by the owners, they had to start moving their containers off the land and car storing because the land was being sold. I actually ended up buying ND autos workshop and the land together which means they did not need to move containers or move their cars as we become the new owner of the land and ND autos workshop".

The applicant does not give a date in the Statement as to when he purchased the site however Land Registry records show that the site was purchased by the applicant in September/October 2022. As it is necessary to demonstrate a continuous 10-year use from 2015, this quoted evidence therefore has little value in supporting the case for the full 10-year period.

The Council has seen the website sales particulars for the whole of the application site, but these are not dated (and the Estate Agent has not responded to an email request for date confirmation). However, it is a fair assumption that the sales particulars were published prior to the applicants purchase in 2022. The sales particulars include an aerial photo and three other photos which show that aside from some parking/vehicle storage immediately behind the Heath Place industrial buildings, the majority of the land was natural and open. These can be viewed here: <https://www.onthemarket.com/details/10706645/>.

The Council has seen website sales particulars for the neighbouring site to the South (Heath Place/Tradewinds). One of the included photos (no. 3) shows a part of the application site as green land. However, these sales particulars are not dated, and it has not been possible to establish when the images were taken: <https://www.onthemarket.com/details/10997490/>.

- Aerial photo image dated 2001 - this is stated to be a baseline image to demonstrate topographical changes. It is not evidence on its own.

- Aerial photo image dated 2005 - this purports to show evidence of storage containers and portable buildings plus imported soils. However, in practice whilst something is shown situated behind the industrial unit, it is not clear what it is. Also, there is nothing to corroborate that the light brown areas of the site represent imported soils and not just areas of different coloured (perhaps dead) vegetation. Google Earth imagery from December 2005 (which matches the supplied image) can be zoomed into

and simply shows a series of pedestrian paths across the land but no obvious topographical changes.

- Aerial photo image dated 2007 - this purports to show evidence of storage containers and portable buildings plus imported soils. In practice it is very similar to the 2005 image with the only difference being the colour of the vegetation and this may simply be reflective of a different time of year (Google Earth's matching image for 2007 is dated to April).

- Aerial photo image dated January 2012 - this purports to show evidence of storage containers and portable buildings, vehicles, trailers, and lorry bodies plus imported soils. There is no evidence of imported soils when zooming in via Google Earth. It is accepted that it appears as though the Heath Place hardstanding area has extended slightly into the site and that some items are stored or parked on land immediately behind the buildings. A large rectangular orange item could be a lorry trailer or a shipping container, but it is unclear.

- Aerial photo image dated September 2012 - this purports to show evidence of storage containers and portable buildings, vehicles, trailers, and lorry bodies. Zooming in on the Google Earth version makes it clear that 7 or 8 cars are parked on part of the site beyond the Heath Place hardstanding and that there are also three 'structures' on the application site including the orange rectangular item. However, the Google Earth imagery is 2D and it is not clear what the items are.

- Aerial photo image dated June 2013 - this purports to show evidence of storage containers and portable buildings, vehicles, trailers, and lorry bodies plus imported soils. In practice this image is very similar to the one from September 2012 with the same 'structures' shown and a similar number of parked cars. Zooming in via Google Earth makes it clear that the items circled by the applicant as areas of imported soils are actually small trees in a lighter green colour to the surrounding vegetation.

- Aerial photo image dated April 2015 - this purports to show evidence of storage containers and portable buildings, vehicles, trailers, and lorry bodies plus imported soils. This image is very similar to the one from June 2013 with the same 'structures' shown and a similar number of parked cars. There is no evidence of imported soils when zooming in via Google Earth.

- Aerial photo image dated September 2019 - this purports to show evidence of storage containers and portable buildings, vehicles, trailers, and lorry bodies plus imported soils. The same areas of car parking and 'structures' are shown but it is clear that this has extended slightly further eastwards, and it also appears that two further lorry trailers (or perhaps shipping containers) are positioned just east of two of the previous 'structures'. This image is the first to show anything on the northern third of the site as parts of the eastern area of the whole site are shown to have been tracked over and over by a large vehicle (perhaps a tractor). These 'trackways' do not however evidence any importation of soils but rather a localised clearance of vegetation.

The two YouTube video links provided by the ward councillor are dated to December 2019 and show the flooding that took place at that time. The site is briefly glimpsed in the Part 3 video at and around the 4:51 mark but (a) much of it is underwater and (b) the angle of the sun makes viewing this area difficult. However, it is clear that no storage containers, portable buildings, vehicles, trailers, lorry bodies are visible. The site is also visible in the Part 1 video at around the 7:06 mark where the camera pauses in looking across the site towards the Tradewinds building. The site is shown part underwater and there are no obvious signs of any imported items.

- Aerial photo image dated June 2020 - this purports to show evidence of storage containers and portable buildings, vehicles, trailers, and lorry bodies. In practice, what is shown in terms of car parking and storage is similar to that on the 2019 photo. Interestingly the previous vehicle trackways are shown

to have grown over i.e. are now green and are only just visible when zooming in on Google Earth.

- Aerial photo image dated August 2021 - this purports to show evidence of storage containers and portable buildings, vehicles, trailers, and lorry bodies. Again, what is shown in terms of car parking and storage is similar to that on the 2019 and 2020 photos. The two drone images supplied by the ward councillor (stated to be dated from March and April 2021) do resemble the state of the site around the time of the August 2021 Google Earth photos. These photos show the existence of three lorry trailers/lorry containers on the land immediately behind the Heath Place buildings but otherwise the land is green space with some mown paths.

- Aerial photo image dated April 2022 - this purports to show evidence of storage containers and portable buildings, vehicles, trailers, and lorry bodies plus imported soils. This photo clearly shows that the site has been almost 100% cleared to bare earth and that some additional vehicles and other items are situated on it albeit on the western side. The previous orange 'structure' is no longer shown although there appears to be a rectangular shaped area of hardstanding where it had been. The Google Earth imagery is 2D, but it appears as though there are now earthen bunds along the northern and eastern boundaries. The previous ditch extending into the site from the Rife (as shown on the location plan) has clearly been removed.

- Aerial photo image dated June 2022 - this purports to show evidence of storage containers and portable buildings, vehicles, trailers, and lorry bodies plus imported soils. This is very similar to that from April 2022 but with some additional vehicles on the site. However, the quality of the image on Google Earth does not allow for detail to be seen when zooming in. The two drone images supplied by WSWP (stated to be dated from 2022) resemble the state of the site around the time of the two 2022 Google Earth photos. Similarly, those provided by the ward councillor (stated to be from March and July 2022, also resemble the state of the site in the 2022 Google Earth photos.

- Aerial photo image dated August 2025 - this is provided as a new baseline image. It clearly shows that the land has been 100% cleared and is covered by hardstanding, vehicles, containers, portable buildings, trailers, and lorry bodies. However, it does not accurately identify the existence of imported soils.

- Lidar image allegedly from pre-2001, and a second allegedly from 2020 - these are not officially dated and therefore have very low weight.

The applicants evidence along with that provided by the interested parties shows that there is no clear evidence of imported soils on the site area. It also shows that only a small area of the site was being used for car parking and other structures until April 2022 when the whole site had been cleared and that the site was not fully occupied by the claimed uses/operations until sometime during the period between June 2022 and August 2025.

As such, there is no case to say that a lawful development certificate should be granted for the existing use of the land for the parking and storage of vehicles, trailers and lorry bodies, the siting of storage containers and portable buildings and the storage of imported inert soils for more than 10 years.

It is also relevant that section 191(2)(b) of the Town and Country Planning Act 1990 (as amended), states it is not possible to grant a Certificate of Lawfulness where the proposed operations and uses constitute a contravention of the requirements of an Enforcement Notice presently in force. So even with the lack of evidence to support the application, it would not be possible to grant a Certificate given the presence of the Enforcement Notices.

An appeal decision concerning land in Chichester is relevant in this case (APP/L3815/X/24/3343345). This concerned a Certificate which had been sought for hardstanding and an earth bund on the land purportedly present on the site for in excess of 4 years prior to service of an Enforcement Notice dated 18/08/22.

The Inspector found that the available evidence indicated that, on the balance of probabilities, the hardstanding and earth bund were substantially completed before the date of the application and therefore no enforcement action could be taken in respect of them on the date that the application was validly made. However, the certificate could not be granted by the appeal as the hardstanding and earth bund contravened the requirements of an enforcement notice then in force, so the operations were not lawful by reason of section 191(2)(b) of the Act.

It is noted that the NPPG (para 009 Reference ID: 17c-009-20140306) states that a lawful development certificate can be issued for a different description from that applied for (as an alternative to refusing a certificate altogether)." It is likely that the applicant could have a case that a very small area of the site immediately east of the buildings occupied by Laleham Products and ND Autos has been used for a continuous 10-year period for the parking of vehicles and storage of lorry trailers. However, this is a significantly different description and a significantly smaller site area to that proposed and so it is not deemed appropriate to amend the application.

RECOMMENDATION

REFUSE

REASONS FOR REFUSAL OR INFORMATIVE(S)

- 1 The applicant has failed (as judged on a balance of probability) to prove that the land has been used continuously in the ten year period between 10 October 2015 to 10 October 2025 for the parking and storage of vehicles, trailers and lorry bodies, the siting of storage containers and portable buildings, and for the storage of imported inert soils by reason of:

- (a) The evidence solely comprises of aerial photos with no corroborating evidence.
- (b) The aerial photos themselves do not support the asserted 10-year use of all of the land.
- (c) The submitted evidence from interested persons and other sources conflicts with the applicants own evidence.

Notwithstanding, in accordance with section 191(2)(b) of the Town and Country Planning Act 1990 (as amended), it is not possible to grant a Certificate of Lawfulness where the proposed operations and uses constitute a contravention of the requirements of an Enforcement Notice presently in force.