Planning Inspectorate

Appeal Decision

Site visit made on 20 October 2026

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2026

Appeal Ref: APP/T2215/X/25/3360014
Land at Hook Green Farm, Hook Green Lane, Dartford, DA2 7AL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use and development (LDC).
- The appeal is made by The Bex Trust against the decision of Dartford Borough Council.
- The application ref DA/23/00703/LDC, dated 5 June 2023, was refused by notice dated 18 December 2024.
- The application was made under section 191(1)(a) and (b) of the Town and Country Planning Act 1990 (as amended).
- The use and development for which a certificate of lawful use and development is sought is the 'Creation of area of hardstanding and access track and the siting of three shipping containers to be used for storage. Use of land for commercial storage of building materials, scaffolding, tools, equipment, plant, vehicles and containers by building contracting and property development business'.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use and development describing the existing use and operations which are found to be lawful.

Procedural and Preliminary Matters

2. The appeal is made to ascertain whether the claimed use and development of the land is lawful as described in s191(2) of the Act. This provides that '…uses and operations are lawful at any time if - (a) no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force'. The relevant date for the purposes of assessing an application made under s191(2) is the date of the application as set out under s191(5). Here the relevant date was 5 June 2023.

3. The burden of proof in satisfying the requirement of s191(1) falls to the appellant to establish that the specified use commenced at least 10 years prior to the relevant date of the application and continued without any significant interruption thereafter. Additionally, the appellant must demonstrate that the facilitating operational works - consisting of the creation of the area of hardstanding and access track, were substantially completed at least 10 years[1] before the relevant date. The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.

[1] see *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598 re: s171B time limits for ancillary operational development

4. The Planning Practice Guidance[2] reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.

5. The Council acknowledge that sworn declarations received by them on 21 April 2024, and an additional statement by Robert Taylor, were not taken into account when it made its decision. I have had regard to the additional documents in my determination of the appeal. Given that the Council has had the opportunity to comment on the documents as part of the appeal, I am satisfied that their interests are not prejudiced by this approach.

6. The parties were also consulted on a revised description which included reference to Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended). Those comments have also been taken into account.

Main Issue

7. The main issue is whether the Council's decision to refuse the LDC was well founded.

Reasons

8. The site is accessed via a gravelled track passing residential properties and associated gardens to the east and parked commercial vehicles to the west. The track continues southwards before turning south-west into a compound with outside storage and three storage containers positioned in a U arrangement with timber shed-type infill. In addition, a shelter for scaffold storage constructed of scaffold poles and corrugated metal sheeting lies to the west of the containers.

9. The containers and infill area included items such as insulation boards, scaffold parts, ladders, sheet materials, hand and power tools, bagged and loose materials, paint, ducting, heaters, air-con units, a cement mixer, temporary wire fencing panels and pipe insulation. Externally, plant, building materials, piping, ladders, scaffolding poles, clamps and boards, ironwork, pallets, fencing and trestles, a cement mixer, a plastic tank and containers, a modular container, and a disposed fridge unit were arranged about a cleared area and alongside peripheral overgrown and treed areas.

10. Beyond that were several demountable open 'hook-lift' trailer skips and a vehicle designed to load and unload them. To the north of the containers, an additional area of hardstanding is present on which two trailer backs were loaded with scaffold and ladders.

11. The evidence in support of the appeal includes intermittent verified dated aerial photographs from 2003 to 2021, site photographs and sworn statements of the owner, business associates and current and former users of the site – including family members and others.

12. The aerial photography demonstrates that, save for the area to the north of the containers, those containers and other stored items have probably been on the

[2] Paragraph: 006 Reference ID: 17c-006-20140306

site since at least 2003 when the access and a hardstanding area had clearly been formed. Although the subsequent images show only snapshots of the site across subsequent years, the consistent siting of the containers across those images and some skip trailers from mid-2009 onwards, suggest a continuous presence of stored items for a period of 10-years or more prior to the date of the application. The containers and trailers remained in place.

13. The Council highlight that much of the written evidence submitted in support of the appeal refers to a 'builders' yard'. This could be construed as a distinct use from the description of development for which the LDC was applied for. That description relates to storage uses.

14. In planning terminology, a 'builders' yard' would generally be interpreted as something entailing more than storage alone. That description is often attributed to a use consisting of an operational base where storage functions, prefabrication, maintenance of equipment, or administration in association with a builder or construction company, for example, might take place. As a composite use, a 'builders' yard' is generally considered *sui generis* rather than a primary Class B8 storage use.

15. However, the qualification in each of the statements is that the use described is for the storage of building materials, tools, vehicles and equipment. Notwithstanding that the format of those sworn statements are somewhat standardised, no other activities are referred to in the supporting evidence.

16. Only a third party refers to the conversion and use of the containers for work space, office and storage purposes. However, it was purported that this was investigated by the Council within the 5-years prior to 2025. At the time of my site inspection, the containers and the timber infill areas were in use for storage. There was little evidence of any administrative area or purposely designed primary workspace. Moreover, the Council does not rely on any investigation findings, nor does it provide other evidence to suggest that the appellant's version is less than probable.

17. The Council highlight that there is some inconsistency between statements as to when the use commenced. However, it seems to me that is reflective of when part of the site was first used by MD&CO Ltd from 2011 onwards rather than previously solely by Bex Contracts Ltd. and Bex Corporate Services Ltd. A third-party commentary suggests the site has been used for stored items since 2000, which is consistent with the appellant's version of events.

18. Taking those matters together I find that, on the balance of probability, a storage use and facilitating access track and hardstanding were commenced/substantially completed and probably continually used for a period of 10-years or more prior to the date of the application such that the s171B time limits for enforcement have expired for the majority of the land. However, from the evidence and observations on the ground, the area subject of the revised application exceeds that demonstrated to benefit from a lawful storage use. Notably, a group of demountable trailers plotted on the eastern side of the site were not present in April 2013. If these were subsequently installed prior to 5 June 2013, such that the use of that part of the land had occurred for 10-years or more prior to the relevant date, this has not been demonstrated by the appellant.

19. While I note the aerial image in 2013 appears to show vehicle track lines to the locations of the trailers stored to the south of the hardstanding area, aside from the locations of the trailers themselves, which do not appear to have changed significantly in subsequent years, there is little to demonstrate any consistent frequent use of the eastern side of the site until additional trailers were stored there. The additional trailers and (probably) the vehicle used to load them, can be seen in the August 2015 aerial image. Those have retained similar positions since but fall short on the relevant timeframe.

20. The application included what was said to be an area of hardstanding projecting southwards from the main compound area. However, it is unclear from the August 2003 aerial image as to whether that was actually covered in materials to create part of the hardstanding. In subsequent images that part of the site appears naturalised and, in the absence of additional evidence, is therefore excluded.

21. The images show some storage to have occurred alongside the widened track leading to the main compound. However, those areas were not included in the land subject of the LDC application.

22. A levelled area to the north of the shipping containers seems more recent and does not appear in the aerial or other imagery provided by the appellant. Accordingly, the plan has been amended to show only those areas that the evidence indicates have probably been used for consistent storage for a period of 10 years or more prior to the relevant date.

Other Matters

23. I note the concerns of nearby residents in relation to the use of the site, the existing and potential impacts of traffic on the rural lane, including wear and flooding exacerbation, and the effect on the quiet character and enjoyment of the countryside and Green Belt. However, those planning merits are not considerations in s195 appeals.

24. I note the appellant's frustrations as to the time taken for the Council to make a decision on the application. However, that too is not a relevant consideration in the appeal.

Conclusion

25. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for the creation of area of hardstanding and access track and the siting of three shipping containers used for storage (Class B8) and the use of land for commercial storage (Class B8) of building materials, scaffolding, tools, equipment, plant, vehicles and containers by building contracting and property development business is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

R Hitchcock

INSPECTOR

Planning Inspectorate

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 5 June 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 works and use of the site have persisted for a period of 10 years or more on, or before, that date.

Signed

R Hitchcock

Inspector

Date: 10 November 2026
Reference: APP/T2215/X/25/3360014

First Schedule

The creation of an area of hardstanding and access track and the siting of three shipping containers used for storage (Class B8). Use of land for commercial storage (Class B8) of building materials, scaffolding, tools, equipment, plant, vehicles and containers by building contracting and property development businesses.

Second Schedule

Land at Land at Hook Green Farm, Dartford, DA2 7AL

IMPORTANT NOTES – SEE OVER

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.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 10 November 2026

by R Hitchcock BSc DipCD MRTPI

Land at: Hook Green Farm, Dartford, DA2 7AL

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Scale: Not to Scale

