

Supporting Statement.

**Application for a Certificate of Lawfulness for
the existing use of Land Opposite Tamella for
Storage Use and as a Yard.**

Beech Ridge, Brook Lane, Botley, SO30 2ER

On behalf of Mr. Samuel Skinner

Date: March 2023 | Pegasus Ref: P22-2764





Document Management.

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1. Introduction.

- 1.1. This Supporting Statement has been prepared by Pegasus Group on behalf of the applicant, Mr. Samuel Skinner, in support of an application to Eastleigh Borough Council (EBC) seeking a certificate of lawfulness for the existing use of land opposite Tamella known as Beech Ridge for storage and use as a yard.
- 1.2. This statement describes the application site and surrounding area, sets out the planning history of the site, describes the use in more detail and then sets out the relevant planning law and evidence in support of the application.
- 1.3. In addition to this Statement, the application is accompanied by the following supporting documentation:
 - Covering Letter
 - Completed Application form and signed certificate A
 - The appropriate fee – £462.00
 - Site Location Plan
 - Signed Affidavit from applicant Sam Skinner
 - Signed Affidavit from neighbour Russell Vaughan
 - Other Supporting Evidence
- 1.4. This application was invited following liaison with Officers at Eastleigh Borough Council.

2. The Application Site and Surrounding Area.

- 2.1. The site is located along The Bridleway off Brook Lane. The site lies on the northern side of The Bridleway and is situated opposite the dwelling known as 'Tamella'.
- 2.2. The sites measures approximately 0.18ha in size.
- 2.3. The site is bound by trees to the north, east and west. Beyond the trees to the north lies open fields, with further trees to the east. To the west of the site is a small yard under separate ownership which is also used for storage purposes. The storage yard is accessed via the Bridleway to the south side of the site which is also bound by trees on either side providing screening to the storage area.
- 2.4. The site has been used for storage purposes including materials, vehicles and containers.
- 2.5. There are no protected trees or TPO areas on the site.



Figure 1: Site Location and surrounding context (excerpt from Google Maps)

3. Planning History.

- 3.1. There is no record of any planning history for this site.

4. The Proposal.

- 4.1. This application for a Certificate of Lawful Use seeks to establish, in law, the use of the land opposite Tamella, for storage and as a yard. The land has been used for the parking of vehicles and storage space by the applicant's father since 1984. Following this, the applicant has used the land continuously for storage and as a yard since 2007.
- 4.2. Neighbours in close proximity to and adjoining the site have been aware of the use of this site since 1998 (depending on how long they have lived in the vicinity) and have never raised concerns over any use, noise or traffic generation in relation the site. This and further confirmation that the existing use is lawful is explored in more detail in section 6.0 Evidence below.

5. Planning Law.

Town and Country Planning Act 1990

- 5.1. Section 191 of the Town and Country Planning Act 1990 ('the Act') allows for an individual to make an application for a Certificate of Lawfulness. The Act states that the 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.
- 5.2. The Act goes on to state that, if on an application made under Section 191, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, they shall issue a certificate. Thereafter, the lawfulness of the use shall be conclusively presumed.
- 5.3. The time for enforcement action is clarified in Section 171B of the act which states:

"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."

Planning Practice Guidance

- 5.4. At paragraph 003, the Planning Practice Guidance (PPG) states;

"lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required."

- 5.5. Paragraph 006 goes on to the state that, whilst the applicant is responsible for providing sufficient information to support an application, a local planning authority always needs to co-operate with an application who is seeking information that the authority may hold about the planning status of the land. Furthermore, it states:

"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."

- 5.6. In terms of processing an application for a lawful development certificate, the PPG is clear that there is no statutory requirement to consult third parties including parish councils or neighbours. Any views expressed by third parties on the planning merits of a case, or on whether the applicant has any private rights to carry out the use are irrelevant when determining the application.
- 5.7. No enforcement action has been pursued in respect of the storage use and, as set out in Section 171B of the Act, the lawful use of any other breach of planning control begins at the end of a 10 year period.

6. Evidence.

- 6.1. This application for a lawful use certificate is supported by a number of witness statements from neighbours that live along Brook Lane as well as commercial businesses that have delivered materials to the site in connection with the use. The Business Development Director of Elliotts confirms they have been delivering to the yard at Brook Lane, Botley since November 2014 and the Regional Manager (South) of Burton Roofing Merchants Ltd also confirms they have been delivering materials to the yard at Brook Lane Botley for just under 5 years. Prior to this, he was Branch Manager for SIG Roofing Supplies in Bishops Waltham and had delivered materials to the yard at Brook Lane since starting the post in 2010.
- 6.2. The signed letter from Garth Skinner confirms the land has been used for the parking of vehicles and storage since 1984 and used as a yard since 2007.
- 6.3. Signed affidavits have also been produced in the presence of a lawyer confirming the substantial amount of time the land has been in use for storage purposes.
- 6.4. The signed affidavit by Sam Skinner supports Garth Skinners statement that the family have used the land for storage of materials and vehicles since the late 1980s and that there have never been any complaints from neighbours or local residents regarding the use of the land.
- 6.5. The other signed affidavit is from a neighbour, Russell Vaughan. He has lived in close proximity to 'Beech Ridge' in the neighbouring property 'Lynwood' since 1998. This independently confirms and further supports the statement from Garth Skinner and signed affidavit from Sam Skinner. Confirming that the land has been utilised for the storage of materials and vehicles continuously since he has lived at Lynwood (where he moved in 1998).
- 6.6. In addition to the letters, an accompanying HM Land Registry Land Charges search confirms the above time scales, showing the land in ownership of Garth Skinner (the applicant's father) from 1984–2007 until it was transferred to the applicant and then into joint ownership in 2015.

7. Summary and Conclusions.

- 7.1. Section 171B of the Act is clear that where a change of use of land has taken place, no enforcement action can be taken after the end of the period of 10 years. Section 191 of the Act expands on this, stating that an individual may make an application for a Certificate of Lawfulness for an existing use if no enforcement action can be taken in respect of the use (because the time for enforcement action has expired) and they do not contravene any enforcement notices in force at the time.
- 7.2. The use of the land opposite Tamella complies with both Sections 171B and 191 of the Act. This is clear within the evidence presented with this application including, witness statements, the HM Land Registry Land Charges search confirming ownership, affidavits signed in the presence of a solicitor by the applicant and a neighbour to the site confirming this to be the case.

Town & Country Planning Act 1990 (as amended)
Planning and Compulsory Purchase Act 2004

Solent Office

3 West Links Tollgate, Chandlers Ford, Eastleigh, SO53 3TG

T 023 8254 2777

Solent@pegasusgroup.co.uk

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