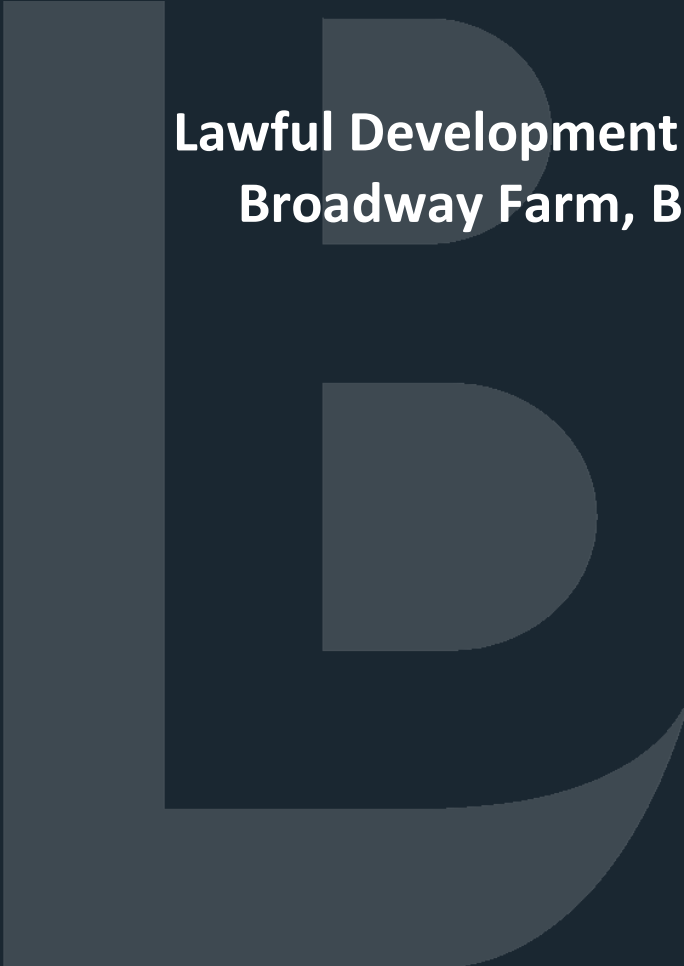




Lawful Development Certificate for CCW Services, Broadway Farm, Broad Oak, Botley, Hampshire

Planning Statement

April 2023

LUKEN  BECK

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Executive Summary

- i. This application is for a Lawful Development Certificate under S191 of the Town and Country Planning Act 1990 and is made on behalf of CCW Services Ltd of Broadway Farm, Broad Oak, Botley, Hampshire.
- ii. The land, the subject of the application, is identified by a red line on drawing ref: CCW-BSL-ZZ-XX-DR-A-1010-DF
- iii. In accordance with S191, the application demonstrates that on the balance of probability a) the engineering operation as described in the application was undertaken more than 4 years ago in that it was completed in 2006 (thus also more than 10 years ago) and b) that the parking apron has been used continuously for the parking of motorised vehicles, including heavy haulage vehicles and trailers, for more than 10 years.
- iv. The evidence provided to support the application includes 29 exhibits to include 7 affidavits prepared by people who have each known the site in excess of 10 years.
- v. Additional paperwork includes copies of Public Advertisements together with the Transport Operator's Licences authorising the parking of haulage vehicles and trailers for more than 10 years.
- vi. Copies of the dated Public Notices from newspapers are also included.
- vii. A Director at the Contractors Firm who undertook the engineering works in 2006 has prepared an affidavit stating that he recalls the work in 2006, some 17 years ago. His firm has also prepared correspondence in February 2023 confirming that the firm more recently dug four trial holes, with photographic evidence, illustrating the engineering operation in 2006.
- viii. Taking all the evidence together, the Council is invited to grant an application for a Lawful Development Certificate.

1. Introduction

- 1.1 This Planning Statement is prepared on behalf of CCW Services Ltd in respect of land at Broadway Farm, Broad Oak, Botley, Hampshire.
- 1.2 The application is made under S191 (1) (a) and (b) of the Town and Country Planning Act 1990 for a Certificate of Lawfulness of existing use and engineering operations specifically in relation to land situated to the northeast of the land, identified in the Location Plan and Block Plan [Ref: CCW-BSL-ZZ-XX-DR-A-1010-DF] **Exhibit 1**.
- 1.3 Having regard to S171B Town and Country Planning Act 1990, it will be demonstrated that the engineering operation and the use of the land, the subject of this application, has been undertaken and subsequently used continuously for the parking of vehicles and trailers for in excess of 10 years.
- 1.4 The engineering operation¹, consisting of the excavation of the land and placing of a layer of Terram membrane (to act as a weed suppressant) topped by 40-50cm of hardcore and concrete 'grasscrete' was undertaken in 2006 (17 years ago). The land continues to be used for the parking of heavy vehicles and trailers in support of the CCW Services haulage business in accordance with terms of the Operator's Licence.
- 1.5 Evidence of both the engineering operation and the subsequent parking of heavy lorries and trailers forms an integral part of this application.
- 1.6 The legal test for the application is required to show, "on the balance of probability" that a) the engineering operation took place more than 4 years ago (though it has subsisted for more than 10 years) and b) the land has been used continuously for the parking of heavy vehicles and trailers for more than 10 years.

¹ As per S55 T&CP Act 1990 – meaning of development

2. The Legal Framework

- 2.1 The power for a local planning authority to issue a LDC is derived from section 191 of the Town and Country Planning Act 1990 ('the TCPA 1990'). That provides that if any person wishes to ascertain whether, among other things, any existing use of buildings or other land is lawful they may make an application to the local planning authority. 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: see section 191(2).
- 2.2 In respect of the former, though section 57(1) of the TCPA 1990 requires planning permission to be granted for the "*carrying out of any development on land*", something is only development if it falls within the definition at section 55(1) of the TCPA 1990; namely it is the carrying out of building, engineering, mining or other operations in, on, over or under the land (known as operational development); or the making of any material change in the use of any buildings or other land. Furthermore, some development is permitted pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015. In respect of the latter, the time is to be taken not to have expired if a) the time for applying for a planning enforcement order under section 171BA(1) has not expired, b) an application has been made for a planning enforcement order and has neither been decided or withdrawn, or c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired: see section 191(3).
- 2.3 Section 171B of the TCPA 1990 sets out the time limits for enforcement; namely:
- i) 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.
 - ii) 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.
 - iii) 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.
- 2.4 Where operational development is part and parcel of a material change of use, or integral to it, the four year bar will not necessarily apply; rather, the ten year

time period may be applicable: see *Murfitt v Secretary of State for the Environment and East Cambridgeshire DC* (1980) 40 P. & C. R. 254, *Somak Travel Ltd v Secretary of State for the Environment and the London Borough of Brent* [1987] JPL 630, and *Kestrel Hydro v Secretary of State for Communities and Local Government, Spelthorne Borough Council* [2016] EWCA Civ 784.

- 2.5 The breach of planning control must have been continuous during the period of immunity, save for that this does not include anything which is de minimis during the period: see *Thurrock Borough Council v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 226.
- 2.6 If a local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matters described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application: see section 191(4) of the TCPA 1990. As to the standard of evidence, the National Planning Practice Guidance ('the PPG') assists emphasising that 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: see paragraph 006 (reference ID: 17c-006-20140306). See also *F W Gabbitts v SSE and Newham LBC* [1985] JPL 630 whereby the court held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted going on to state what is now summarised in the PPG, as stated. The planning merits of the operational development or the use in respect of which an LDC is sought is not relevant: see paragraph 009 (reference ID: 17c-009-20140306). The burden of proof is the balance of probability; namely, is it more likely than not.
- 2.7 The responsibility for providing sufficient information lies with the applicant though i) a local planning authority always needs to cooperate with an applicant who is seeking information that they may hold as to the planning status of the land and ii) a local planning authority is entitled to canvass evidence before determining an application but needs to share this with the applicant for them to have the opportunity to comment and/or to produce counter evidence : see paragraph 006 (reference ID: 17c-006-20140306).
- 2.8 A local planning authority may issue an LDC for a different description than applied for as an alternative to refusal though seeking the applicant's agreement is advised in the PPG. Refusal does not necessarily mean that something is unlawful but may mean that to date insufficient evidence has been presented: see paragraph 009 (reference ID: 17c-009-21040306). Should an application be refused, there is a right of appeal to the Secretary of State pursuant to section 195 of the TCPA 1990.

3. Background

3.1 CCW Services Ltd [Company Registration No. 04877852] has been in operation for 20 years having been incorporated and registered at Companies House on the 27th August 2003 before which time the Doe Family ran a series of businesses from the premises at Broadway Farm, Broad Oak, Botley, Hampshire. The nature of the business, as filed at Companies House, is defined as;

*“4399 – Other specialised construction activities not elsewhere classified;
49410 – Freight transport by road; and
52103 – Operation of warehousing and storage facilities for land transport activities.”*

3.2 During the last three decades the businesses have evolved and grown successfully, facilitating a variety of job opportunities supporting the local Eastleigh BC and wider regional economy.

3.3 Today, CCW Services is an international operation with its haulage division serving the southern region with connections to Southampton docks providing an integrated storage and distribution facility across several sites in Hampshire.

3.4 The Broadway site remains integral to the business.

3.5 An area of land measuring 0.2075ha, located to the northeast of the site, as shown in **Exhibits 1 & 2**, has been used for the parking of vehicles since before 2006. From the late 1990's the grass field was used for the parking of motorised vehicles in support of the business.

3.6 In 2006, a concrete cellular grasscrete platform was constructed to make it easier for vehicles and trailers to manoeuvre park in wet weather. The surface also made it cleaner to drive the vehicles onto the public highway.

3.7 This parking apron, the subject of this application, has been used continuously for the parking of motorised vehicles, including heavy vehicles and trailers for over the last 10 years.

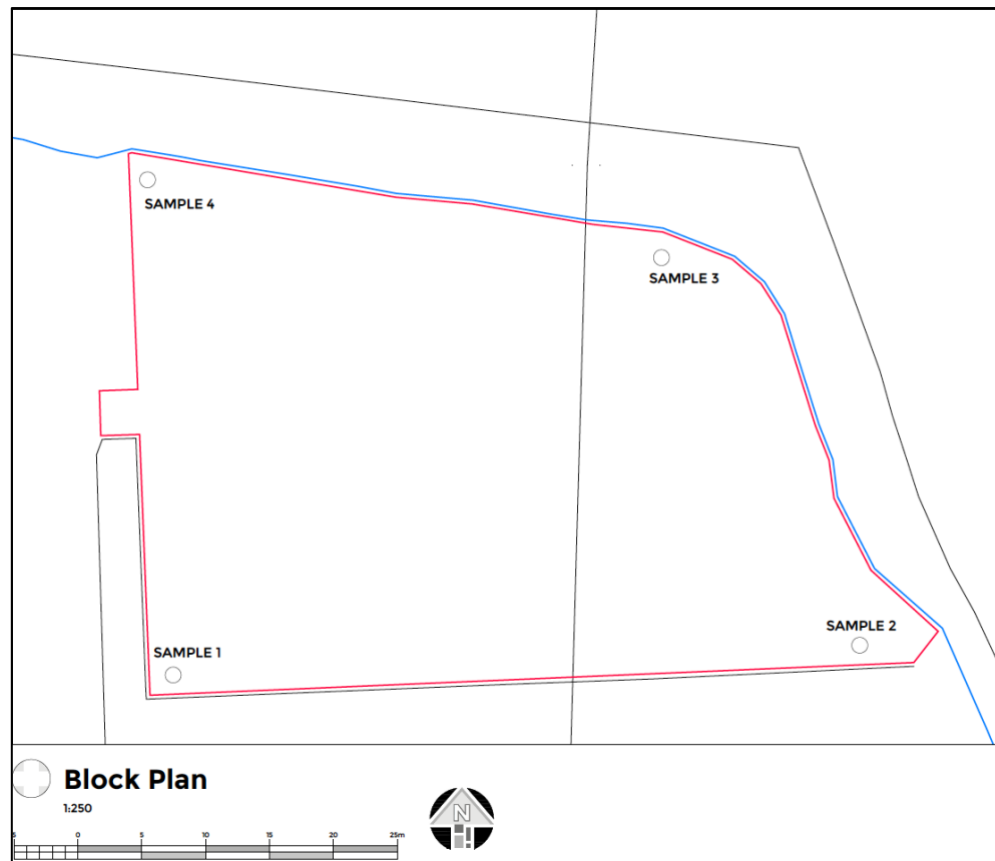
4. Evidence for the Lawful Development Certificate

The Engineering Operation

- 4.1 The location of the parking apron is illustrated at **Exhibit 1**. The engineering operation required to lay down the sub-core base to support the cellular reinforced concrete paving hardcore was constructed in 2006. Motorised vehicles to include heavy lorries and trailers have been parked on the apron from before 2006 to the present day.
- 4.2 In 2006 CCW Services instructed G&M Technical Services to undertake engineering works on an area of land at Broadway Farm, Broad Oak, Botley, Hampshire as illustrated on **Plans 1 and 2** attached. **Exhibits 1 & 2**.
- 4.3 Across the entire area, several tonnes of earth were excavated to a depth approximating 40-50cm. Once the earth had been excavated, a layer of Terram membrane was laid to provide ground support and to act as a weed depressant. Hardcore (type one crushed concrete) was then placed upon the membrane on top of which was laid a cellular grass reinforced concrete paving to provide parking spaces for the Storage of motorised vehicles to include haulage vehicles and Trailers based at the Broadway Farm site for CCW Services Ltd, operating from Broadway Farm.
- 4.4 An affidavit, prepared and signed by Tony Heathfield, a Director of G&M Technical Services, is appended to this application in which he states he completed the engineering works in 2006. Regrettably there is no paperwork as paper copies are only retained for 7 years. **[Exhibit 4.]** As Tony Heathfield has been attending the site personally for over 17 years and has undertaken other groundworks on site, his evidence is particularly pertinent.
- 4.5 In 2020, for road safety and operational reasons the grasscrete area was capped with a layer of Tarmacadam, undertaken to stop grass and soil being transferred onto the site access roads and the main public highway. It is understood that due to the heavy vehicle uses on the concrete cellular grasscrete since 2006, it was necessary to maintain and repair the base, with professional advice suggesting a tarmacadam top would provide a better and more robust solution which would not make much of a material difference but be longer lasting.
- 4.6 Notwithstanding the application of the Tarmacadam surfacing, the grasscrete and hardcore beneath remains and has not been removed. In the absence of any documentary evidence, in order to determine the depth of construction

materials, on the 24th February 2023, 4x numbered trial holes were dug by G&M Technical Services [See letter dated 28th February 2023 – **Exhibit 5**]

- 4.7 The trial holes were located in each of the four corners of the site, chosen to avoid any operational disruption. See [Ref: CCW-BSL-ZZ-XX-DR-A-1011-DF] **Exhibit 6**. (See plan below)



- 4.8 A Photograph of Trial Hole 1 [**Exhibit 7**] clearly shows the surface Tarmacadam with the rubble beneath.
- 4.9 Trial Hole 2 illustrates, with the assistance of a tape measure, the layers of material below the Tarmacadam to a depth of 35cm showing the grasscrete concrete layer immediately beneath the Tarmacadam with the sub-base below, down to the Terram membrane at the bottom, installed in 2006. [**Exhibit 8**]
- 4.10 **Exhibit 9** shows the same Trial Hole 2 but to a greater depth of 40cm.
- 4.11 Trial hole 4 also shows a similar depth of just over 30cm with compacted material down to the Terram membrane with the concrete grasscrete towards the surface, as constructed in 2006. [**Exhibit 10**] Trial hole 3, simply repeats the same evidence without the benefit of the tape measure. [**Exhibit 11**].

- 4.12 Of particular significance, all the trial holes of some 40cm show the Terram membrane at the bottom, hard core rubble, the grasscrete and finally the Tarmacadam on the surface.

The Use

- 4.13 The area shown on Exhibit 2 was used since the late 1990's for parking when it was a grass field but in wet weather it became very difficult to manoeuvre and park heavy vehicles and trailers.
- 4.14 The grasscrete apron was constructed in 2006 and has been used continuously for the parking of motorised vehicles including heavy haulage vehicles and trailers. The only documentary evidence available is since 2010 when a Transport Operator's Licence was granted to CCW Services. Between 2006-2010, the Operator's Licence was granted personally to the owner/Director of CCW Services Ltd when Broadway Farm was formally recognised and licenced as an Operating Centre for the parking of haulage vehicles and trailers. **[Exhibit 12a]** It was this Licence in 2005 that prompted the instigation of the grasscrete pad in 2006 to improve the parking and manoeuvring of heavy vehicles and trailers.
- 4.15 It should be noted that all the updated licences for CCW Services include the same date of the 28th June 2010 although the numbers of vehicles and trailers was different, as stated in Table 1 below.
- 4.16 On the 28th June 2010 a Standard International Operator's Licence was granted to CCW Services to park haulage goods vehicles in addition to trailers (length 12m) at Broadway Farm, Broad Oak, Botley, Hampshire. **[Exhibit 12]**.
- 4.17 The Operator's Licence has been renewed throughout the last 13 years increasing the numbers of vehicles as the business has adapted and evolved, though it is noted that there have been additional vehicles on site during this period. Please see the Affidavits.
- 4.18 The following **Table 1** sets out the numbers of haulage lorries and trailers granted under the Goods Vehicle Operator's Licence over the years;

Date	Haulage lorries	Trailers
June 2010	6	2
August 2016	7	4
June 2017	9	6
December 2018	14	12

June 2019	17	15
November 2019	19	27
February 2020	20	27

These vehicle numbers do not represent the total parking on the apron in the particular years because, as referred to in some of the affidavits, the number of parked vehicles exceeded those authorised in the Operator's Licence.

- 4.19 It needs to be explained also that the numbers of vehicles and trailers mentioned in the Operator's Licence does not represent the total number of vehicles operating within CCW Services; for example, the minimum number of lorries and trailers at any one time has always been a minimum of two more than in the Licence because the lorries have been subject to regular 6 weekly mechanical checks for which reason the vehicles are off the road in maintenance and repair. Additional vehicles were also required on standby in case of breakdowns. It is apparent in the evidence from some of the affidavits that some of the trailers being brought into the site, stored, loaded and unloaded belonged to other companies which explains why, in Gary Jewell's affidavit (he was and remains a driver for the Company), during the period in 2015/16, he can recall up to 40 trailers being parked on the grasscrete apron at any one time.
- 4.20 The following Public Notices provide evidence of the applications as well as the Operator's Licences themselves;
- 4.20.1 13th November 2009 – Notice in the Daily Echo [**Exhibit 13**]
 - 4.20.2 August 2016 – see Public Notice in the Southern Daily Echo for the 18th June 2016 and Operator's Licence [**Exhibits 14 and 28**]
 - 4.20.3 June 2017 Operator's Licence [**Exhibit 23**];
 - 4.20.4 December 2018 – Notice in the Daily Echo dated 5th September 2018 and Operator's Licence [**Exhibits 14 and 24**]
 - 4.20.5 June and November 2019 – Public Notice in the Daily Echo dated 30th September 2019 and Operator's Licences [**Exhibits 14, 25 and 26**]
 - 4.20.6 March 2020 – Public Notice in the Daily Echo dated 26th February 2020 and Operator's Licence [**Exhibits 14 and 27**]
- 4.21 A copy of the current Goods Vehicle Operator's Licence number OH1093516 dated 26th June 2010 (updated in 2020) for 20 motor vehicles and 27 trailers is appended at **Exhibit 27**.
- 4.22 The original operator's licence application and all the subsequent renewal applications have been widely advertised within the Press [**Exhibits 13 & 14 inclusive**] whilst the Central Licensing Office submits details of all applications to organisations including Local Authorities, the Police and Trade Associations

who have the right to object to the grant of an application. No objections have been raised to any applications from any organisation including Eastleigh Borough Council. It is understood no objections arose from the application for an Operator's Licence submitted in 2005 following which the Licence was granted.

- 4.23 The cellular reinforced concrete based grasscrete apron has been used since 2006 for the parking of motorised vehicles including heavy haulage lorries and trailers. The evidence of the Operator's licences for CCW Services is available from 2010. [See **Exhibits 23 – 28** inclusive] although there is evidence provided of earlier licences granted to Maurice Doe in person. During the international pandemic, part of the parking apron has been used by NHS emergency response vehicles in support of the national emergency.
- 4.24 This application for a Lawful Development Certificate is also supported by the affidavits of 6 people who have worked at Broadway Farm, Broad Oak. They all have knowledge of the site and recall when the engineering works were undertaken. They can also state that the parking apron, the subject of this application, has been used continuously as a lorry and trailer park in compliance with the Operator's Licence since 2010 to the present day. The evidence supplied by Mike Walker, Gary Jewell, John Moore and Louisa Doe also reaffirms the use of the land over the period since before 2010. Maurice Doe and Tony Heathfield have a more intimate knowledge of the engineering operation because Maurice Doe made the decision to undertake the work and instructed Tony Heathfield who then carried out the work personally.
- 4.25 Affidavits have been prepared and signed by the following people;
- Exhibit 4.** Anthony Heathfield, Director of G&M Technical Services;
Exhibit 15. Maurice Doe, Director and owner of CCW Services Ltd;
Exhibit 16. Louisa Jane Doe, Company Secretary and owner of CCW Services Ltd;
Exhibit 17. Gary Jewell, Inventory and Warehousing Services for CCW Services;
Exhibit 18. Gavin Boxall, Warehouse Maintenance for CCW Services;
Exhibit 19. Jon Moore, Facilities Management Services for CCW Services;
Exhibit 22. Mike Walker, Driver for CCW Services;
- 4.26 Each affidavit has been prepared in full consultation with the individual concerned and duly signed in accordance with Statutory Declarations Act 1835, each understanding the importance of clearly stating what they can recall.

5. Summary

- 5.1 An application is made to Eastleigh BC for a Lawful Development Certificate under S191 of the Town and Country Planning Act 1990.
- 5.2 Evidence has been presented to demonstrate that the engineering operation to construct the parking apron at Broadway Farm as per Exhibit 1, was undertaken more than 4 years ago, indeed more than 10 years ago.
- 5.3 Further evidence has been submitted in support of the application for the parking of motorised vehicles including heavy haulage vehicles and trailers on the apron which has remained ongoing for more than 10 years.
- 5.4 Seven affidavits have been prepared and signed by people very well acquainted with the activities on the site for over the last 10 years.
- 5.5 The combined evidence must be considered to meet the relevant legal test whether a Lawful Development Certificate should be granted 'on the balance of probability.'
- 5.6 The evidence contained in the affidavit from the original Contractor who laid the parking apron is compelling, clearly stating that the engineering operation to support the parking was constructed in 2006, more than 10 years ago.
- 5.7 The 40-50cm depth of hard core on which was placed the concrete cellular grasscrete was constructed for the purpose of parking the haulage vehicles and trailers to support the business. The 6 further affidavits confirm the construction of the parking apron and the subsequent use for the parking of motorised vehicles including haulage vehicles and trailers. Furthermore, the Operator's Licence, first granted to CCW Services in 2010, and renewed regularly until the present day provides further evidence that the CCW Services Business not only built the grasscrete apron for the parking of heavy vehicles, but it continues to this day.
- 5.8 Based upon the evidence, the Council is respectfully requested to grant the Lawful Development Certificate.

6. Exhibits

1. Location Plan and Block Plan [Ref: CCW-BSL-ZZ-XX-DR-A-1010-DF]
2. Plan of the parking apron, subject of this LDC application [Ref: CCW-BSL-ZZ-XX-DR-A-1011-DF]
3. Blank
4. Affidavit for Anthony Heathfield
5. G&M Technical Services letter dated 28th February 2023.
6. Plan showing the location of the 4 trial holes [Ref: CCW-BSL-ZZ-XX-DR-A-1011-DF]
7. Photograph of Basic Trial Hole 1.
8. Photograph of Trial Hole 2 – 35cm deep
9. Photograph of Trial Hole 2 – 40cm deep
10. Trial Hole 4
11. Trial Hole 3
12. Operator's Licence granted to CCW Services in 2010.
- 12a. Operator's Licence granted to MF Doe in 2005.
13. Copy of Public Notice dated 13th November 2009
14. Copy of Public Notices dated 18th June 2016; 5th September 2018; 24th May 2019; 30th November 2019 and 26th February 2020.
15. Affidavit for Maurice Doe, Director and owner of CCW Services Ltd;
16. Affidavit for Louisa Jane Doe, Company Secretary and owner of CCW Services Ltd;
17. Affidavit for Gary Jewell, Inventory and Warehousing Services for CCW Services;
18. Affidavit for Gavin Boxall, Warehouse Maintenance for CCW Services;
19. Affidavit for Jon Moore, Facilities Management Services for CCW Services;
20. Blank
21. Blank
22. Affidavit for Mike Walker, Driver for CCW Services;
23. 2017 Operators Licence;
24. 2018 Operator's Licence;
25. June 2019 Operator's Licence;
26. November 2019 operator's Licence;
27. February 2020 operator's Licence.
28. 2016 Operator's Licence.



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