

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

**Appeal on behalf of Maurice Doe
[CCW Services Ltd]**

Against the decision of Eastleigh Borough Council to refuse a Certificate of Lawful
Existing Use or development

at

Broadway Farm,
Broad Oak,
Botley
SO30 2EU

LPA Reference: LDC/23/95111

APPELLANT'S STATEMENT OF CASE

Graham Beck JP, MBA, LLB (Hons), BA (Hons), Dip TP.

Contents

1.0	EXECUTIVE SUMMARY	4
2.0	SITE LOCATION	8
3.0	RELEVANT PLANNING HISTORY	10
4.0	EXPLANATION AND REASONS FOR THE APPEAL	10
	• The Engineering Operation	14
	• The Use of the Land	20
5.0	CONCLUSION	27

Appendices

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 Operators Licence;
25. June 2019 Operators Licence;
26. November 2019 Operators Licence;
27. February 2020 Operators Licence;
28. 2016 Operator's Licence
29. Copy of Council's Refusal certificate dated 29th August 2023
30. Planning Officer's undated report
31. Copy of the application Form dated 25th April 2023
32. Copy of the accompanying Planning Statement prepared by Luken Beck (April 2023)
33. Refusal Notice and letter dated 29th August 2023
34. Council Solicitor's memo dated 17th August 2023

1 Executive Summary

1.1 This Appeal is made on behalf of Mr. Maurice Doe ('the Appellant') pursuant to section 195 of the Town and Country Planning Act 1990 ('the 1990 Act') against the refusal of Eastleigh Brough Council to grant a certificate of Lawful Existing Use or development ('LDC') at Broadway Farm, Broad Oak, Botley SO30 2EU ('the Site'). The application was refused by the Council's Head of Legal Services on the 29th August 2023 for the following reasons: ¹

1. The Council is not satisfied that the use described in the First Schedule at the land described in the Second Schedule is lawful due to insufficient evidence that the land has been used for the parking of motorised vehicles, including heavy vehicles and trailers, for a period in excess of 10 years as of 24th April 2023 being the date of this application.
2. The Council considers that the subsequent building operation of the laying of Tarmacadam at the land described in the Second Schedule constitutes new engineering works which have commenced a new chapter in the planning history for the application site. As such, the Council cannot issue a Certificate for the engineering works described in the First Schedule.

¹ Appendix 29 – Refusal certificate dated 29th August 2023

- 1.2 In accordance with S191, the Appellant's opinion is that 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.
- 1.3 The Evidence supporting the application includes seven affidavits² prepared by people who have known the site for longer than ten years together with photographs³, public advertisement Notices⁴, Operator's Licences⁵ and plans⁶ and a letter from G&M Technical Services⁷.
- 1.4 The Council has taken the view that the subsequent laying of tarmac on top of the grasscrete constitutes new engineering works for which planning permission is required but this does not negate the fact the grasscrete was laid more than 10 years ago and remains in situ today, a fact which the Council appears to accept. It seems that the Council's refusal in this regard is based upon those works constituting a new chapter in the planning history of the Site.
- 1.5 With regard to the use of the land for the continuous parking of vehicles and trailers, the Council provides no contrary evidence and appears to rely on the

² Appendices 4, 15 to 19 inclusive and 22

³ Appendices 7 to 11 inclusive - Photographs of boreholes

⁴ Appendices 13 and 14

⁵ Appendices 12, 12a, 23 to 28 inclusive

⁶ Appendix 1, Location plan and Block plan of the site + Appendix 2, Parking Apron plan + Appendix 6, Plan showing location of the boreholes

⁷ Appendix 5

observations of one or more neighbours in addition to speculation of how the land may have been used based upon the limited photographic evidence. No such documents have been disclosed or made available on the Council's website.

From the Government's Practice Guidance Notes⁸, "*A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.*" In this particular case, the Council never contacted the applicant or the agent to discuss any possible contrary evidence which appears to have assisted in the decision-making process to refuse the Certificate. As no such evidence was disclosed by the Council during the application process, it is assumed there is none.

1.6 Furthermore, the Practice Guidance Notes continue⁹, "*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.*" (our emphasis)

1.7 In order to prepare the appeal, reference has been made to the Practice Guidance Notes for making appeals against the refusal of certificates of lawful

⁸ Guidance for Lawful development Certificates, Paragraph 006 Ref:17c-006-20140306

⁹ Ibid

use or development (updated 18 August 2023) the contents of which should include¹⁰;

“3.3.3. The appeal statement should:

- explain clearly why the appellant disagrees with each of the reasons for refusal and respond to any counter evidence put forward by others *include the full report reference if any case law is cited*
- not contain excessive detail of the site. The Inspector will observe details at the site visit*
- include a history of the site including any relevant applications”*

¹⁰ Practice Guidance Notes for appeal Certificates of lawful use and development paragraph 3.3.3

2 Site Location

2.1 The land, the subject of this appeal, lies within a thirty-year-old, well-established commercial estate know as Broadway Farm, Broad Oak, Botley, Hampshire. The appeal site is illustrated by the red oval in the Location Plan at Figure 1 below.



Figure 1 – Broadway Farm, Broad Oak, Botley, Hampshire (by courtesy of Google Maps)

- 2.2 A copy of the submitted red line plan together with the blue land of the appellant's land ownership is shown at Figure 2 below.

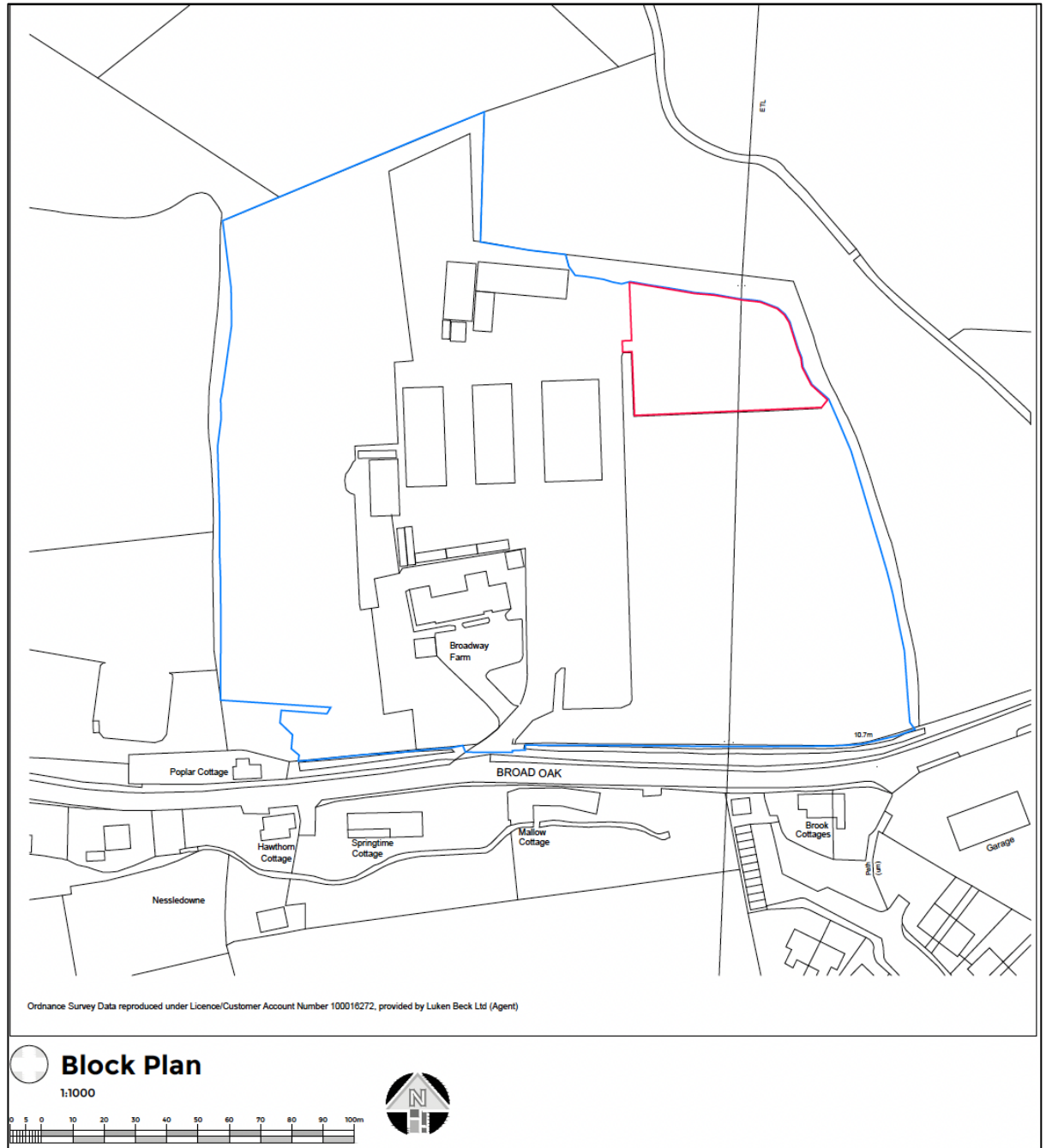


Figure 2 – Location Plan of Broadway Farm, Broad Oak, Botley, Hampshire illustrating the appeal site in red.

3 Relevant Planning History

- 3.1 An undated report prepared by the Council in connection with the determination of the application for the Certificate contains a summary of the planning history which is factual and not disputed.¹¹

4 Explanation and reasons for the Appeal

- 4.1 The Appellant's application for a lawful development certificate was made pursuant to section 191 of the 1990 Act on 25th April 2023. A copy of that application and the documentation accompanying may be found at Appendices 31 and 32. The application was made pursuant to section 191 because it related to both an existing use and existing operations carried out in relation to the Site.
- 4.2 The application was refused by the Council's Head of Legal Services on the 29th August 2023¹². Though the notice of refusal refers to "*a certificate of lawful existing use or development*" it is headed "*TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192*". The notice is plainly wrong on its face in this regard, section 192 of the 1990 Act relating to an application for a certificate of lawfulness of proposed use or development to which the application did not relate.
- 4.3 The notice of refusal sets out the following reasons for refusing the application:

¹¹ Appendix 30 – Planning Officer's undated report

¹² Appendix 33 – Refusal certificate and letter both dated 29th August 2023

- i) The Council is not satisfied that the use described in the First Schedule at the land described in the Second Schedule is lawful due to insufficient evidence that the land has been used for the parking of motorised vehicles, including heavy vehicles and trailers, for a period in excess of 10 years as of 24th April 2023 being the date of this application.
- ii) The Council considers that the subsequent building operation of the laying of Tarmacadam at the land described in the Second Schedule constitutes new engineering works which have commenced a new chapter in the planning history for the application site. As such, the Council cannot issue a Certificate for the engineering works described in the First Schedule.

4.4 For the avoidance of any doubt, the First Schedule described the building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete', together with the parking of motorised vehicles to include heavy vehicles and trailers. The Second Schedule set out the Site address as referenced above.

4.5 It was not entirely clear to the Appellant from the notice of refusal how the Council had come to the conclusions that they had reached. Accordingly, on 30th August 2023 a request was made for disclosure of any report that had been compiled by the Council in reviewing the application. On 31st August 2023 the

Council provided to the Appellant's agent a redacted memorandum which included an assessment of the evidence together with a redacted internal email dated 17th August 2023¹³. It would seem that the redactions in the memo relate to third party persons/organisations who provided comments on the application; however, as they have not been identified it is difficult for the Appellant to fairly and properly respond. It is noted that the Council's internal email appears to have copied a person(s) or organisation(s) which have been redacted and refers to a meeting having taken place. The Appellant is unclear as to who those redacted persons were and why they were included in such correspondence, particularly if they are not employees of the Council, given that the Appellant was not privy to the information.

4.6 It must be remembered that the Government's Practice Guidance Notes¹⁴, "*A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.*" The Council never contacted the Appellant, or his agent, to discuss any possible contrary evidence despite it being evident from the disclosed documentation that the Council has relied heavily upon the same in their decision-making process to refuse the Certificate.

4.7 The Court has held that the Appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted (see F. W.

¹³ Appendix 34

¹⁴ Guidance for Lawful development Certificates, Paragraph 006 Ref:17c-006-20140306

Gabbittas v SSE and Newham LBC [1985] J.P.L. 630). Indeed, 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, provided the Appellant's evidence alone is sufficiently precise and unambiguous it should be accepted. This is further supported in the Government's Guidance Notes¹⁵.

4.8 With those preliminary points in mind, this statement of case now turns to address the Council's reasons for refusing the application. For the avoidance of doubt, the Appellant continues to rely upon the planning statement and documentation submitted in respect of the application save for any amendments or additions herein.

4.9 The evidence provides for 29 exhibits to include seven affidavits from individuals who have known the site for more than 10 years.

4.10 There are two elements associated with the appeal, firstly the engineering operation and secondly the use of the land.

¹⁵ *"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."* (our emphasis)

The Engineering Operation

- 4.11 The refusal Notice states; *“The Council considers that the subsequent building operation of the laying of Tarmacadam at the land described in the Second Schedule constitutes new engineering works which have commenced a new chapter in the planning history for the application site. As such, the Council cannot issue a Certificate for the engineering works described in the First Schedule.”*
- 4.12 It is clear from the statutory declaration evidence of Tony Heathfield, a Director of G&M Technical Services, that in 2006 the earth was excavated, a layer of Terram membrane was laid to provide ground support and to act as a weed depressant. (Appendix 4 paragraphs 5-7) Hardcore (type one crushed concrete) was then placed upon the membrane on top of which was laid 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, operation from Broadway Farm.
- 4.13 The affidavits of Maurice Doe (Appendix 15, paragraph 6), Louisa Doe (Appendix 16, paragraph 4), Gavin Boxall (Appendix 18, paragraph 4) and John Moore (Appendix 19, paragraph 4), all recall that the engineering works were undertaken in 2006, some 17 years ago.
- 4.14 The four bore holes excavated in February 2023 (which positions are illustrated on drawing 21003-1011-DF¹⁶) clearly show the depth of hardcore, including the

¹⁶ Appendix 2

Terram membrane with the grasscrete concrete beneath the tarmac; those same bore holes remain open for the Inspector's perusal and examination.

4.15 The Council's solicitor prepared a memo dated 17th August 2023 (Appendix 34 paragraph 2) in which there is an acceptance that "*there may be evidence that the concrete 'grasscrete' was installed in 2006*" based upon the evidence submitted in the application. However, the basis for refusing a lawful development certificate in respect of the operational development appears to be that in the Council's view, the subsequent laying of the tarmac constituted a new engineering operation requiring planning permission and a new chapter in the planning history of the site.

4.16 In the affidavit prepared by Maurice Doe, the reasons for laying the grasscrete in 2006 are explained at paragraph 7 where he makes it clear that during inclement weather, tractors were used to pull heavy trailers out of the field for which reason he decided to install the grasscrete to improve the efficiency of the business. His evidence continues at paragraphs 14 and 15 where he explains that during the Covid pandemic, he was requested by the NHS to use part of the parking apron to accommodate NHS vehicles, namely ambulances and first response vehicles.

4.17 Given the wear and tear on the grasscrete from the previous 13 years (2006-2019) the decision was made to repair the grasscrete with a tarmac top which would result in vehicles leaving the site with cleaner wheels and to avoid spreading mud onto the 'yard' and subsequently onto the public highway.

- 4.18 In essence, there is no material difference between the grasscrete and tarmac surface insofar as both surfaces provide a hard base for the parking of motor vehicles. In this case, the tarmac material was used to repair the grasscrete which has remained in situ since 2006.
- 4.19 It is noted from the Council's Planning Officer undated report¹⁷ that "*There have been no planning applications submitted for these works, therefore if Legal are satisfied with the evidence provided that the engineering operations were carried out in 2006 this would fall within the time limitations for operational development under the Planning and Compensation Act 1991 and no enforcement action can be taken as four years have elapsed.*"
- 4.20 The Officer's report continues (page 2), "*Section 171B of the Planning and Compensation Act 1991 – In respect of operational development states: (1) 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**.*" (our emphasis).
- 4.21 Pausing here, though the Officer refers to section 171B of the Planning and Compensation Act 1991 it is clear that he is referring to section 171B of the

¹⁷ Appendix 30, EBC Planning Officer's undated report

1990 Act which was amended by section 4 of the Planning and Compensation Act 1991 to insert section 171B.

- 4.22 It is important to understand that a tarmac top cannot be laid directly on top of a grass base. In order to prepare the ground properly, exactly the same preparations would need to be made as were undertaken in 2006. The full engineering operations would still require a 40-50cm removal of all earthworks to be excavated followed by the installation of tonnes of hardcore beneath which a Terram membrane should be placed to provide ground support and to act as a weed depressant. The final surface material, grasscrete or tarmac would then be placed on the top.
- 4.23 The affidavit produced by Tony Heathfield, Director of G&M Technical Services who personally undertook the engineering works in 2006, describes at paragraphs 8 – 10 the more precise nature of the engineering works which took 6-8 men, 10 days to complete.
- 4.24 As the Council's planning Officer has correctly pointed out, the engineering operations were "*substantially completed*" in 2006. No such engineering works were required in 2020 to accommodate the tarmac repairs.
- 4.25 Furthermore Tony Heathfield states at paragraph 12 of his affidavit that "*I suggested topping the grasscrete with Tarmacadam which would form a much-improved robust surface to carry the heavy weight of the vehicles and trailers.*" He continues at paragraph 14 saying, "*In my professional opinion, whilst the*

function of the grasscrete and the Tarmacadam surfaces was very much the same, the Tarmac solution would provide a cleaner, more supportive, longer lasting surface for parked vehicles and trailers."

4.26 There was no requirement in 2020 to undertake any further 'substantial engineering' works to lay the tarmac top because the same base constructed in 2006 remained in situ. The four boreholes dug in February 2023 within the parking apron, provide further evidence, clearly demonstrating the substantial engineers works undertaken in 2006.

4.27 In the alternative, even if it is concluded that the tarmac top constitutes more than a lawful repair to that which already existed on site and is not permissible, a lawful development certificate should be issued in respect of the 'grasscrete' itself. It is clear that from 2006 to 2020 the original 'grasscrete' existed on Site for some 14 years and no enforcement action could have been taken in respect of it. The evidence set out above illustrates that it still remains now, under the tarmac layer. Were the Council to consider enforcement action, any enforcement notice which required not only the removal of the tarmac but also the 'grasscrete' would plainly be an excessive within the meaning of section 174 f) of the 1990 Act. In such a context, it might also be considered not to be expedient to enforce against the tarmac layer.

4.28 To the extent that the Council suggests that a new planning chapter has commenced by virtue of the laying of tarmac, such that the Appellant can no longer rely upon the 14 years within which the 'grasscrete' hardstanding has

subsisted, they are plainly wrong. The concept of a ‘new chapter’ in the planning history of a site is judge-made. In *Jennings v Secretary of State for the Environment* [1982] 1 QB 541 Lord Denning MR was clear that a new chapter commences “*when there is a radical change in the nature of the buildings on the site or the uses to which they are put – so radical that it can be looked on as a fresh start altogether in the character of the site*”. The laying of tarmac to repair the grasscrete is plainly far from such a ‘radical change’.

4.29 Putting this into context, the T&CP (General Permitted Development) (England) Order 2015, at Schedule 2, Class J, permits the development consisting of “(a) *the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purposes of the undertaking concerned; or (b) the replacement in whole or in part of such a surface.*”

4.30 The Planning Officer’s position on this point is agreed and on the basis of the evidence provided by the Appellant, it is considered that a Certificate should be granted.

4.31 There is no contrary evidence provided by the Council or any third parties which contradicts or otherwise makes the Appellant’s version of events less than probable, the Appellant’s evidence being sufficiently precise and unambiguous such that it should be accepted.

The Use of the Land

4.32 The refusal notice states, *“The Council is not satisfied that the use described in the First Schedule at the land described in the Second Schedule is lawful due to insufficient evidence that the land has been used for the parking of motorised vehicles, including heavy vehicles and trailers, for a period in excess of 10 years as of 24th April 2023 being the date of this application.”*

4.33 The onus of proof rests with the applicant and on the evidence submitted, it is submitted that a Certificate should be granted. Once again, the legal test is that the evidence should be satisfied on the balance of probability. Paragraph 4.7 above is repeated.

4.34 In support of this part of the application there are seven statutory declarations that mention the use of the parking apron since before the 23rd April 2013, the ten-year period;

- Tony Heathfield’s affidavit (at paragraph 6) explains the reasons why in 2006 he was instructed by Maurice Doe to undertake the engineering works to provide a parking area for heavy vehicles and trailers;
- Maurice Doe states (at paragraph 4) that since before 2000, the land identified on the location plan was used for the parking of lorries and trailers; this is over 23 years ago since the land has been used for the parking of lorries and trailers.

- Louisa Doe recalls in her affidavit (at paragraph 5) that up to 40 trailers were parked on the said land in 2006. At paragraph 9, it is explained that from 2006 to the present day the land has been used continuously for the parking of lorries and trailers; this is over 17 years ago.
- Gary Jewell, a driver, says (at paragraph 4) that between 2012-2018 he was parking lorries and trailers on the land. Since 2018 Gary has been supervising the parking of trailers and lorries on the parking apron (paragraph 7). He also states (at paragraph 10) that he believes the land has been used continuously for the parking of lorries and trailers since at least 2012. He also makes the point that for the majority of the time, the parking has been undertaken in the evenings when the lorries and trailers are parked up off the road when the collections and deliveries are completed.

4.35 It is noted at this juncture that the Council's solicitor states in the memorandum¹⁸ that the application is supported by a number of statutory declarations, followed in the next sentence by reference to the observations of a neighbour or neighbours who 'refutes the use' but there is no contrary evidence provided.

4.36 It is unclear who the neighbours are and what access they have had to the site to make such observations. There is no indication of any timeline during which observations were made. The memo picks up the point that it is proffered that

¹⁸ Council memorandum dated 17th August 2023

between 2000 and 2018 the use of the area was minimal but there is no evidence; the only references appear to be made to Google Earth images which are not made available by the Council but would appear to be inconclusive in any event.

4.37 The conclusion is then drawn by the Solicitor stating, “*We concluded that the evidence available does not sufficiently demonstrate the continuous use of the land for the parking of motorised vehicles and trailers for a period in excess of 10 years.*”

4.38 The Council concedes there is evidence showing some use of the land by vehicles (tyre tracks around 2014) together with some storage but speculates that there should be more wear and tear on the land. The reliance on such speculation and observations without any evidence would seem most inappropriate and unreliable.

4.39 The weight of the evidence provided by the Appellant would seem to satisfy the test ‘on the balance of probability’ but neither the Council, nor any third parties, have provided any sufficient evidence to the contrary.

4.40 The planning officer’s report (Appendix 30) summarises on page 2 what seems three neighbour comments.

4.41 The resident at Springtime Cottage (located on the south side of Broad Oak, southwest of the application site) suggests there is no evidence of grasscrete

from the historical photographs (Google Earth Pro is referred) but there is no photographic material available from the Council to make any comments.

4.42 Arising from our own inquiries of Google Earth Pro, during the 10 years in question (April 2013 – 2023) there are seven aerial photographs available of which the August 2016 and April 2015 photographs clearly show the tyre tracks on the land. In all seven photographs the green grass has grown through the grasscrete for which reason the colour of the ground is green, as to be expected.

4.43 The photographic material provided by Google Earth Pro is not relied on to support the application because it is inconclusive with photographs only taken in daylight when, nearly always, the lorries are on the road.

4.44 The further observations from Springtime Cottage state there is no evidence of regular continued use for the storage of vehicles; but the evidence provided by the affidavits from seven different people who all worked on the land continuously throughout the 10-year period, including drivers of the haulage vehicles, suggests otherwise. No contrary evidence is provided by the objector.

4.45 The second set of observations makes no reference to the use of the land but the third commentary (top of page 3 of the Officer's report) states that between 2000 and 2018 the use of the area was minimal and sporadic and the site was vacant for the majority of the time. Again, reliance seems to be placed on

Google Earth images which have not been disclosed or made available on the Council's website.

4.46 In response, the period of time under consideration is the 10 years between April 2013 and April 2023. During that time, the evidence contained in the affidavits indicates the land was used all the time for parking lorries and trailers. It has been explained in the originally submitted Planning Statement accompanying the application (Appendix 32 paragraphs 4.18 to 4.19) how the lorries were on the road most of the day with some overseas for a week at a time. It has also been explained how the numbers of trailers parked was up to 40 in number, some of which belonged to customers from other companies.

4.47 It remains unknown who the objectors / commentators are and how they understand the daily workings of the site. It is unclear when they are said to have observed the site and over what period. It is also unclear how observations were made when no access was permitted to the site and observations outside the site are difficult. No contrary evidence is provided.

4.48 With regard to the observations made by the Botley Parish Council, no further comments are made here.

4.49 Given the overwhelming evidence provided within the application compared with the absence of evidence to the contrary, bearing in mind that the legal test to be applied to the grant of a Lawful Certificate is "on the balance of probability", it is considered that the Council's decision must be incorrect.

- 4.50 The Council's memo does concede that around 2014 some evidence shows the use of the land by tyre tracks and some storage in 2016 but this is followed by speculation insofar as the Council would "*expect to see more wear and tear on the land if it was being used continuously for the parking of vehicles and trailers.*" This information does not amount to evidence and should either be disregarded or given very little weight because the snapshot of an aerial photograph identifies one brief moment in time during the ten-year period.
- 4.51 Returning to the evidence provided by the applicant, the statutory declaration made by Gavin Boxall once again refers to lorries and trailers being parked on the grass land prior to 2006 (paragraphs 2 & 3). To make way for the engineering operation in 2006 Gavin recalls he and Jon (Moore) removing the trailers and vehicles off the grass to enable the contractor access to undertake the engineering operation. At paragraphs 5 & 6, Gavin describes how the parking apron has been used since 2006 for the parking of vehicles and trailers. He also mentions the fluctuating numbers of trips because sometimes lorries would be travelling in Europe for a week before returning to CCW Services at Broadway Farm.
- 4.52 The evidence provided by the various exhibits showing the haulage licences, the dates and the public advertisements also gives testimony to the fluctuations as the business changed over the years. The point has been well made in the LDC application that Eastleigh Borough Council were notified and consulted on

each application for a Haulage Licence but no objections or observations were ever received.

4.53 Jon Moore has worked for the company for over 30 years and his evidence confirms that since 2006 he has regularly parked 40-foot trailers and vehicles on the grasscrete area (paragraph 3). He goes on to describe and explain some of the business reasons for laying the grasscrete and the movement of lorries and trailers on an off the parking apron maintaining the land has been used for parking continuously since before 2006 (paragraph 8).

4.54 Mike Walker, a fully qualified Class 1 HGV Driver including a Class 1 ADR Licence holder, who has driven all across Europe for CCW Services, states (at paragraph 5 of his affidavit) that when he is on site he is regularly asked to park vehicles on the apron and has done for the last 11 years. He also makes the point (at paragraph 9) that due to the relatively small amount of space around the buildings to park trailers and lorries, to include articulated lorries, the apron land has been used constantly.

4.55 In the light of all the evidence provide by the Appellant to support the application for the LDC, it is disappointing that the Council considers that *“the evidence available does not sufficiently demonstrate the continuous use of the land for the parking of motorised vehicles for a period in excess of 10 years”*. There is no contrary evidence provided by the Council or any third parties which contradicts or otherwise makes the Appellant’s version of events less than probable, the Appellant’s evidence being sufficiently precise and unambiguous such that it should be accepted.

5 Conclusion

- 5.1 Eastleigh Borough Council has refused an application for a Certificate of Lawful Existing Use or Development for two reasons namely, that the Council is not satisfied that the use described is lawful due to insufficient evidence being provided and that the Council considers that the subsequent building operation of the laying of the Tarmacadam constitutes new engineering works which have commenced a new chapter.
- 5.2 Seven detailed Statutory Declarations have been prepared and submitted in support of the application. All the affidavits are prepared by people who have first-hand knowledge of exactly how the land has been used for at least the last 10 years. Those who have direct knowledge of the engineering operation include an extremely plausible reason for recalling the substantial engineering operations that took place in 2006, including the Director of the Contracting Company who personally undertook the works as well as Maurice Doe who commissioned and paid for the works.
- 5.3 Other evidence to include the Haulage Licences and the corresponding newspaper advertisements corroborate the statutory declarations providing a timeline of how business practices evolved over the key period.
- 5.4 No sufficient evidence is provided by the Council or any third parties to reasonably justify the conclusion that the LDC should be refused on the basis

that the application is supported by insufficient evidence and that the tarmac repair amounts to an engineering operation which commences a new chapter.

5.5 In the light of all the evidence provided to support the application, it is considered that the legal test has been satisfied that on the 'balance of probability'; the substantial engineering operation was undertaken in 2006 as described in the First Schedule and the said land has been used for at least the last 10 years for the parking of motorised vehicles to include heavy goods haulage vehicles and trailers.

5.6 The Inspector is respectfully requested to allow the appeal.

GB October 2023