

4.2 20/02389/LDCEX Revised expiry date 22 December 2020

Proposal: Certificate of lawfulness for the use of the land for the storage of roll-on/ roll-off bins and skips and porta cabin for more than 10 years; and the erection of a building in excess of 4 years.

Location: Land North Of Hunters Retreat, Shoreham Lane, Halstead KENT TN14 7BY

Ward(s): Halstead, Knockholt & Badgers Mount

ITEM FOR DECISION

The application has been referred to the Development Control Committee by Councillor Grint for the committee to consider whether the evidence available justifies the grant of the Lawful Development Certificate.

RECOMMENDATION: That the Lawful Development Certificate be GRANTED for the following reason:

Evidence has been submitted which demonstrates, on the balance of probabilities, that the land has been used continuously for the storage of roll on/roll off bins and skips, and porta cabin for more than 10 years, and a building has been erected on site in excess of 4 years ago. As such, the use of the site for the storage of roll on/roll off bins and skips and porta cabin and the erection of the building, is immune from enforcement action and lawful, in accordance with Section 191 of the Town and Country Planning Act 1990 (as amended).

Description of site

- 1 The application site is located to the west of the large roundabout at Badgers Mount at the junction of London Road, Old London Road, Shacklands Road and Shoreham Lane, behind a property known as Hunters Retreat. It consists of approximately 0.54 hectares, is reasonably flat, and has vehicular access to Old London Road.
- 2 The site lies within the Metropolitan Green Belt, but not within an area of Outstanding Natural Beauty, which lies further to the east.

Description of proposal

- 3 The Lawful Development Certificate application for an existing use, claims that the land has been used continuously for the storage of roll on/roll off bins and skips and porta cabin for more than 10 years, and the erection of a building in excess of 4 years.

(Item No 4.2)

Relevant planning history

- 4 00/01022/OUT - Proposed clearance of all stone, rubble, fencing and structures within existing site boundary. Erecting a detached house and double garage and on remainder a single stable and feed store with the land used for grazing one horse. 14.07.2000 REFUSED
- 5 99/01691/OUT - Proposed clearance of all rubble, fencing and structures within site boundary and erection of detached house and double garage. 12.11.1999 REFUSED.
- 6 09/02413/FUL - Use of land for commercial horticultural nursery including retail sales to the public, erection of polytunnels and storage building with associated car parking. WITHDRAWN

Policies and legislation

- 7 Town and Country Planning Act 1990 (as amended)
- 8 National Planning Policy Guidance

Constraints

- 9 The following constraints apply:
 - Metropolitan Green Belt

Initial Consultation

Consultations

- 10 Halstead Parish Council
- 11 Object to this application and have made the following comments;
- 12 'Halstead Parish Council strongly object to this application.
- 13 We are aware that this site has a history of unauthorised use going back to a waste transfer station.
- 14 AONB & Green Belt
- 15 The site faces the AONB and is situated within the Green Belt which should be protected from such a development. Having seen how the skips are stored further along the road at Oak Tree Farm, we believe that allowing the site to become a lawful place of storage for roll on roll off bins and skips would materially harm the openness of the Green Belt through excessive scale, bulk or visual intrusion and is therefore not appropriate in the green belt as laid out by section 145 of the NPPF.
- 16 Under Policy GB07 it is quite clear that the building to be redeveloped on a Green Belt site needs to have at least 75% of its original structure maintained. The porta cabin on site looks to this council to be dangerous
(Item No 4.2)

and falling down -the design and access statement from planning application 09/02413/FUL attests to this. It would need substantial rebuilding to make it suitable for re-use.

17 Use of Land

18 This council do not believe that the land has been used in the manner which the affidavits state for the length of time given. We have seen proof from residents that we believe would test the accuracy of these statements including complaints made to Sevenoaks Planning department. We attach several screenshots from Google Street View which show what we would deem to be a very unused driveway from 2008.

19 The site is surrounded by 8 neighbouring properties. Neighbours have said that the site has been very quiet until the past year and activity has been escalating since the introduction of the entrance gate (which you can see from our street view photos is after May 2019). The noise and nuisance smells, dust and debris including obnoxious fires are already causing disturbance. An application to make this site lawful for storage which inevitably see an increase in the types of activity. Residents have shown the council proof of ongoing activities that go above and beyond the storage of bins. They talk of disruption caused by the work on their lives and destruction of their personal property and that of the Green Belt.

20 We have attached a video taken on 2nd September 2020 by a resident which clearly shows waste sorting taking place (link not attached). We attached photos of the site from across the last 30 years. We can see in these photos the previous use of this site and how utterly devastating it is for the Green Belt land and the residents who live nearby. We believe that approval of this application would allow for this situation to occur again.

21 Recently, rubble and rubbish including asbestos has been thrown from the site (fly tipping) to the verge which would further prove that waste is being sorted on this land.

22 Highways

23 The entrance to the site is situated close to a busy roundabout. The increase of large lorries coming in and out of the site in such close proximity to the roundabout would be dangerous for all road users. We already suffer with mud and debris on the road from the site next to the Station and the site at Oak Tree Farm which are owned by the same company.

24 Adding a further storage area for these skips would only increase this mess. The owners have fenced off a section of the verge which belongs to Kent Highways. The application suggests that they are in discussion with Kent Highways over the purchase of that section of land and yet have provided no proof of this and this fence should be removed immediately. HPC do not feel that permission for anything on this site should be granted until clarification of ownership of this section has been established'.

- 25 Badgers Mount Parish Council
- 26 Object to this application and have made the following comment;
- 27 ‘Badgers Mount Parish Council has been consulted as the adjoining Parish and objects strongly to this application.
- 28 Green Belt
- 29 The site is in the Green Belt and the recent commencement of the current use is inappropriate development within the Green Belt. The storage of bins and skips in such large numbers causes considerable harm to the openness of the Green Belt.
- 30 Land use
- 31 The current use of the site has commenced within the past year contrary to the various affidavits included in the application which state that this use has been going on for many years. Until recently most of the site was covered with overgrown scrub bushes and trees and it has effectively been derelict for the majority of the last 20 years, which various nearby residents could attest to. The present use is causing considerable noise, dust and smell nuisance to neighbouring residents.
- 32 Access
- 33 The access to the site is close to the roundabout and there have been many occasions when skip lorries have been seen blocking part of the carriageway making the area increasingly dangerous. If the use is allowed to continue, there will undoubtedly be a considerable increase in mud and debris being carried onto Old London Road in a similar way to the Oak Tree Farm site, which is owned by the same company, approximately half a mile south of this site’.

Representations

- 34 The Council received 17 letters not supporting the applicants claim. These are discussed further below and relate to the following issues:
- Level of activity
 - Inaccuracy of evidence supplied by applicant
 - Noise
 - Dust
 - Odour
 - Exposure to hazardous substances
 - Ground contamination
 - Traffic and road hazards
 - Site intensification
 - Untidy/debris across road
 - Impact on Green Belt
 - Asbestos Contamination
 - Fire Hazard
 - Impact on residential amenity

(Item No 4.2)

Chief Planning Officer's appraisal

- 35 Issues to consider for applications for a Lawful Development Certificate
- 36 The Government's Planning Practice states that when considering an application for a lawful development certificate: "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."
- 37 This type of application is simply considering whether the development concerned is or would have been lawful.
- 38 This application is submitted under s191 of the Town and Country Planning Act 1990. Section 191 (2) states that:
- 39 For the purposes of this Act uses and operations are lawful at any time if—
- (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.
- 40 The time limits for taking enforcement action are set out in s171B of the Town and Country Planning Act 1990 and the National Planning Practice Guidance summarises this as follows:
- 41 Development becomes immune from enforcement if no action is taken:
- Within four years of substantial completion for a breach of planning control consisting of operational development;
 - Within four years for an unauthorised change of use to a single dwellinghouse;
 - Within ten years for any other breach of planning control (essentially other changes of use). However, this would also relate to noncompliance with a condition.
- 42 When considering the degree of information to be submitted in support of such applications, the National Planning Practice Guide explains that;
- '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.'

- 43 The guidance adds that;
- ‘A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant’s agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.’
- 44 To ensure that decisions are clear, precision in the terms of any certificate is vital. It is important to note that:
- A certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a “use class”, a certificate must also specify the relevant “class”. In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any “use class” (i.e. “sui generis” use); and
 - Where a certificate is granted for one use on a “planning unit” which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.
- 45 Analysis of the Evidence
- 46 This section of the report sets out the analysis of the evidence submitted, and all the other evidence submitted or available to the Council.
- 47 For the purposes of this application, the applicant needs to provide evidence that supports the;
- Continued use of the land for the storage of roll on/roll off bins and skips, and porta cabin for the last 10 years; and
 - The building was erected in excess of 4 years ago.
- 48 For clarification, this porta cabin does not constitute a ‘building’ due to its lack of permanence and therefore would not amount to development. Therefore, whether the porta cabin is lawful lies within the consideration of the use of land.
- 49 The analysis concludes that despite a minor discrepancy in the evidence, on the balance of probability, that the land has been used to store roll on /roll off bins and skip, and porta cabin for a period in excess of 10 years, and a building was erected on the site in excess of 4 years. As such, it is immune from enforcement action and has become the established lawful use.
- 50 After this section, a full summary of the evidence referred to is set out for reference.

- 51 The applicant, Mr David Barker, has submitted a Statutory Declaration (SD1). This declaration sets out the background of the site at the time of purchase in 2004 and that the site has been used as an overspill to the waste transfer business with the applicant. The site was used for:
- Storing bins and some skips when there is a need for overflow accommodation.
 - The building on the site was repaired between 10 - 12 years ago and is used for secure storage purpose.
 - 10-20 storage bins and 30 skips were on site at any one time. Varies throughout the year.
 - The porta cabin was inherited from the previous owner and this has remained in position ever since the acquisition of the site in 2004 (it is not used for any specific purpose but is stored on the site).
- 52 A further three Statutory Declarations (SD2-SD4) from three employees of BSP Knockholt Ltd all state that the site has been used for the storage of the roll on/roll off bins and skips for a period in excess of ten years.
- 53 As legal declarations, these statements (SD1 - SD4) can be given significant weight.
- 54 The Supplementary Planning Statement states that the applicant, through either The Borton Group, or Knockholt Properties, has been in control of the site since 2006. This is consistent with the evidence in exhibit SD6 - Land Registry documents. However, there is an inconsistency with the Statutory Declaration (SD1) made by the applicant, which states that he purchased the land together with a partner *'in or around 2004'*.
- 55 For the purposes of this application, the applicant only needs to provide evidence that supports the continued use of the land for the last ten years. The application was made valid 20 August 2020, so we are looking back to 20 August 2010. There is no evidence to suggest that the applicant did not own the land since this date. It is not considered that this inaccuracy discredits the Statutory Declaration made by the applicant (SD1).
- 56 Similarly, exhibits SD7 (aerial photo of the site in 2008), SD10 (Letter from Senior Investigation Officer at SDC dated 2009) and SD11 (Letter from KCC dated 2007) have very limited weight as they fall outside of this ten-year timeframe, albeit they provide useful background information. However, these exhibits can be afforded limited weight.
- 57 Exhibits SD5 and SD9 refer to a Call for Sites submission. The Supporting Planning Statement within exhibit SD5 dated 2017 states that the applicant has *"owned the site for approximately ten years and has used it quietly and discreetly for the storage of skips bins, and off road loaders and containers without any objection from local residents. The building on site has been renovated"*.

- 58 The SDC Site Deliverability Assessment following the Call for Sites submission in 2017 (SD5) states the following;
- That the existing use that may be lost as '*Scrubland and remains of old buildings*'.
 - The site is recognised as Brownfield.
 - Badgers Mount Parish Council commented '*We support the proposal which would be an improvement from the exiting overgrown area with an assortment of containers etc...*'
- 59 Exhibit SD8 shows aerial photograph of the site in 2012 and clearly demonstrates the porta cabin, building and a number of skips and bins on site. The site is not overgrown, with worn areas where there is little to no grass indicating vehicle movement and that the site is in use at that time.
- 60 The exhibits SD5, SD8, and SD9 referred to above, are consistent with each other and with the statements made within the Statutory Declarations, and as such can be afforded moderate weight.
- 61 The aerial photography available to Council supports the applicants claim, and clearly indicates the site has been use for the storage for roll on/roll off bins and skips, and porta cabin for a period in excess of 10 years, and the erection of a building in excess of 4 years, and as such can be given substantial weight.
- 62 The enforcement case files from 2011, 2015 and 2018 would also suggest that the site has been active.
- 63 A visit to the site by the Case Officer on the 3 September 2020 confirmed the presence of a high number of roll on/roll off bins and skips, the porta cabin, and the building.
- 64 Councillor Grint states that the site has the appearance of being derelict and abandoned.
- 65 In planning law, this case is not strictly one of abandonment. The test is whether there has been a new use established through a continuous use and whether at any point the Council could have taken enforcement action.
- 66 If at any time during the relevant period (the last ten years), the Council would not have been able to take enforcement proceedings in respect of the breach, for example, because no breach was taking place, then any such period cannot count towards the rolling period of years which gives rise to the immunity.
- 67 The site is visible from the public realm, the site has not been concealed and is accessible, and activities at the site were investigated in 2011, 2015, and 2018 by the Council for un-regularised use pertaining to the storage of waste and steel containers. There were occasions when enforcement officers visited the site and saw no activity and considered the breach rectified. This conclusion was reached in good faith based on the

information available at that time. The evidence now indicates that these occasions, particularly the last two were brief gaps in accessing the land and did not amount to a gap in the claim for a continuous use.

- 68 Whilst ‘storage’ by nature does not need to be accessed daily, the items being stored should remain on the site throughout the period. The evidence before the Council, by way of the Statutory Declarations and the aerial photographs, would suggest that the roll on/roll off bins and skips were on site at all times throughout the last ten years, suggesting that the site has been in a continuous use. The aerial photographs also show the building and porta cabin in situ too.
- 69 The Council received 17 letters from local residents not supporting the applicants claim.
- 70 There is no evidence within those letters that disputes that roll on/roll off bins, skips and containers, and porta cabin have been on the site for the last 10 years, nor the building for the last 4 years. The letters do not provide any substantial evidence to dispute the applicant’s claims in this regard, indeed many in fact support this claim by providing personal accounts witnessing the bins, skips, containers, porta cabin and building sited historically on the site.
- 71 There are claims within these letters that the level of activity has not been as described within the Statutory Declarations provided in SD1 - SD4, however, no evidence has been brought forward to support these claims, nor sworn declarations made by those opposing. Regardless of this, the level of activity is not a matter of consideration as the application merely relates to the use of the land for the ‘storage’ of roll on/roll of bins, skips and containers, and erection of the building.
- 72 A few of the letters refer to an application made in 2009 (SE/09/02413/FUL) in which the agent at the time, Mr David Bass of the Borton Group Ltd referred to the site as being ‘*effectively vacant and has nil use*’. Several of the objection letters received claim that this discredits other evidence submitted by the applicant. However, this would have been based on the information available at the time to the agent.
- 73 This statement by Borton Group Ltd for the 2009 application, would not affect the ten-year period, being outside the relevant timeframe. The evidence that the letters refer to is contained in Statutory Declarations.
- 74 Some uses, such as a storage use, will, by the very nature of the use have fluctuations in activity, where items being stored would come and go from a site. There can also be changes in the intensity of the use over time. These uses could still be capable of being continuous and be lawful, if that use overall has not ceased.
- 75 An analysis of the evidence shows that there are minor discrepancies in the applicant’s evidence when compared to all the other evidence available. When looking at all the evidence as a whole, those discrepancies do not undermine the credibility of the applicant’s evidence. There is evidence to

indicate that the use of the land and the erection of the building are likely, on the balance of probability, to be lawful and this evidence is compelling.

76 A summary of the evidence.

77 Applicant's evidence:

78 The application seeks confirmation that the land has been used for the storage of roll on/roll off bins and skips, and the porta cabin for a period in excess of 10 years, and the erection of the building in excess of 4 years. The information submitted for this application correctly identifies the relevant test in this case.

79 Summary of evidence submitted by the applicant in support of the application

Evidence Source	Evidence
Statutory Declaration signed by the applicant; David Barker (Ref SD1)	States the following: <ul style="list-style-type: none"> • Purchased the site around 2004 • Uses the site as an overspill to the waste transfer business, BSP (Knockholt) Ltd located at Knockholt Stations Goods Yard; storing bins and some skips when there is a need for overflow accommodation. • Purchased larger site at Oak Tree Farm, Halstead as the business is expanding. • The building on the site was repaired between 10 - 12 years ago and is used for secure storage purposes. • Between 10 -20 storage bins and 30 skips at any one time on site but varies throughout the year. • Porta cabin was inherited from the previous owner and this has remained in position ever since his acquisition of the site in 2004. It is not used for any specific purpose but is stored on the site.
Statutory Declaration signed by Anthony Johnson (Ref SD2)	States the following: <ul style="list-style-type: none"> • Worked for BSP Knockholt Ltd for approx. 18 years. • Employed as a driver delivering bins and skips to a variety of sites in the South.

	<ul style="list-style-type: none"> • Visits the site to collect or deposit a bin at least 3 - 4 times a day on a daily basis for last 15 years. • Confirms the site has been used continuously for that length of time for the storage of the larger bins, and on a seasonal basis; the small skips.
Statutory Declaration of Martyn Knight (Ref SD3)	<p>States the following:</p> <ul style="list-style-type: none"> • Worked for BSP Knockholt Ltd for approx. 16 years. • Confirms David Barker has owned the site for at least 15 years. • Has visited that site regularly each week. • That the site is used for storage of roll on roll off bins and 40 yarders. • Has collected bins from the site many times each week continuously for at least the last 15 years. • Usually between 15 and 20 bins at the site on a daily basis depending on how busy the company is.
Statutory Declaration of Daniel Burgess (Ref SD4)	<p>States the following:</p> <ul style="list-style-type: none"> • Worked for BSP Knockholt Ltd for approx. 17 years • Oversees the daily duties of the company. • Sends lorries to the site on a daily basis to either collect bins or deliver empty bins or storage until they are needed.

80 Summary of evidence submitted by the applicant in the form of the Supplementary Planning Statement in support of the application:

Evidence Source	Evidence
Supplementary Planning Statement Ref SD/17/05 dated 18 August 2020	<p>States the following:</p> <ul style="list-style-type: none"> • The use has continued for more than 10 years.

	<p>11 appendices have been submitted to support this claim. SD1 - SD4 are the Statutory Declarations previously listed.</p> <p>SD5 - SDC Call for Sites submission from 2015 together with the Supporting Planning Report of D.P.P dated 01.03.2017.</p> <p>The SDC Call for Sites submission form has the use of the site as 'Nil' use but refers to the Supporting Planning Report, that states under Section 2.0:</p> <p>'My client has owned the site for approximately ten years, and has used it quietly and discreetly for the storage of skips bins, and off road loaders and containers without any objection from local residents. The building on site has been renovated. This at present does not have a Lawful Development Certificate, but investigations into the use are ongoing and an application will be forthcoming'.</p> <p>SD6 - Land Registry documents for Title K443028 and K321157. Applicant states that the site came into the joint ownership of the Borton Group in 2006, of which the applicant was a joint owner. In 2013 the land was transferred to Knockholt Properties Ltd (of which David Barker has an interest) and Michael Cutting.</p> <p>SD7 - Aerial photograph from GetMapping.com dated 20.09.2008. Shows the porta cabin, building and a number of skips and bins on site. The vehicular access is also well established.</p> <p>SD8 - Aerial photograph from GetMapping.com dated 25.05.2012. Shows the porta cabin, building now enclosed and a number of skips and bins on site. The site is now less overgrown, with more worn areas where there is little to no grass.</p> <p>SD9 - SDC Site Deliverability Assessment following the Call for Sites submission in 2015 (under SD5).</p> <p>The Assessment states the following;</p> <ul style="list-style-type: none">• That the existing use that may be lost as '<i>Scrubland and remains of old buildings</i>'.• The site is recognised as Brownfield.• Badgers Mount Parish Council commented '<i>We support the proposal which would be an</i>
--	--

	<p><i>improvement from the exiting overgrown area with an assortment of containers etc...'</i></p> <p>SD10 - Letter from Nicola Clinch, Senior Investigations Officer at SDC, dated 17 August 2009. Applicant states it is not directly relevant to the use of the site, but shows a knowledge of the site with a file reference 310/74/025.</p> <p>SD11 - Letter from KCC to the applicant dated 5 September 2007. The applicant states this letter shows the Borton Group to be active in the area.</p> <p>The SPS also included the following timeline;</p> <ul style="list-style-type: none"> • February 2006 - Borton Group Ltd are registered as owners of the site (SD6) • 2006 - Sworn declarations of David Barker and others confirm use (Sd1 - SD4 inclusive) • August 2009 Nicola Clinch of SDC aware of site (SD10) • September 2009 - Aerial photograph confirms use (SD7) • May 2012 - Aerial photograph confirms use (SD8) • 2015 - 2017 - SDC Call for Sites (SD5 and SD9) • 020 - Steve Whitehead of SDC investigates.
--	---

81 Summary of Evidence held by Council

Evidence Source	Evidence
Sevenoaks District Council Aerial Mapping	<p>1999 - Site predominately clear of grass and vegetation with mostly bare earth showing. Porta cabin to north east of the site, building to the centre and a number of bin/skips present on site especially to the northern half. Vehicular access to the site well established.</p> <p>2001 - 2003 - Southern half of the site been allowed to revegetate. Porta cabin and building still present. Significantly more bins/skips on site, mostly located in</p>

	<p>close proximity to the building at the centre/west of the site.</p> <p>2008 - Vegetation re-established to the site boundaries, but centre of the site void of any, with bare earth present perhaps suggesting increase in activity/movements on site. Porta cabin remains in situ, and the building has undergone some external works by way of increase in roof covering. Fewer bins/skips on site, but several still remain clearly visible. Vehicle access still in use, and gates erected.</p> <p>2012 - Site mostly revegetated except for access and area around the building and porta cabin. Roof covering over building reduced. Several bins/skips still visible.</p> <p>2015 - 2016 - Site been allowed to revegetate further with the presence of mature grasses/trees especially to the site boundaries and south of the site. Porta cabin remains in situ, and there are more bins/skips to the west of the porta cabin, and to the south west of the building.</p> <p>2018 - 2019 - Site densely overgrown with vegetation and trees. Porta cabin and building remain in situ and several bins/skips visibly beneath the vegetation to the north east and south east of the building.</p>
Google Earth GIS	26.09.2018 - Decrease in vegetation to the centre of the site with an increased number of bins/skips on site, particularly to the western boundary, north of the site and far south. Porta cabin and building remain in situ. More defined movement paths clear of vegetation visible.
Enforcement Investigation File ref 11/00274/UNSITE	<p>Complaint received by local resident in regards to a skip at the entrance to the site being used for fly-tipping and untidy site.</p> <p>File note by Senior Investigation Officer dated 04.04.2011 following a site visit confirms that the site is occupied by BSP Knockholt Ltd. Skip was removed and case closed.</p>
Enforcement Investigation File ref 15/00571/OPDEV	<p>Complaint received by local resident in regards to the following;</p> <p><i>'The land fronting Old London Road and close to the Badgers Mount roundabout and that adjoins the residential properties to the north that includes the</i></p>

	<p><i>Oast House, is being used for the storage of big steel containers’.</i></p> <p>Site visit dated 16.07.2015 claims that there were a number of skips behind the gate all filled with rubbish. Letter sent to the owner to remove.</p> <p>Site visit 14.10.2015 enforcement officer notes bins have been removed.</p> <p>Internal discussion with enforcement case officers concluded that the containers had been removed, breach ceased, and file closed 10.02.2016</p>
Enforcement Investigation File ref 18/00417/MCU	<p>Complaint received by local resident dated 09.10.2018 in regards to; <i>‘very large containers being moved about by heavy machinery on land to the rear of the property’.</i></p> <p>File note from Investigation Officer closing case on 21.10.2019. Reason for recommendation; ‘Nothing on site’.</p>
Case Officer Site Visit	<p>A visit to the site by the Case Officer on the 3 September 2020 confirmed the presence of a high number of roll on/roll off bins and skips, and the building and porta cabin.</p>

82 Other evidence

83 The local Ward Member, Councillor Grint has also commented on this application. In summary he comments:

- Disputes the site owner’s declaration that the site has been used for storage for 10 years; it has not.
- For most of the past 10 years, until very recently, the site has given every appearance of being derelict and abandoned: completely overgrown with plants, bushes and undergrowth to a height of around 2 metres.
- No movements of "stored items" on to or off from the site.
- The fact that one or two containers and/or skips may have been on the site throughout this period is not evidence of the site being used for storage, but rather of the site having become abandoned and derelict.

84 The Council received 17 letters not supporting the applicants claim. Relevant claims have been summarised thematically below.

85 Disingenuous accounts of the historic site usage and level of activity

- The Planning Statement prepared by Stephen Downs quotes from a report prepared by Mr Downes in March 2017 to the effect that the owner had only used the site 'quietly and discreetly' therefore not four or five times daily consistently for fifteen years. This debases the sworn declarations.
- The same public record (09/02413/FUL) states that the site is 'effectively vacant and has nil use' despite statements to the contrary.
- The Planning Statement for this application also states that the building on site was 'refurbished at least 12 years ago' where as the documents for 09/02413/FUL state that the building was 'semi-derelect' 11 years ago.
- Three of the four sworn declarations can carry no weight and should be disregarded.
- The application is hence solely predicated on the recall of the owner himself whereas the neighbourhood responses testify to a very different historical site usage than set forth in his declaration.

86 Personal accounts of the site

- Some 4 to 5 years ago my elderly neighbour's dog escaped through a hole in the fence at the rear of her garden onto the site. I climbed over the fence and happily found the dog by the building which I would describe at that time as empty, dilapidated and open one side to the elements.
- I have described the site as very quiet indeed with no observable comings or goings.
- I do not refute that there were a number of roll on, roll off large bins stored on the site and in the intervening years I think that statement paragraph 5 of point 3 of the Planning Statement for CLUED which states that the owner 'has used the site quietly and discreetly for the storage of skips bins and roll on, roll off loaders and containers' to be reasonably accurate.
- I would stress that very few skips have been stored and these have been within the bins.
- Coming and goings have been few and far between despite the time of the year often with months rather than weeks between movements. In the main the bins have been stored empty and processing, sorting or similar activity has not been undertaken on the site.
- Since moving into my property four years ago, the land in question has mostly been a derelict site containing skips and large metal containers.
- The testaments claim that there has been daily activity with one claiming that they have deposited bins 3 - 4 times a day for the last 15

(Item No 4.2)

years. I can testify that this level of activity has not been happening. For most of the 12 years I have lived here, it has just been a quiet eyesore, with the occasional day (may be once a month) where there has been noise implying work being carried out.

- Stephen Downes own report indeed confirms that back in 2017 it has been used quietly and discreetly for the storage or skips bins and off road loaders and containers. This agrees with my experience - a storage site which was quiet as there was very little activity.
- The recent increase in activity and the claims of the employees that the site has been use daily for many years is completely untrue, from my experience as a neighbour directly overlooking the site.
- I've lived here for 13 years and over that time there has been some activity, mainly around 6 - 7 years ago and then nothing until recently (maybe the last year) when there was a lot of noise coming from the site...The building and porta cabin on the land are both derelict.
- The application is for existing use yet for at least the last four years since being resident on our property on Old London Road, we have not observed any use of the site which appeared to be unused, overgrown and derelict and not being used actively, certainly not for skips containing waste. We have observed several empty skips on the site remaining there but until this year have not observed waste being taken and stored at the site. In our view the use has not therefore continued for more than 10 years.

87 Conclusion

88 The relevant test in the determination of this application is whether, on the balance of probability, the evidence available supports the applicants claim that the roll on/roll off bins and skips, and porta cabin, have been on site for a period of 10 years or more, and the erection of the building was in excess of 4 years ago.

89 The Local Planning Authority has no substantive evidence to contradict that produced by the applicant. The evidence submitted by the applicant, particularly the Statutory Declarations, supports the contention that the site has been used in the manner as described, and the building has been on site for that period of time.

90 In light of the evidence available and Government Guidance, it is concluded, on the balance of probability, that the land has been used to store roll on /roll off bins and skip, and porta cabin for a period in excess of 10 years, and a building was erected on the site in excess of 4 years. As such, it is immune from enforcement action and has become the established lawful use.

91 It is therefore recommended that this application is GRANTED.

Background papers

Site and block plan

Contact Officer(s): Charlotte van den Wydeven: 01732 227000

Richard Morris
Chief Planning Officer

[Link to application details:](#)

[Link to associated documents:](#)



