



Appeal Decision

Site visit made on 22 September 2026

by **Paul T Hocking BA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 October 2026

Appeal Ref: APP/D3640/X/25/3360436

Fenns Lane Nursery, Fenns Lane, West End, Surrey GU24 9QE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Peter Bellion of Owen Isherwood against the decision of Surrey Heath Borough Council.
 - The application ref 23/0413/CEU, dated 6 July 2023, was refused in part by the Council by notice dated 20 November 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is described as: Storage of shipping containers on land at Fenns Lane West End in excess of 10 years. Use of car park at front of property for in excess of 10 years as well as circulation areas around the site.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matter

2. The Council has already issued a split decision, in that a certificate was issued for the lawfulness of a car park and circulation areas, but a refusal notice was issued pertaining to shipping containers. My assessment is therefore now confined to three areas, that have been identified as H1, H2 and H3 on the submitted plans, where these containers are situated.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawfulness is well founded.

Reasons

4. The site relates to a former nursery comprising various buildings and outside areas. In matters such as this the onus is firmly on the appellant to demonstrate their case on the balance of probabilities. My assessment is therefore fact specific, based upon the evidence before me.
5. The appeal application form describes the remaining use for which lawfulness is sought as the: '*Storage of shipping containers on land...*'. These are then located in the three areas, each of which are within close proximity.
6. The Council has then refused the appeal application for the '*...use of the shipping containers...as B8 Uses (storage and distribution)...*'. This is different to what had

been applied for. This might however be because the appeal application and submissions have tended to conflate what has been applied for.

7. In terms of my assessment, there is little dispute that the containers, of which there are 35, have been in situ for a considerable period of time and that the three areas represent anything other than a single planning unit.
8. However, and as I could see during my site visit, the containers themselves are being used for storage purposes. This is consistent with an earlier appeal¹ where the Inspector *'...was not shown any containers that were being stored on the land.'* Rather, it was a case that the land was *'...being used for the storage of domestic, business and hobby items, with this use being facilitated by the shipping containers that have been placed on the land.'* This is also consistent with the Council's site visit in 2022.
9. As a matter of fact and degree there is accordingly very little evidence to demonstrate on the balance of probabilities the lawfulness initially described by the appellant for the mere storage of shipping containers. As has also been previously noted², the *'physical use may therefore be different than the mere presence of a container alone, and this will be a determining factor when it comes to lawfulness.'*
10. The Council then contends that the containers amount to buildings. Indeed, containers have been widely held to be buildings for planning purposes. Whilst they are not connected to utilities or drainage, I could see during my site visit that each container is of a considerable size and has permanence given the containers have been in situ for a considerable period of time. Whilst they are not physically attached to the ground, they are nevertheless held by their considerable own dead weight. The appellant then provides little factual evidence to demonstrate on the balance of probabilities otherwise.
11. The 2024 statutory declarations from the Directors of the company for the appellant declare that *'...the containers have only been used by the licensees for storage purposes since 2007 for household and antique furniture, gardening equipment, flooring equipment etc. No one has ever used the containers as a workshop.'* Whilst I accept there may have previously been some ambiguity in the appellant's evidence, as a matter of fact and degree, these now amount to sufficiently precise declarations in respect of the continuous use of the containers within the planning unit for a relevant period, that being at least 10 continuous years for the lawfulness of a use and 4 continuous years for buildings in this case. I therefore do not accept that they contain only generalised assertions. Aerial photographs also corroborate the siting of the containers for a relevant period.
12. There has also been previous evidence of some limited work taking place from within a container/s, for which it had been surmised by an earlier Inspector that *'...it may well be the case that the incidents referred to were so limited as to render them of no consequence to the overall use...'* In light of the most recent statutory declarations, as a matter of fact and degree, I now find this more likely than not to be the case.
13. There is accordingly now very little evidence to undermine the appellant's version of events in respect of what actually amounts to the siting and use of the

¹ Appeal refs APP/D3640/C/21/3281220, APP/D3640/X/21/3280462

² APP/D3640/X/19/3241266

containers for a relevant period. There is also very little evidence that there was a relevant enforcement notice in force.

14. I have powers pursuant to s191(4) of the Act to consider a modified description of lawfulness. As a matter of fact and degree, the appellant has now demonstrated on the balance of probabilities the siting of the containers for what amounts to a storage purpose use in the three areas for a relevant period, and so a certificate of lawfulness should be issued.

Conclusion

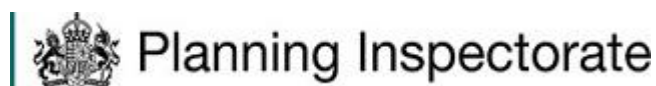
15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal in-part to grant a certificate of lawful use or development was not well-founded and that the appeal should succeed. I will therefore exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

16. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use and operation which is considered to be lawful.

Paul T Hocking

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 6 July 2023 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The siting of containers for storage purpose use for a relevant period has been demonstrated on the balance of probabilities.

Signed

Paul T Hocking

Inspector

Date: 7 October 2026

Reference: APP/D3640/X/25/3360436

First Schedule

The siting of 35 containers (none of which are stacked) in the areas strictly annotated H1, H2 and H3 on the plan attached to this Certificate for storage purpose use falling within Use Class B8 of The Town and Country Planning (Use Classes) Order 1987, as amended.

Second Schedule

Land at Fenns Lane Nursery, Fenns Lane, West End, Surrey GU24 9QE

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use and operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use and operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 7 October 2026

by Paul T Hocking

Land at Fenns Lane Nursery, Fenns Lane, West End, Surrey GU24 9QE

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Scale: DO NOT SCALE

