

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/20/26/CLE

LOCATION: Land adjacent to Unit E
Heath Place
Bersted
PO22 9SL

PROPOSAL: Lawful development certificate to confirm the existing mixed (sui generis) parking and B8 general open storage use for the parking and storage of vehicles, trailers and lorry bodies and the siting of storage containers.

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; and
- the siting of storage containers and portable buildings.

The submitted evidence 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, April 2023, as well as an undated photo said to be the latest available imagery from August 2025.

SITE AND SURROUNDINGS

The land in question is a small area of land immediately east of the side of Unit E Heath Place. Unit E is currently occupied by ND Autos. The site is currently being used for the parking/storage of cars and the storage of other vehicles and shipping containers. The land is accessed through the Heath Place industrial site.

The land is presently open to Heath Place and then enclosed on the eastern and southern sides by fencing. The site is in the Built-Up Area Boundary and the immediate area has an industrial character.

RELEVANT SITE HISTORY

BE/122/25/CLE	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	Refused 04-12-25
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buildings and the storage of imported inert soils for more than 10 years.

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.	Refused 24-12-25
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 a larger site (including this). 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 wider site area (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 on the wider site area for 3 No. light industrial/workshop units. This was refused for flood risk, drainage, and biodiversity issues. A resubmission application was made and has also been refused, also for these reasons.

The wider site area was 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."

However, crucially, this Stop Notice (and the subsequent Enforcement Notices as served in December 2022 and November 2023) all excluded the particular site area of this CLE from the enforcement site area.

Application BE/122/25/CLE was lodged in October 2025 and concerned the wider site area (including the area of this new CLE). It was refused on the grounds of insufficient evidence and that it is not possible to grant a Certificate where the proposed operations and uses constitute a contravention of the requirements of an Enforcement Notice presently in force.

REPRESENTATIONS

Representations Received:

Bersted Parish Council

Bersted Parish Council state objection on the grounds that BE/10/97 was lodged for a change of use to B8 but was withdrawn and no subsequent applications have been lodged to change its use. The Parish Council refute the applicants claim the site has been used for the purposes stated in the application for more than 10 years.

Comments on Representations Received:

Comments noted. The previous planning decision is not materially relevant to whether the use is lawful or not.

CONSULTATIONS

Consultations Responses Received:

ENVIRONMENT AGENCY - object due to the absence of a flood risk assessment (FRA).

Comments on Consultation Responses:

It is not appropriate to require a FRA for a CLE application.

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 11 March 2016 to 11 March 2026 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 (as set out in order of appearance in the statement) has been reviewed along with any other identified evidence sources, and the following comments are made:

- The quoted submissions from the applicant state that "... 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 became 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. It is also noted that this same statement was made to the previous application BE/122/25/CLE and so it is not clear which particular part of the wider site ownership this statement refers to.

The Council has seen the website sales particulars for the whole of the application site, but these are not dated (and the Estate Agent did not respond to an email request concerning BE/122/25/CLE 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 some evidence of parking/vehicle storage immediately to the east of Unit E but that the majority of the land was natural and open. These can be viewed here: <https://www.onthemarket.com/details/10706645/>.

- Aerial photo image dated 2001 - this is stated to be a baseline image. It shows that an area to the side of Unit E is bare earth and has 1 or 2 cars parked on it.

- Aerial photo image dated 2005 - this purports to show evidence of parking and B8 general open storage use however, it is not sufficiently clear to show anything other than the same bare earth area on the previous image. Google Earth imagery from December 2005 (which matches the supplied image) can be zoomed into but does not add any additional clarity.

- Aerial photo image dated 2007 - this purports to show evidence of parking and B8 general open storage use. In practice it is very similar to the 2005 image with the only difference being that the bare earth appears to now be hardstanding. Google Earth's matching image for 2007 is dated to April.

- Aerial photo image dated January 2012 - this purports to show evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. This photo is blurry (as is Google Earth's version) and whilst it appears that metal objects are shown in the area to the side of Unit E, it is not possible to say whether they are containers or vehicles. A large rectangular orange item could be a lorry trailer, a shipping container or something else entirely. It is unclear.

- Aerial photo image dated September 2012 - this purports to show evidence of evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. Zooming in on the Google Earth version makes it reasonably clear that there are two storage containers (one grey and one red/orange) and about 4 cars parked to the side of Unit E.

- Aerial photo image dated June 2013 - this purports to show evidence of evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. In practice this image is very similar to the one from September 2012 with the only difference being one less parked car.

- Aerial photo image dated April 2015 - this purports to show evidence of evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. This image is similar to the one from June 2013 except that an additional longer orange object (likely a shipping container but unclear) is shown as an eastern extension of the previous area. Also, the number of parked cars has changed.

The following items are specifically from within the requisite 10-year period:

- Whilst not provided or referenced by the applicant, it is clear from Google Street View photography (June 2016) that there are two orange/red/brown coloured shipping containers sat to the side of Unit E. There are also cars parked in this rough area. The imagery is from a point to the front of ND Autos and only allows a view of a small area of the application site towards the front.

- The Google Street View photography from April 2019 (also not referenced by the applicant) shows the same two shipping containers and some vehicles parked.

- Aerial photo image dated September 2019 - this purports to show evidence of evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. The same areas of car parking and storage/shipping containers/other items are shown but it is clear that an additional red rectangular shipping container is shown as a further eastern extension of the previous area.

This additional container was not shown on the April 2015 photo and whilst it does partially appear on the June 2016 Streetview image, given that the 10-year period begins in March 2016, there is a span of 3-4 months where there is no evidence of this additional shipping container. Therefore, the full extent (width) of the site has not been evidenced for the whole of the requisite 10-year period.

It is also unhelpful that the application red edge has not been plotted on top of this aerial image or the later aerial images as it is unclear whether the evidence supports the exact red edge as applied for.

- Aerial photo image dated June 2020 - this purports to show evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. In practice, what is shown in terms of car parking and storage is very similar to that on the 2019 photo, but the image is extremely blurry and precise site areas or items cannot be discerned.

- Aerial photo image dated August 2021 - this purports to show evidence of evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. Again, what is shown in terms of car parking and storage is similar to that on the 2019 and 2020 photos. The image is also blurry albeit less so than the 2020 one.

- Two 3D drone images supplied by the ward councillor during the BE/122/25/CLE application (stated to be dated from March and April 2021) resemble the state of the site around the time of the August 2021 Google Earth images. These drone shots show the existence of two shipping containers and two smaller storage containers on the land immediately east of Unit E.

- Aerial photo image dated April 2022 - this purports to show evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. This photo is slightly unhelpful in that it is blurry (as if the aerial camera was shaking when it was taken). However, the red/orange shipping/storage containers are no longer present, and it appears as though the land is instead being used for the parking of predominantly white vehicles (assumed to be cars and vans). Landscaping obscures the area where the grey container was previously shown. This evidence suggests a break in the storage of trailers on the site although it is likely that the longstanding grey storage container is still present underneath the foliage.

Google Earth's image from April 2022 is different to this one and appears to show one of the previous small containers (the grey one) but there is no evidence of the previous red/orange shipping containers. The parked cars are no longer all white with yellow, black, and grey ones too.

It is noted that the Google Earth's June 2022 imagery is the same as that stated by the applicant to be from April 2022 (with the same foliage obscuring the grey container). Assuming this foliage was not removed within the same month of April and did not then grow back to the same extent within two months, then the applicant has likely misdated their photograph.

- The Google Street View photography from June 2022 is the latest Streetview imagery (also not referenced by the applicant) and shows none of the orange/red shipping containers in the site area. There are some smaller green containers on the other side of a palisade fence but it is unclear if these are in the site area.

- Aerial photo image dated April 2023 - this purports to show evidence of evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. This image is the same as the one on Google Earth. It shows that the area to the side of Unit E is occupied by the grey container and several parked cars. There is a palisade fence shown as an eastern boundary to Unit E with additional storage containers on the other side. Some of these may be within the red edge as applied for but without this red edge being superimposed over the top of the image, it is not clear - and the presence of the fence suggests different ownerships and potentially planning units.

- Aerial photo image stated to be from August 2025 (this is actually shown on page 4 of the Statement but is referenced/dated at the end of the Statement). This purports to show evidence of evidence of parking and B8 general open storage use of the land including storage of vehicles, trailers and lorry bodies, and the siting of storage containers. This image does not appear on Google Earth. It appears to show the grey container partially obscured by foliage but otherwise the site is solely used for the parking of cars. Some of the adjacent containers shown on the April 2023 photo are now missing. Again, it is unclear from this as to the precise application site extent.

Google Earth imagery also includes a photo from March 2024 which shows the grey storage container and several parked cars. Beyond the fence is a grey/green container and some additional containers/portacabins immediately to the North. There are no further historical Google Earth images.

It is acknowledged that the officer report to the previous CLE application stated, "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, following a thorough review of the application and the available evidence, it is clear that there are gaps in the evidence and/or that inadequate evidence has been provided to fully demonstrate such a lawful use.

As such, there is no case to prove on the balance of probability that a lawful development certificate should be granted for the existing use of this small area of land for the parking and storage of vehicles, trailers and lorry bodies, and the siting of storage containers and portable buildings.

It is also noted that the submitted evidence solely comprises of 2D aerial photography. Whilst it is highly likely that the photos do indeed show shipping/storage containers, in many of the images there is no clarity on what these actually are and they could equally be buildings or tents. The available Google Streetview imagery and the third party supplied 3D drone shots add some clarity but not of the whole site area. There is no other evidence to corroborate the aerial photography.

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). Based on the above review, the Local Planning Authority are satisfied that there is sufficient evidence that the area between the side of Unit E and the palisade fence has been used for the last 10 years for the parking/storage of vehicles and the siting of one storage container. This area would not encompass all of that shown by the applicants location plan in that there is insufficient evidence to prove the use of the area north of Unit E's front building line.

RECOMMENDATION

APPROVE

The use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the site had been used for the parking/storage of vehicles and the siting of one storage container for a continuous period of 10 years.

FIRST SCHEDULE

The parking and storage of vehicles and the siting of one storage container.

SECOND SCHEDULE

Land to the eastern side of Unit E, Heath Place, Bersted, Bognor Regis, PO22 9SL.

EXTENT OF USE

Use of the land edged in black on the plan attached to this certificate for parking/storage of vehicles and the siting of a storage container.

BE/20/26/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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