

EASTLEIGH BOROUGH COUNCIL

**TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING &
COMPENSATION ACT 1991), SECTION 195**

APPEAL AGAINST REFUSAL OF LAWFUL DEVELOPMENT CERTIFICATE

**TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE)
(ENGLAND) RULES 2000**

**LOCAL PLANNING AUTHORITY
STATEMENT OF CASE**

Appeal by Maurice Doe, CCW Services Ltd

Appeal Site Broadway Farm Broad Oak, Botley, Southampton, SO30 2EU

Planning Inspectorate Reference: APP/W1715/X/23/3331326

Local Authority Reference: LDC/23/95111

Eastleigh Borough Council
Civic Offices
Upper Market Street
Eastleigh
Hampshire
SO50 9YN

November 2023

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1. LOCATION AND DESCRIPTION OF APPEAL SITE AND SURROUNDING AREA

1.1. The LPA will provide a detailed description of the appeal site and its surroundings, below is a summary.

1.2 Broadway Farm lies between Hedge End and Botley on the northern side of Broad Oak, along the A334 which runs east-west between the two settlements. The site lies in designated countryside and local gap which prevents the physical or visual diminution of space between the settlements of Hedge End and Botley. Immediately surrounding the site is agricultural land used for grazing and arable purposes.

1.3 The site gently slopes up on a northerly direction from the road before levelling off around halfway into the site and dropping down again towards the north-western corner. It is approximately 0.76 hectares.

1.4 The site is occupied by a haulage and storage commercial enterprise operated by the Appellant. The site was originally used as an agricultural smallholding but has for the past 20-25 years been used by the appellant to operate his storage and distribution company. There is a single access point from the A334 and includes "Broadway Farm" which is where the Appellant resides. To the rear and continuing in a northerly direction is a cluster of buildings which is where the haulage business operates from. On either side of the cluster, there are open fields.

1.5 The appeal concerns the use and operations of the tarmacked northern aspect of the open field space (approx. 45m by 65m) immediately east to the cluster of buildings, the "Upper Field".

2. RELEVANT PLANNING HISTORY, POLICY AND ENFORCEMENT

PLANNING HISTORY

Application no/date	Description	Decision /date
Z/17963/000/00	Erection of chalet bungalow	Refused – 11/11/1977
Z/17963/00A/00	Erection of detached bungalow and integral garage	Permit – 23/03/1978
Z/17963/001/00	Broadway Farm – Use of rear yard for pallet repair and storage with retention of relocated portable office and shed	Refuse – 25/07/1997 Allowed on appeal – 30/09/1998
F/07/61818/	Broadaway Farm – Single storey side extension with attached garage	Refuse – 30/01/2008
F/17/81201	Broadway Farm – Retention of 2 no. product handling/storage buildings and alterations and extensions to existing pallet storage building in association with the continued use of the site for storage and distribution (Use Class B8)	Permit – 13/03/2019
F/21/91859	Broadway Farm – Construction of a warehouse for storage and distribution (Class B8) with ancillary works including parking area, together with retention of tarmac hardstanding for open vehicle storage.	Withdrawn by Applicant – 06/01/2022
F/22/93195	Broadway Farm – Construction of a Warehouse for storage and	Withdrawn by Applicant – 28/07/2022

	distribution (Class B8) together with a parking apron for first response vehicles and ancillary works.	
F/22/94108	Broadway Farm – Proposed construction of a Warehouse for storage and distribution (Class B8) together with a relocation of existing parking apron for first response vehicles and ancillary works	Refuse – 01/02/23

RELEVANT ENFORCEMENT HISTORY

REF	Description	Date
E/15/15747	Unauthorised change of use - car park on countryside land Closed: 30/03/15 Reason: The land where cars are parked has been used for such activity for a number of years and is immune from any enforcement action.	21/03/15
E/17/16597	Unauthorised barn extension (concealed) Closed: 26/11/18 Reason: The issue of the alterations to the barn are being dealt with under planning application F/17/81201 so no enforcement action required.	25/02/17
ENF/2020/22	Alleged unauthorised barn	17/06/20

	Closed: 16/07/20 Reason: The landowner is constructing a permitted storage building on site, however this has been delayed due to the outbreak of covid-19. The new outbuilding is temporary and will be removed once the new structure is completed. As this sits adjacent to the new development and will be removed once complete, we will not be taking any further enforcement action. A follow up inspection will be completed to check that the temporary outbuilding has been removed.	
ENF/2021/58	Unauthorised change of use of field from agricultural to storage. Closed: 10/11/21 Reason: As requested, a retrospective application has been received under reference F/21/91859 to retain the unauthorised development.	05/02/21
ENF/2022/14	Unauthorised change of use of field from agricultural to storage following withdrawal of F/21/91859 Closed: 16/06/22 Reason: As requested, a retrospective planning application has been submitted under reference F/22/93195.	10/01/22
ENF/2023/169	Site review of potential breach of planning permissions (Hours of operation, buildings & hardstanding) Current investigation	17/04/23

3. THE APPLICATION

Scope of Appeal

3.1 On 25 April 2023, an application for a Certificate of Lawfulness for an Existing Use or Development under section 191 of the Town and Country Planning Act 1990 (“The Act”) was received by Eastleigh Borough Council (“The LPA”) from Luken Beck (“the Agent”), on behalf of Maurice Doe, CCW Services Ltd (“the Appellant”).

3.2 The application related to Broadway Farm Broad Oak and was for:

“Building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular ‘grasscrete’ as illustrated on Plans 1 and 2 attached, together with the parking of motorised vehicles to include heavy vehicles and trailers in accordance with an Operator’s Licence dated 28th June 2010, and subsequent renewals which remains ongoing and evidenced in Affidavits.

3.3 The LPA will describe the development in more detail by reference to the plans and particulars submitted as part of the application which is subject to this appeal. The evidence provided with the application is set out in the List of Documents at section 5 below. The LPA will refer to previous planning history and site visit records where relevant.

3.4 The LPA also notes that reference is made to requests for disclosure – so that is very clear, the LPA will also set out the representations received including those from the Parish Council and members of the public which are all available on the LPA’s website.

3.5 On the 29th of August 2023, under delegated authority the LPA refused to grant the application for a Certificate of Lawfulness for Existing Use or Development on the grounds that “insufficient evidence had been provided to prove, on the balance of probabilities, that the land has been used for the parking of motorised vehicles, including heavy vehicles and trailers, for a period in excess of ten years as of 24th April 2023.

3.6 The Council also consider that “the subsequent building operation of the laying of the 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.”

3.7 It is this refusal against which the Appellant is appealing and to which the LPA is responding.

Proposed Amendment

3.8 The LPA agrees that the LDC incorrectly refers to section 192 of the 1990 Act and would therefore suggest that this is amended to refer to “section 191”. This is the provision which the LPA applied when considering the application. The change would not result in any prejudice to the appellant because it is an issue that the appellant has raised himself.

3.9 Crucially, there is no change in the substance of the refused LDC.

4. RESPONSE TO APPLICANT'S STATEMENT OF CASE

Legislation, Case Law and Government Guidance

4.1 The Council will rely upon Legislation, Government Guidance and case law to show that its decision was correct.

Section 191(2) of the 1990 Act states:

"For the purposes of this Act uses and operations are lawful at any time if –

(a) no enforcement action may 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."

Section 191(4) of the Act states:

"If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter 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."

4.2 The relevant test on the evidence under a section 191 application is that the LPA should be satisfied on the balance of probabilities. In *Gabbittas v Secretary of State for the Environment and Newham Borough Council* [1984] JPL 630, the High Court confirmed that there is no need for evidence given by a witness to be independently corroborated.

4.3 The burden rests on the appellant to establish continuous use. The standard of proof is the ordinary civil standard. The breach of planning control must have been continuous during the period of immunity, and in deciding whether the change of use has arisen, the proper approach is to compare the present years with the previous use and assess whether there has been any material change of use (*Thurrock Borough Council v SSETR* [2002] EWCA Civ 226).

4.4 The Planning Practice Guidance puts it like this:

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 (Paragraph: 006 Reference ID: 17c-006-20140306)

4.5 The LPA agrees that the operational development is part and parcel of the material change of use (*Kestrel Hydro v SSCLG* [2016] EWCA Civ 784). Therefore, in terms of time limits, the "10-year" rule applies, under section 171B of the 1990 Act, which says as follows:

- 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.*
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*

[...]

(3) 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.

4.6 The LPA's case in respect of the two principal issues arising in the case are set out below.

Operational Development

4.7 It is alleged that the engineering operation, consisting of the excavation of the land and placing of a layer of Terram membrane topped by 40-50cm of hardcore and concrete 'grasscrete' was undertaken in 2006. The LPA accepts that it does not have contrary evidence to dispute the laying of grasscrete in 2006 but, on this point the LPA's opinion is that the evidence is not unambiguous.

4.8 In the LPA's view, there is a material difference between grasscrete and tarmacadam – visually and in terms of quality, permeability, and appearance. The LPA considers that the boreholes are of limited assistance because they are restricted to appeal site which has already been tarmacked – rather than the lower half of the eastern field or indeed anywhere else on the site. The photographs of the boreholes show compacted concrete but no evidence of grasscrete. Only the Terram Membrane is specifically discernible, for example at the base of Trial Hole 4 (A's appendix 10).

4.9 However, whatever happened before, the subsequent laying of tarmac on top of the 'grasscrete' constitutes new engineering works which require planning permission. The LPA will show that the formal, impermeable stark tarmacadam surface was part and parcel of the intensified use of the Upper Field. In previous

years, the evidence of use of the Upperfield was *de minimis* or alternatively an informal sporadic use which did not trigger a change of use.

4.10 The engineering operation comprised in the laying of tarmacadam fundamentally changed the character and appearance of the Upper Field: a new access point has been created; the eastern field was sub-divided; boundaries features were erected / planted. In the opinion of the LPA this was a change so radical that it can be looked on as a fresh start altogether in the character of what was a verdant open undivided field.

4.11 The LPA will refer to *Jennings Motors Limited v SSE* [1982] QB 541 to support its assertion that whatever took place before, the tarmacadam provided a new chapter in the planning history of the Upper Field.

4.12 To that end, the Appellant's case in respect of the GPDO, Schedule 2, Class J is unclear and insufficiently particularised on the facts, without any reference to case law.

Permitted development

J. Development consisting of—

(a) the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purpose of the undertaking concerned; or

(b) the replacement in whole or in part of such a surface.

Development not permitted

J.1 Development is not permitted by Class J if the development would be within the curtilage of a listed building.

Conditions

J.2 Development is permitted by Class J subject to the following conditions—

(a) where there is a risk of groundwater contamination the hard surface must not be made of porous materials; and

(b) in all other cases, either —

(i) the hard surface is made of porous materials, or

(ii) provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the industrial building or warehouse.

4.13 The relevance of this to an LDC appeal is unclear in circumstances where there was a previous planning application to regularise the breach of planning control comprised in laying of tarmac. The LPA note that there has previously been no suggestion that the appeal site is causing groundwater contamination (see planning application ref F/17/81201).

4.14 Furthermore, Class J of Part 7 of Sch 2 relates to hard surfaces for industrial or warehouse premises. The development permitted is the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purpose of the undertaking concerned or the replacement in whole or in part of such a surface. The application site is outside and therefore not within the curtilage of an industrial building or warehouse.

4.15 It will be for the Appellant to prove that the criteria set out within the GDPO is satisfied. The LPA does not consider it appropriate to comment on the expediency of enforcement action.

“Material Change of Use”

4.16 In the opinion of the LPA, the Appellant has not discharged the evidential burden required and that the LPA’s decision was founded appropriately on all the facts before it at the time of the decision. The evidence that has been submitted is

not sufficiently precise or unambiguous as to when the material change of use took place.

4.17 In the LPA's view, whilst there is some use of the Upper Field by vehicles, such as tyre tracks in 2014 and some storage containers in 2016, on balance the "wear and tear" on the land is inconsistent with the level of use "of up to 40". Whilst the Appellant's case appears to be that satellite imagery is of limited assistance; the Appellant does not suggest that the images are inaccurate. In line with established case law, the LPA will say that a comparison is the required approach, and the evidential scope of the inquiry is unrestricted. To that end, it is noted that the neighbours' accounts appear to be consistent with the LPA's interpretation of the evidence.

4.18 In the LPA's opinion, the operator's licence(s) are of limited assistance. This is because there is no plan which accompanies the licence and there is nothing to suggest that this use was restricted to the Upper Field. If anything, the operator's licence(s) show a doubling in the number of permitted vehicles in 2016 (not earlier) which was then followed by an intensification of use.

4.19 In the LPA's opinion, the evidence, when taken as a whole, will show that 2023 does not bear resemblance to the use in 2003.

5. LIST OF DOCUMENTS

5.1 The LPA will refer to the documents annexed to this Statement of Case.

5.2 Note: The right is reserved to present or refer to such further evidence and/or documentation as may be necessary to respond to any submissions / documentation etc. contained or referred to in in the Appellant's Statement of Case pursuant to Town and Country Planning (Inquiries Procedure) (England) Rules 2000 and which are not referred to in the Appellant's grounds of appeal.

6. TIME AND PLACE FOR VIEWING APPEAL DOCUMENTS

The above documents may be inspected by appointment (and where practicable, copied between the hours of 10.00 – 12.00 and 14.00 – 16.00 on Monday to Friday at Eastleigh House, Upper Market Street, Eastleigh, SO50 9YN.

If the Council makes any copies of the said documents, an appropriate copying fee will be charged.

EASTLEIGH BOROUGH COUNCIL

**TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING &
COMPENSATION ACT 1991), SECTION 195**

APPEAL AGAINST REFUSAL OF LAWFUL DEVELOPMENT CERTIFICATE

**TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE)
(ENGLAND) RULES 2000**

APPENDICES

Planning Inspectorate Reference: APP/W1715/X/23/3331326

Local Authority Reference: LDC/23/9511

LDC Application	APP/01
LDC Refusal	APP/02
LPA Appeal Questionnaire and Responses	APP/03
Aerial photographs of the site	APP/04
F/07/61818 Officer Report and Site Plan	APP/05
Planning Enforcement: E/15/15747 Site Visit Photographs ENF/2021/58 Site Visit Photographs	APP/06
Legal Memorandum	APP/07

APP/01 – LDC APPLICATION FORM

Development Management

Eastleigh House, Upper Market Street, Eastleigh, SO50 9YN

Tel: 023 8068 8264 www.eastleigh.gov.uk

Office hours: Mon-Thurs 8.30am - 5pm, Friday 8.30am - 4.30pm



Application for a Lawful Development Certificate for an Existing Use or Operation or Activity,
including those in breach of a planning condition

Town and Country Planning Act 1990 (as amended)

Publication of applications on planning authority websites

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

Site Location

Disclaimer: We can only make recommendations based on the answers given in the questions.

If you cannot provide a postcode, the description of site location must be completed. Please provide the most accurate site description you can, to help locate the site - for example "field to the North of the Post Office".

Number

Suffix

Property Name

Address Line 1

Address Line 2

Address Line 3

Town/city

Postcode

Description of site location must be completed if postcode is not known:

Easting (x)

Northing (y)

Description

Applicant Details

Name/Company

Title

Mr

First name

Maurice

Surname

Doe

Company Name

CCW Services Ltd

Address

Address line 1

Broadway Farm Broad Oak

Address line 2

Address line 3

Town/City

Botley

County

Hampshire

Country

Postcode

SO30 2EU

Are you an agent acting on behalf of the applicant?

☒ Yes

☐ No

Contact Details

Primary number

Secondary number

Fax number

Email address

Agent Details

Name/Company

Title

First name

Surname

Company Name

Address

Address line 1

Address line 2

Address line 3

Town/City

County

Country

Postcode

Contact Details

Primary number

02380633440

Secondary number

07771567098

Fax number

Email address

grahambeck@lukenbeck.com

Reason for Lawful Development Certificate

Please indicate why you are applying for a lawful development certificate

- ☒ An existing use
- ☐ Existing building works
- ☐ An existing use, building work or activity in breach of a condition

Being a use, building works or activity which is still going on at the date of this application.

If Yes, to either 'an existing use' or 'an existing use in breach of a condition', please select the relevant Use Class.

Other

Please note that following changes to Use Classes on 1 September 2020: The list includes the now revoked Use Classes A1-5, B1, and D1-2 that should not be used in most cases. Also, the list does not include the newly introduced Use Classes E and F1-2. To provide details in relation to these or any 'Sui Generis' use, select 'Other' and specify the use where prompted. [View more details on Use Classes.](#)

Other (please specify)

This application for an LDC is not only for 'An Existing use' but also for 'Existing building works'

Description of Existing Use, Building Works or Activity

Please fully describe each existing use, building works or activity for which you want the lawful development certificate. Where appropriate, show to which part of the land each use, building works or activity relates

Building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete' as illustrated on Plans 1 and 2 attached, together with the parking of motorised vehicles to include heavy vehicles and trailers in accordance with an Operator's Licence dated 28th June 2010, and subsequent renewals which remains ongoing and evidenced in Affidavits.

Grounds for application for a Lawful Development Certificate

Under what grounds is the certificate being sought

- ☒ The use began more than 10 years before the date of this application
- ☐ The use, building works or activity in breach of condition began more than 10 years before the date of this application
- ☐ The use began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years
- ☒ The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.
- ☐ The use as a single dwelling house began more than four years before the date of this application
- ☐ Other - please specify (this might include claims that the change of use or building work was not development, or that it benefited from planning permission granted under the Act or by the General Permitted Development Order).

Is the certificate being sought for a use, operation, or activity in breach of a condition or limitation?

- ☐ Yes
- ☒ No

Please state why a Lawful Development Certificate should be granted

A lawful development certificate should be granted because i) the engineering operation of placing the concrete cellular 'grasscrete' in the ground was undertaken more than 10 years ago thus within the four year limitation period for operational development; and ii) the use of the red line area for the parking of motorised vehicles including heavy haulage lorries and trailers in accordance with an Operator's Licence granted to CCW Services Ltd. has been enduring for more than 10 years and is ongoing.

Information in support of a Lawful Development Certificate

When was the use or activity begun, or the building works substantially completed (date must be pre-application submission)?

01-04-2006

In the case of an existing use or activity in breach of conditions has there been any interruption?

- ☐ Yes
- ☒ No

In the case of an existing use of land, has there been any material change of use of the land since the start of the use for which a certificate is sought?

- ☐ Yes
- ☒ No

Residential Information

Does the application for a certificate relate to a residential use where the number of residential units has changed?

- ☐ Yes
- ☒ No

Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land?

- ☐ Yes
- ☒ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact?

- ☒ The agent
- ☐ The applicant
- ☐ Other person

Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application?

- ☐ Yes
- ☒ No

Interest in the Land

Please state the applicant's interest in the land

- ☒ Owner
- ☐ Lessee
- ☐ Occupier
- ☐ Other

Authority Employee/Member

With respect to the Authority, is the applicant and/or agent one of the following:

- (a) a member of staff
- (b) an elected member
- (c) related to a member of staff
- (d) related to an elected member

It is an important principle of decision-making that the process is open and transparent.

For the purposes of this question, "related to" means related, by birth or otherwise, closely enough that a fair-minded and informed observer, having considered the facts, would conclude that there was bias on the part of the decision-maker in the Local Planning Authority.

Do any of the above statements apply?

- ☐ Yes
- ☒ No

Declaration

I / We hereby apply for Lawful development: Existing use as described in this form and accompanying plans/drawings and additional information. I / We confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine options of the persons giving them. I / We also accept that: Once submitted, this information will be transmitted to the Local Planning Authority and, once validated by them, be made available as part of a public register and on the authority's website; our system will automatically generate and send you emails in regard to the submission of this application.

☒ I / We agree to the outlined declaration

Signed

graham beck

Date

25/04/2023



TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

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

**NOTICE OF REFUSAL OF APPLICATION FOR A CERTIFICATE OF LAWFUL EXISTING
USE OR DEVELOPMENT**

Application number: LDC/23/95111

Eastleigh Borough Council ("the Council") hereby refuses an application dated 25 April 2023 made by Graham Beck for a certificate of lawfulness of use or development in respect of the matter described in the First Schedule below in respect of the land specified in the Second Schedule below and edged red on the plan attached to this Notice for the following reason(s):

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.

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.

Signed :

A handwritten signature in blue ink, appearing to read "H Devereux".

(Council's Authorised Officer)

Helen Devereux
Head of Legal Services
On behalf of Eastleigh Borough Council

Date: 29 August 2023

FIRST SCHEDULE

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

SECOND SCHEDULE

Broadway Farm, Broad Oak, Botley, Hampshire, SO30 2EU

Note:

If you are aggrieved by the above decision you may appeal to the Secretary of State under section 195: Appeals against refusal or failure to give decision on application of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).

The Planning Inspectorate

QUESTIONNAIRE SECTION 195 AND SECTION 26K LAWFUL DEVELOPMENT CERTIFICATE APPEAL (Online Version)

You must ensure that a copy of the completed questionnaire, together with any enclosures, is sent to the appellant/agent. **You must include details of the statutory development plan, even if you intend to rely more heavily on some other emerging plan.**

This and any documents which you have indicated as 'To follow' should also be sent to the case officer by the date given in the start letter.

If notification or consultation under an Act, Order or Departmental Circular would have been necessary before granting permission and has not yet taken place, please inform the appropriate bodies of the appeal now and ask for any comments to be sent direct to us by the date your statement is due.

Appeal Reference

APP/W1715/X/23/3331326

Appeal By

CCW SERVICES LTD

Site Address

Broadway Farm, Broad Oak
Botley
SOUTHAMPTON
SO30 2EU

PART 1

1.a. Do you agree to the written representations procedure?

Yes ☒ No ☐

*Note: If the written procedure is agreed, the Inspector will visit the site **unaccompanied** by either party unless the relevant part of the site cannot be seen from a road or other public land, or it is essential for the Inspector to enter the site to check measurements or other relevant facts.*

2a. If the written procedure is agreed, can the relevant part of the appeal site be seen from a road, public footpath, bridleway or other public land?

Yes ☐ No ☒

2.b. Is it essential for the Inspector to enter the site to check measurements or other relevant facts?

Yes ☒ No ☐

Please explain

To fully assess the site.

2.c. Are there any known health and safety issues that would affect the conduct of the site inspection?

Yes ☒ No ☐

Please describe

The applicant has advised that due to the commercial nature with heavy haulage lorries and forklift vehicles maneuvering, it is essential to report to security on site and wear high-viz jackets.

2.d. Would the Inspector have to go onto any privately owned adjoining land as well as the appeal site itself?

Yes ☐ No ☒

3.a. Are there any other matters (for example appeals, applications or orders) relating to this land, which are now before the Secretary of State?

Yes ☐ No ☒

PART 2

4. Was a valid application and any fee required, received and accepted for the development appealed against?	Yes	☐ No	☒
5. Does the appeal relate to a planning condition?	Yes	☐ No	☒
6. Is there a planning officer's report to committee or delegated report and any other relevant document/minutes?	Yes	☒ No	☐
Please provide a copy.			
☒ <u>see 'Questionnaire Documents' section</u>			
7. Was there an enforcement notice in force at the date of the application?	Yes	☐ No	☒
8. Are there any related reasons you may have for questioning the validity of the appeal?	Yes	☐ No	☒
9. Are there any related applications now before the local planning authority (LPA)?	Yes	☐ No	☒
10.a. if any Development Plan Document (DPD) or Neighbourhood Plan relevant to this appeal has been examined and found sound/met the basic conditions and passed a referendum, the date the DPD or Neighbourhood Plan is likely to be adopted and, if you consider this date will be before the Inspector's decision on this appeal is issued, an explanation of the Council's policy position in respect of this appeal upon its adoption. You should also include an explanation of the status of existing policies and plans, as they relate to this appeal, upon adoption and which (if any) will be superseded;	Yes	☐ No	☐
Date the DPD/Neighbourhood Plan is likely to be adopted:			
10.b. if any DPD or Neighbourhood Plan relevant to this appeal has been submitted for examination, or in the case of a Neighbourhood Plan has been examined and is awaiting a referendum, an explanation of any substantive changes in the progress of the emerging plan, and their relevance to this appeal if it is considered that the plan will not be adopted before the Inspector's decision on this appeal is issued;	Yes	☐ No	☐
10.c. your Authority's CIL charging schedule is being/has been examined;			☐
10.d. your Authority's CIL charging schedule has been/is likely to be adopted.			☐
10.e. are there any other matters relevant to determining the appeal which you think we should know about at this stage?	Yes	☒ No	☐
Please provide details:			
Please see Eastleigh Borough Council's response attached regarding the appeal procedure.			
☒ <u>see 'Questionnaire Documents' section</u>			
11. Do you wish to attach your statement of case?	Yes	☐ No	☒
12. This appeal is made under section:			
Section 191			☒
Section 192			☐
Section 26H			☐

LPA Details	
I certify that a copy of this appeal questionnaire and any enclosures will be sent to the appellant or agent today.	☒
LPA's reference	LDC/23/95111

Completed by

Sarah Douglas

On behalf of

Eastleigh Borough Council

Please provide the details of the officer we can contact for this appeal, if different from the Planning Inspectorate's usual contact for this type of appeal.

Name

Phone no (including dialling code)

Email

Please advise the case officer of any changes in circumstances occurring after the return of the questionnaire.

QUESTIONNAIRE DOCUMENTS

Appeal Reference APP/W1715/X/23/3331326

Appeal By CCW SERVICES LTD

Site Address
Broadway Farm, Broad Oak
Botley
SOUTHAMPTON
SO30 2EU

The documents listed below were uploaded with this form:

Relates to Section: PART 2

Document Description: 6. A copy of the planning officer's report to committee, the delegated report, or any other relevant document/minutes.

File name: Legal Officer Memo_Report.pdf

File name: Email Nick Roe Springtime Cottage.pdf

File name: Comments Nick Roe Springtime Cottage.pdf

File name: Comments Alistair Rhodes Mallow Cottage.pdf

File name: Comments Botley Parish Council.pdf

File name: Comments Scott Meeks.pdf

File name: Internal Email.pdf

File name: Google Earth Pro - Timeline.pdf

Relates to Section: PART 2

Document Description: 10.e. Details of any other matters relevant to determining the appeal.

File name: EBC response appeal procedure (003).pdf

The documents listed below are to follow by post:

Relates to Section: PART 1

Document Description: 3.a. Details of any other matters (for example appeals, applications or orders) relating to this land, which are now before the Secretary of State.

Completed by Not Set

Date 06/11/2023 16:25:19

LPA Eastleigh Borough Council

EBC response to appellant's choice of appeal procedure ref. LDC/23/95111

The appellant has completed section G3 of the submitted appeal form requesting that the appeal be dealt with through a Public Inquiry (PI).

The appellant has set out their justification for the PI procedure. It is noted that the appellant's chief reason for a PI is that the submitted evidence in the form of 7 signed statutory declarations should be tested through formal examination in chief and through cross examination under oath.

The LPA considers the appeal can be dealt with through either an appeal hearing or written representations and sets out its justification below.

The appeal relates to a Certificate of Lawfulness of Existing Development. Under section 6.2 of the Government's Procedural Guide: Planning Appeals – England, the government sets out a set of criteria helping inform the most appropriate appeal procedure to suit the lodged appeal.

It is noted that the Planning Inspectorate makes the final decision in relation to the appeal procedure but at para 6.2.3 they will consider the views of the appellant and the LPA.

The section goes through each appeal procedure providing advice on the type of appeals that are likely to be considered appropriate for those particular cases. In relation to PIs there are 5 criteria to consider in reaching a decision on the most appropriate appeal procedure.

The LPA have provided a response to each of the criteria:

An inquiry would be appropriate if:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate (This does not preclude an appellant representing themselves as an advocate) **The LPA considers that the appellant has not provided a clearly explained need for the evidence to be tested through formal questioning by an advocate. In the appellant's submission they have compared the appeal to an enforcement appeal and assumed similar formal testing by an advocate would be required. The LPA considers the Inspector should be able to test the evidence through questioning the relevant parties to clarify matters. The assessment of an LDC is based upon a balance of probability, taking into consideration the evidence before the decision maker.**
- the issues are complex (for example where large amounts of highly technical data are likely to be provided in evidence) **The issues are not complex and do not require large amounts of technical data to be provided. The issues relate to the use of the land over time which can be adequately examined through written and photographic evidence.**
- the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing (where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure) **The application was not contentious with no public comments submitted. It is therefore unlikely any**

members of the public would attend the appeal meeting and it would not be in the public interest to hold a public appeal meeting on these grounds alone.

- in an enforcement appeal, evidence needs to be given on oath (for example where witnesses are giving factual evidence about how long the alleged unauthorised use has been taking place) As stated above this is not an enforcement appeal. Reasonable questioning from the Planning Inspector of the relevant parties should be sufficient to clarify matters and establish a conclusion.
- in an enforcement appeal, the alleged breach, or the requirements of the notice, are unusual and particularly contentious. The appeal does not relate to an unusual or particularly contentious development. The appeal relates to the assessment of land use over time and is straight forward in terms of assessment.

Based upon the above explanation the LPA respectfully requests that the appeal is determined through the appeal hearing procedure or written representations in accordance with Gov advice.

I and my wife and family have since 1994 lived at Mallow Cottage, Broad Oak, immediately opposite the field of which the site forms part, on the South side of Broad Oak.

We have a good view of the site from the South boundary of our garden which is on a similar level as the field, some 3 meters above the level of Broad Oak road. This view was until about 2 years ago, when a fence and hedge were erected on the southern boundary of the field, unobscured. This has enabled me to have a clear view of the site from my garden, something which I have regularly done since the development of the whole of the CCW Services site has accelerated, begun to expand onto strategic gap land and become considerably more intrusive since 2008.

I cannot comment on the applicant's contentions regarding the engineering works comprising the installation of membranes, hard core and grasscrete, other than to make two observations:

- a) examination of historic ariel images of the site before and after 2006 does not suggest any changes in the appearance of the surface; and
- b) examination of historic ariel images of the site since 2006 until it was tarmacked in 2020 do not reveal any visual difference between the surface of the site and the rest of the field.

With regard to the second part of the application, regarding the use of the site I can comment with confidence based on my observations over the last twenty years.

Between 2000 and earlier and 2018 or so use of the area of the field comprising the site was minimal and sporadic, during the 2000's the main use was the storage of stacks of pallets and occasional vehicle parking. The majority of the time the site was vacant, suggesting it was used as an overflow pallet storage facility.

More recently the site was used for vehicle parking but this was sporadic and not a regular occurrence, furthermore access to the site appeared to be obtained from the south end of the field meaning that bare grass land with no foundation had to be used to access the site, there was clear hedge/tree boundary running down the west side of the field dividing it from the 'developed' part of the overall site.

In 2020 I witnessed tarmac tankers and other surfacing vehicles entering Broadway Farm and, as explained in the applicant's planning statement the site surface was topped with impervious tramacadam. Since then there has been a major increase in the use of the site for parking lorries, trailers ambulances and other vehicles on a regular basis.

It became obvious to us that this appeared to be an unauthorised use in breach of planning legislation and in March 2021 we enquired of the Eastleigh Borough Council Planning Authority as to whether this was an authorised use. We were advised on 14th April 2021 that following an inspection it could be confirmed that there was a breach of planning and that the applicants had been given 21 days to submit a retrospective application for permission.

Having heard nothing further we made enquiries in August and September and were then advised that a retrospective application had been made on the 4th November 2022 – on 15th March 2022 we were advised that this had been withdrawn and that a further application was to be made by April 2022. Further enquiries in May revealed that the applicant was meeting with the Parish Council – further applications were made unsuccessfully.

Examination of historic ariel images of the site on Google Earth (see appendix) reveal the little or no use of the site on a regular basis before 2020.

In conclusion, whilst I cannot comment with any authority on when the grasscrete was installed, if it was installed as the application states, to facilitate parking on the site, my own observations and the evidence of Google earth images shows that there was no regular parking or vehicle storage on the site until 2020.

On this basis the applicants have clearly failed to demonstrate by adducing any independent evidence that the site has been used for continuous, or even regular, parking of motorised vehicles for any period longer than three years, during which period the use had already been established in breach of planning and which, on my understanding of the law, cannot therefore be used to count towards the time accrued in support of an application under s191 of the TCPA 1990.

In these circumstances I would respectfully request the Council to reject the application for a Lawful Development Certificate.

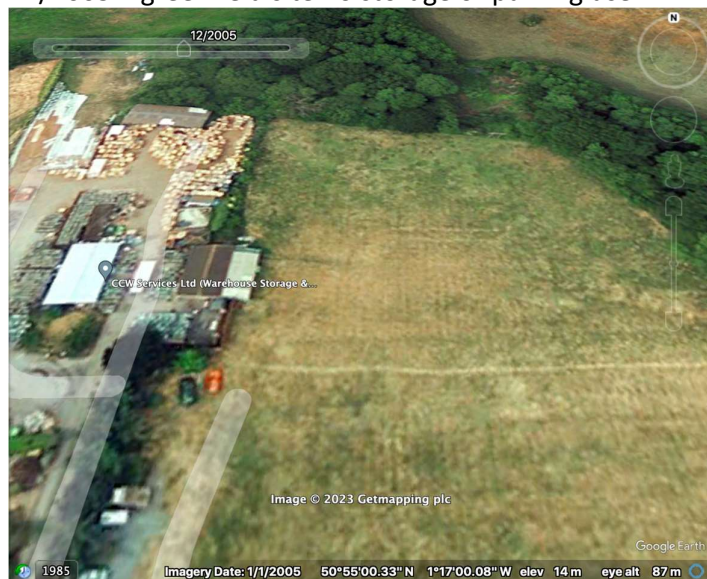
A. Rhodes

Appendix - Google Earth images

12/1999 - greenfield site no storage or parking use



12/2005 – greenfield site no storage or parking use



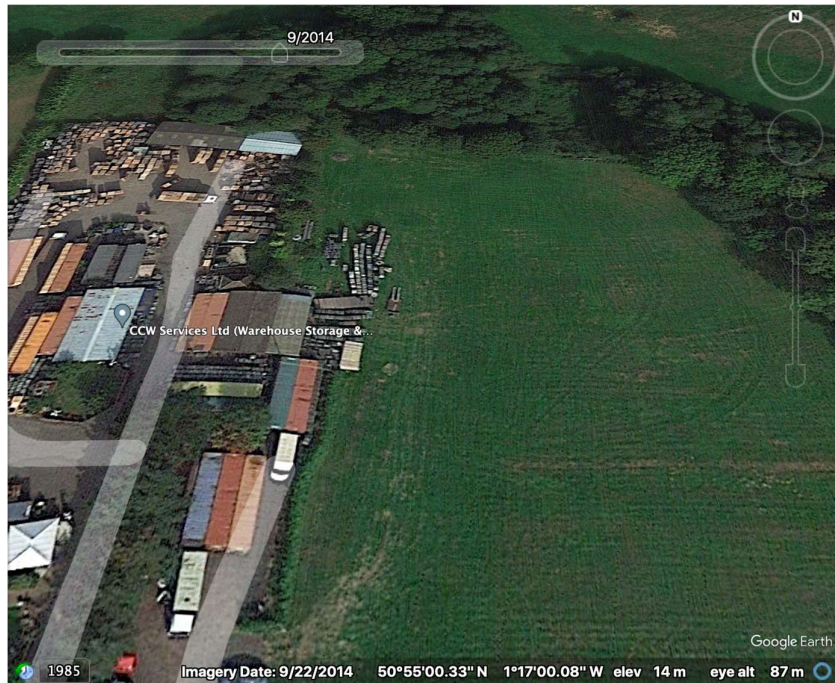
04/2007 - greenfield site no storage or parking use on the site, 4 cars parked on the south end of the field



04/2012 - greenfield site no storage or parking use



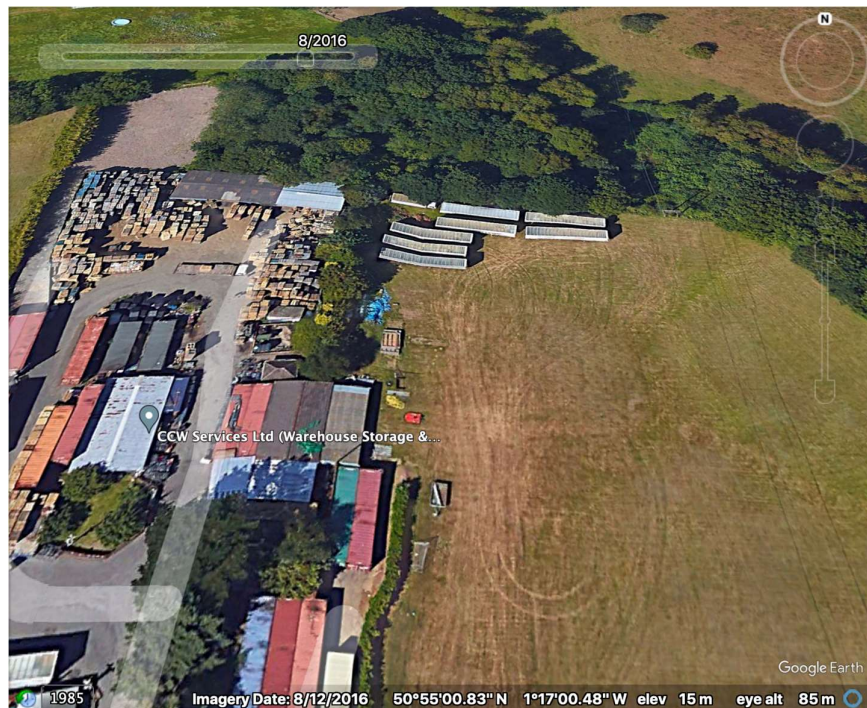
09/2014 – greenfield site – some ad hoc storage use to the immediate south of the site



04/2015 – greenfield site – small amount of items piled together to the south of the site



08/2016 – greenfield site showing 8 ? trailers parked on the grass – increased evidence of track marks leading to/from South end of field



09/2019 - greenfield site no storage or parking use – apparent movement of boundary formed by new hedge to the east



05/2020 - greenfield site showing two small car trailers parked on the site and an established hedge running down the west side of the site with no access to the site other than via the southern part of the field



12/2020 – tarmacked site



From: [Deputy Clerk](#)
To: [Dinnage, Claire](#)
Subject: Botley Parish Council - LDC/23/95111 Certificate of Lawfulness - Broadway Far, Broak Oak, Botley
Date: 05 July 2023 11:32:28

Members of the Planning & Highways Committee have considered this application and agreed the following comments:

LDC/23/95111 - Certificate of Lawfulness - Broadway Far, Broak Oak, Botley

Lawful Development Certificate for an existing use or operation: 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 in accordance with an Operator's Licence

Objection on the following grounds:

We have reviewed previous applications submitted from the same site at several times since 2017.

The committee would like it noted that we realise previous applications are not in relation to the area that is currently being considered, however members feel there is sufficient evidence contained within these previous applications to propose the 'grasscrete' has not been in place for several years as suggested.

In previous applications, detailed reports along with various photographs of the site, suggest there is no evidence of any 'grasscrete' having been laid in the area in question.

In the 2017 application F/17/81201 (which relates to a different area on site), a ground investigation report draws reference to various bore holes having been dug and there is a full report identifying the types of soil in the area.

In the current application, whilst a site map compiled by Boyle & Summers has been provided suggesting bore holes have been dug, the corresponding pictures of these bore holes could have been taken at any location around the site or otherwise. There is no evidence to place these holes into the context of the site.

Referring to the previous application F/17/81201, a detailed report was submitted giving the findings of the different depth measurements and findings, yet this is missing from the current request for a certificate of lawfulness.

Perhaps the full report showing the bore holes in context to the site and full findings of these bore holes, depth measurements, soil analysis and their supposed previous findings could be shared?

In the absence of detailed findings, committee members do not accept that existing 'grasscrete' was installed and therefore decline to accept this is a true reflection of what has happened on the site during the past four/ten years.

Debbie Case
Deputy Clerk

Tel: 01489 787181

E-mail: deputyclerk@botley-pc.gov.uk

Botley Parish Council
The Botley Centre
High Street Recreation Ground
Botley
Hampshire
SO30 2ES

Broadway Farm – Application LDC/23/95111

I have looked at the historical aerial photographs of the area available in Google maps, and that does not appear to support the claims that Grasscrete was installed in 2006. I have attached the photos in chronological order that they are available from Google maps. The date that they were taken (imagery date) is shown in the bottom right hand corner.

My conclusion from the photos and information in the previous planning applications:

- There is no evidence of Grasscrete in the area from the historical photos
- There is no evidence of regular continued use of the area for the storage of vehicles
- The test holes cut in the tarmac does not show Grasscrete
- It is stated in the earlier planning applications that this area was for the sole use of NHS vehicles, and that is contradicted in the supporting information to this application that says that the area was and is for the use of heavy vehicles, so the justification seems to be adapted to perceived best support for application requirements at the time.
- The planning application F/22/94108 proposed to remove this area of tarmac as it contravened environmental regulation as this tarmac area was too close to the adjacent wood which was a protected SINCE environment, and there should be a buffer of at least 20m. This planning application included a proposal to remove the tarmac area for that reason. I cannot see why this requirement would not still apply.
- This area of tarmac (and others) was installed without planning permission in late 2020, so less than 4 years ago. Even if it is accepted that the Grasscrete was already there (which I do not), the tarmac is a significant change to the character of the area, so should not be accepted. There have been several planning applications to expand the site and incorporate this area of tarmac, all of which have included a requirement to provide holding for the increased water run off. This application does not, and I can see no reason why that requirement would not still be applicable.

Please note the following from the aerial photos:

- There is no discernible difference between the grass appearance in the area in question and the rest of the field in the photos pre and post 2006 when it is stated that the Grasscrete was installed. I would expect that the weed control fabric and the hard core would suppress the grass, and that there would be a difference in appearance. There is a photo from April 2007, which is less than a year after the Grasscrete was stated to have been laid, but the whole field has a similar appearance. Grasscrete has a very distinctive cellular pattern with pockets of soil, and that should be clearly visible this soon after it was laid (see photos from Grasscrete website below).



- The photo from Aug 2016 clearly shows tyre tracks going from the entrance 1/3rd way up the field to the area in question. These tracks look the same in the field, and I would not expect to see them in an area with Grasscrete.
- I would draw your attention to the photo taken on 6th May 2020, which is shortly before the tarmac area was laid. Exhibit 4 states that the area needed to be repaired because *"the 14 year old grasscrete required repair and some maintenance given the heavy loads had damaged the grasscrete in places"*. This photo was taken just before the tarmac was installed, and not only is there no indication of a change of grass growth or Grasscrete which has a very distinctive cellular pattern with pockets of soil, but there is no evidence of the damage that apparently required the tarmac.
- I note that only one of the photos has a few trailers, but there are no other vehicles in any of the photos before December 2020 when the tarmac area was added. This suggests occasional use at best.
- There was a hedge / trees/ buildings separating the working site from the area in question, with the access much lower down the site. The photos from 2019 and May 2020 (after much of the expansion of the site with new building work) show that a new hedge was planted which separated the working site from the field. If the area in question was in regular use, then I would expect there to be an access to it. It is only when the new tarmac area has been installed in late 2020 that the access from the top of the working site is made. This suggests that the area has only come into regular use since the new tarmac was laid.
- In Exhibit 4 of the application it was stated that before the Grasscrete was installed there were problems with vehicles / trailers having problems in soft and muddy ground. I would expect that the worst area for this would be at the entrance to / from the area, as this gets the most use. However, the photos show that there was no direct access to the area in question because hedges / trees separated the working area from the field, until the new tarmac was laid in late 2020. If the Grasscrete area prevented problems with mud, then you would put an access directly to it, but that was not done, so they would still have problems with mud / soft ground at the access point without Grasscrete in wet weather, so the area would be of no benefit.

I have read the application document and have the following further comments:

- Run off from hard surface. Note that in the previous planning applications F/21/91859, F/22/93195 & F/22/94108 included this area, and in those it was considered necessary to provide a system to hold the run off water generated by this area. I note that this is not part of this application, and have concerns that the water run off is likely to continue to create problems with the known issue of flooding of the main road adjacent to the site.
- The planning application F/22/94108 included an objection from the council on environmental grounds that this tarmac area was too close to the adjacent wood which was a protected SINC environment, and there should be a buffer of at least 20m. The Planning Statement in that application included the statement:

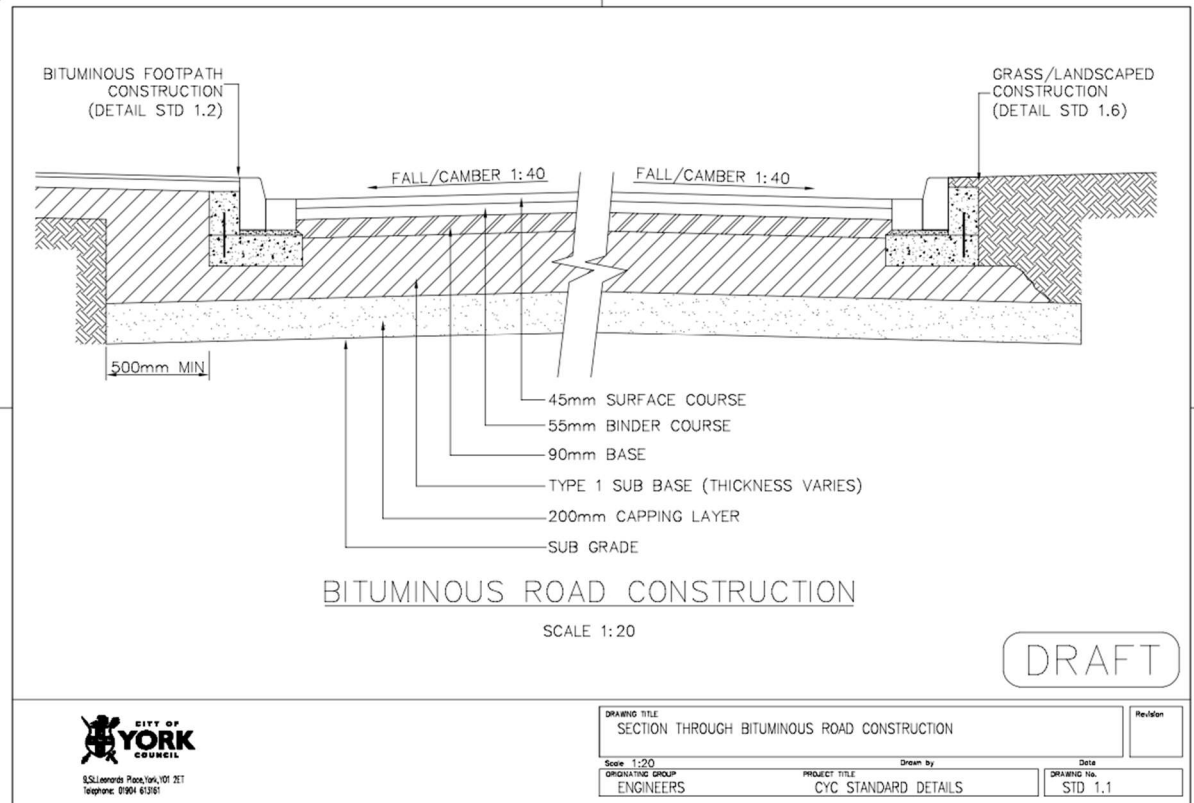
"The main issue outstanding from the latest application arose from the Council's Ecologist in which it stated that the absence of a 20m buffer from the SINC was an absolute requirement. The resultant technical work required a review of the parking apron to remove it from the SINC area to the west, creating an opportunity to remove the existing apron and replace it with an ecological enhancement area to complement the SINC."

I do not understand why this no longer applies, as this area of tarmac has been laid without any planning approval.

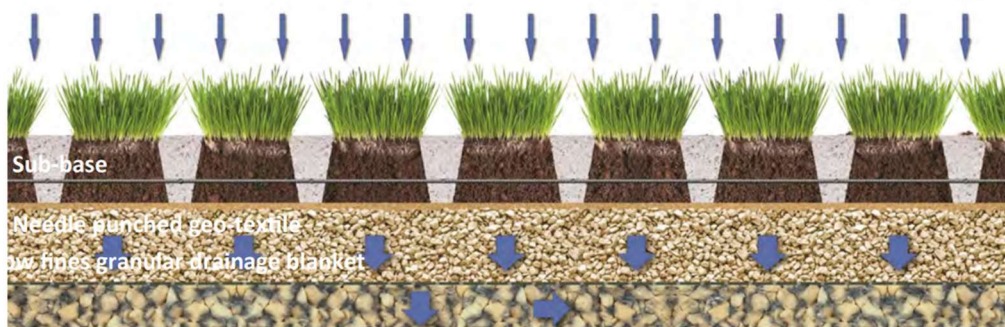
- In application F/21/91859 it was stated that this area was solely for the storage of NHS ambulances at a concessionary rate. There is no mention of that in this application, and it states to the contrary that this area was put in place to ease the storage and parking of large trailers.
- I note from document "230424 F Louisa Doe Statement of Declaration - V1.pdf" that the vehicle licence has changed dramatically from 7.5 tonne trucks to 44 tonne trucks. Justification for the increase is given in that adverts have been placed in the local paper and

no objections have been made. It would require everyone to have a subscription to the Daily Echo, and to avidly read the classified advert section to search for possible notices that might affect your area. This seems a flimsy basis on which to state that there are no objections to both an increase in the volume and size/weight of heavy goods traffic.

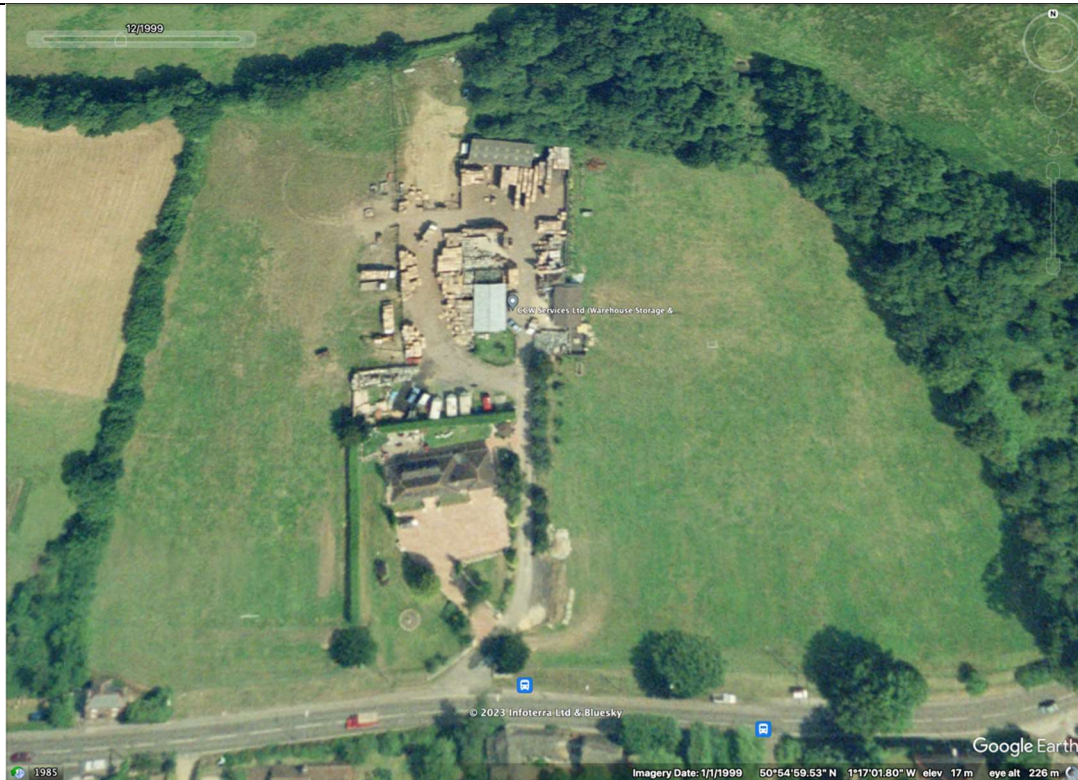
- The change from 7.5 tonne to 44 tonne trucks began in Aug 2016, prior to which they only had a licence for 6 vehicles, so it is not clear why they had the need for continuous use of the area in question for the parking of heavy vehicles from 2006 as claimed.
- The 4 test holes made do not support the claim that Grasscrete was installed in 2006. The photos are not very clear, but what it looks like is a good quality system that would be used to create a tarmac parking area over a grass field. To lay tarmac you build up a system of layers to give good foundations – see typical construction below:



- What is shown in the photos looks like a section through this type of construction, with the stones embedded in the asphalt cut through with a disk cutter. I can see no evidence of the concrete Grasscrete in the holes. Each photo shows a continuous layer of thick material, below which is the compacted hardcore. Grasscrete has a distinctive cellular structure with, a metal reinforcing mesh, and soil pockets, none of which is visible in the photos of the excavations. The photo below is taken from the Grasscrete website, and shows a section through the Grasscrete.



- It is clear that the photos in the application look nothing like this. There is no soil, and there are no gaps.



Aerial view taken on 1st Jan 1999.

The area in question is in the top right hand corner, and the whole field has a similar appearance, suggesting that it is just grass, with no grasscrete.

Note that there are hedges and trees separating the field from the working site, with the access from the bottom near the main road.



Aerial view taken on 1st Jan 2005.

The area in question is in the top right hand corner, and the whole field has a similar appearance, suggesting that it is just grass, with no grasscrete.

Note that there are hedges and trees separating the field from the working site, with the access from the bottom near the main road.



Aerial view taken on 21st Apr 2007.

This is after it is stated that the grasscrete has been installed (in 2006)

The area in question is in the top right hand corner, and the whole field has a similar appearance, suggesting that it is just grass, with no grasscrete. Grasscrete has a very distinctive cellular pattern with pockets of soil, and that should be clearly visible this soon after it was laid.

Note that there still are hedges and trees separating the field from the working site, with the access from the bottom near the main road.



Aerial view taken on 2nd Feb 2012.

This is after it is stated that the grasscrete has been installed (in 2006).

The area in question is in the top right hand corner, and the whole field has a similar appearance, suggesting that it is just grass, with no grasscrete. I would expect grasscrete with the weed control barrier, and hardcore stated to have been installed to make a significant reduction in grass growth, particularly as other areas of the photo indicate that it was dry, but there is no change in the grass, which if anything is growing more strongly than in other areas of the field. Note that there are still hedges and trees separating the field from the working site, with the access from the bottom near the main road.



Aerial view taken on 22nd Sept 2014.

This is after it is stated that the grasscrete has been installed (in 2006).

The area in question is in the top right hand corner, and the whole field has a similar appearance, suggesting that it is just grass, with no grasscrete. I would expect grasscrete with the weed control barrier, and hardcore stated to have been installed to make a significant reduction in grass growth, particularly as other areas of the photo indicate that it was dry, but there is no change in the grass, which if anything is growing more strongly than in other areas of the field. Note that there are still hedges and trees separating the field from the top of the working site, with the access from around 1/3rd of the way up from the bottom near the main road.



Aerial view taken on 22nd Apr 2015.

This is after it is stated that the grasscrete has been installed (in 2006).

The area in question is in the top right hand corner, and the whole field has a similar appearance, suggesting that it is just grass, with no grasscrete. I would expect grasscrete with the weed control barrier, and hardcore stated to have been installed to make a significant reduction in grass growth, particularly as other areas of the photo indicate that it was dry, but there is no change in the grass, which is showing similar signs of wear to other areas of the field. Note that there are still hedges and trees separating the field from the top of the working site, with the access from around 1/3rd of the way up from the bottom near the main road.



Aerial view taken on 12th Aug 2016.

This is 10 years after it is stated that the grasscrete has been installed (in 2006).

The area in question is in the top right hand corner, and the whole field has a similar appearance, suggesting that it is just grass, with no grasscrete. I would expect grasscrete with the weed control barrier, and hardcore stated to have been installed to make a significant reduction in grass growth. There are clear tracks from the access to the field about 1/3rd of the way up the field. These tracks are clearly visible in the area which was stated to have been covered with grasscrete, which is a strong indication that the whole field is grass soil of a similar consistency. Grasscrete has a very distinctive cellular pattern with pockets of soil, and that should be clearly visible, and should not show tyre tracks.



Aerial view taken on 15th Sept 2019.

This is years after it is stated that the grasscrete has been installed (in 2006).

The area in question is in the top right hand corner, and the whole field has a similar appearance, suggesting that it is just grass, with no grasscrete. I would expect grasscrete with the weed control barrier, and hardcore stated to have been installed to make a significant reduction in grass growth. There is no indication of a change of grass growth or Grasscrete which has a very distinctive cellular pattern with pockets of soil. Note that there are still hedges and trees separating the field from the top of the working site, with the access from around 1/3rd of the way up from the bottom near the main road.

The photo also shows the start of the major building program on the site.



Aerial view taken on 6th May 2020.

This is years after it is stated that the grasscrete has been installed (in 2006).

The area in question is in the top right hand corner, and the whole field has a similar appearance, suggesting that it is just grass, with no grasscrete. Exhibit 4 states that the area needed to be repaired because *“the 14 year old grasscrete required repair and some maintenance given the heavy loads had damaged the grasscrete in places”*. This photo was taken just before the tarmac was installed, and not only is there no indication of a change of grass growth or Grasscrete which has a very distinctive cellular pattern with pockets of soil, but there is no evidence of the damage that apparently required the tarmac. The photo also shows that a new hedge has been planted so there is no access to the area in question from the top of the site, and the previous access 1/3rd of the way up the field has been closed off. This suggests that the area was not in regular use.

The photo also shows the continued major building program on the site.

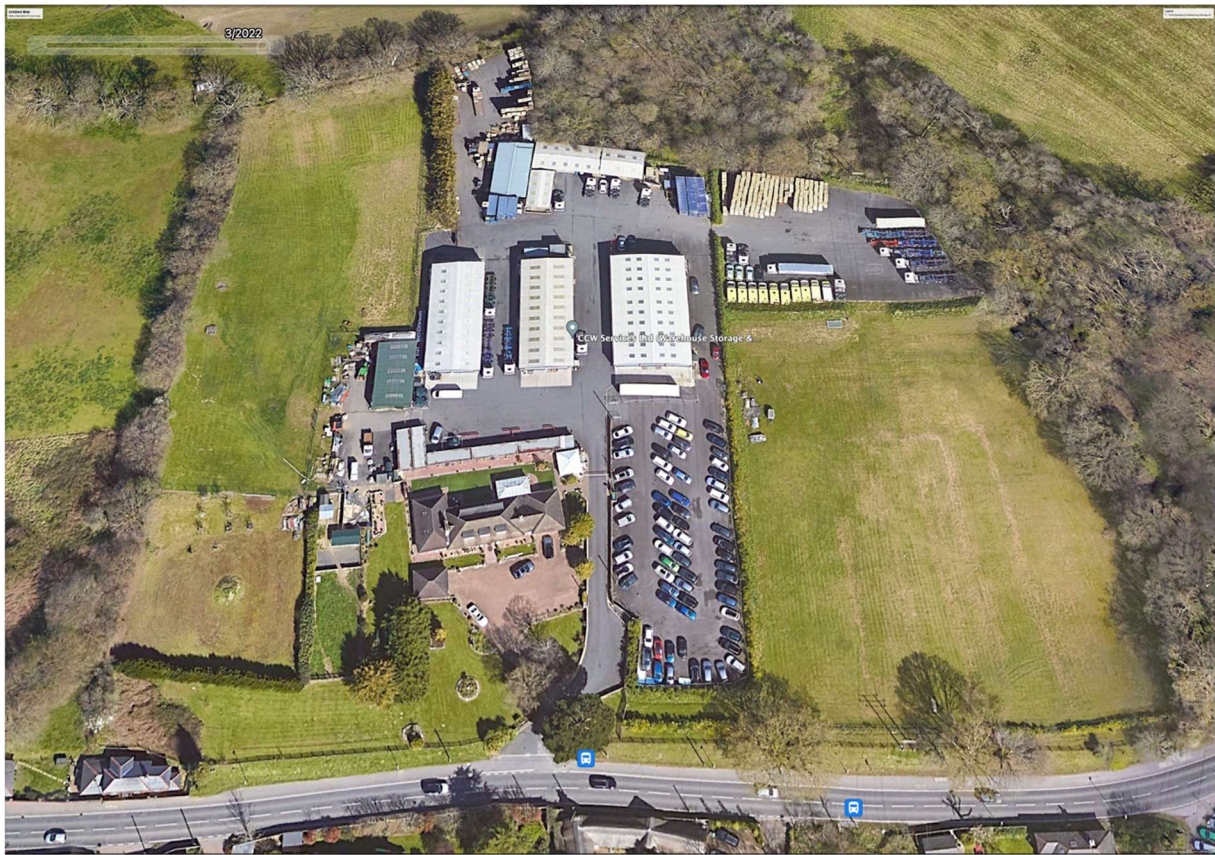


Aerial view taken on 24th Dec 2020.

The area in question is in the top right hand corner, and the tarmac looks very freshly laid.

The photo also shows an opening has been made in the new hedge to provide access to the area in question from the top of the site, that was not previously there. This suggests that the area is only now coming into in regular use.

The photo also shows the continued major building program on the site, with extra large buildings and additional non porous tarmac.



Aerial view taken on 21st Mar 2022.

The area in question is in the top right hand corner, with vehicles on the area.

The photo also shows an opening has been made in the new hedge to provide access to the area in question from the top of the site, that was not previously there. This suggests that the area is only now coming into in regular use.

The photo also shows the continued major building program on the site, with extra large buildings and additional non porous tarmac over areas that were not previously covered.

From: [Scott Meeks](#)
To: [Dinnage, Claire](#)
Subject: LDC/23/95111 - Broadway Farm
Date: 29 June 2023 10:03:27

Dear Claire,

These works were investigated by John Saunders EBC Ref: 00154293 refers (June/July 2020) and were described as temporary due to COVID-19 delays and a further follow up required, unsure of the outcome.

Kind Regards

Scott A Meeks

Google Earth Pro - Timeline for Broadway Farm (LDC/23/95111)

Application for:

- (a) Use of the land for storage of heavy vehicles and trailers from 2006 (10+ years)
- (b) Building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete' in 2006 (4+ years)

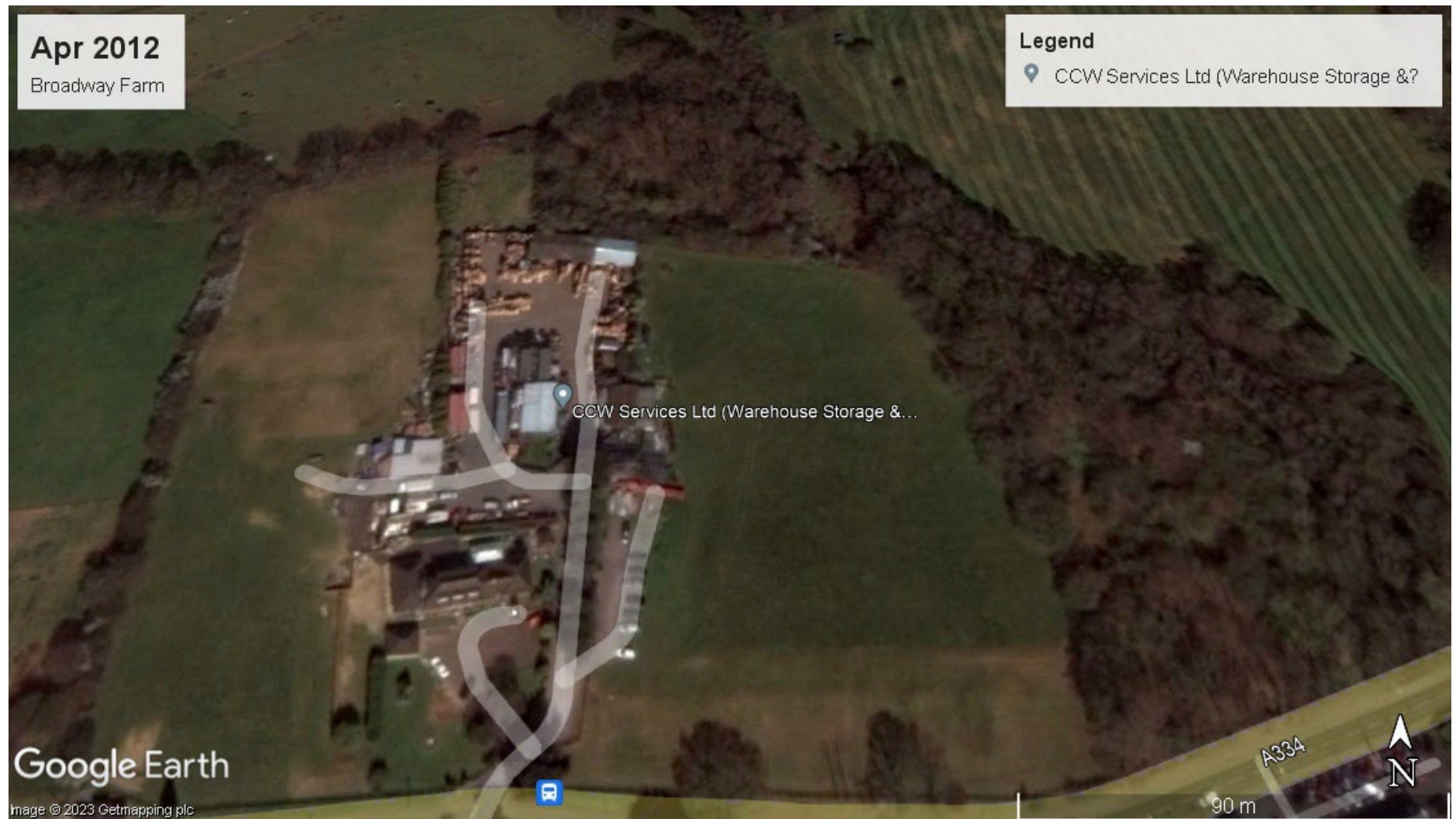
December 2005 (pre-installation of the sub-base hardcore and use of the land commencing)



April 2007 (post-installation and 1 year of alleged use)



April 2012



September 2014



April 2015



August 2016



September 2019



May 2020



December 2020



March 2022



General Info	
Planning Ref:	LDC/23/95111
Address:	Broadway Farm, Broad Oak, Botley, Hampshire SO30 2EU
CLEUD/CLPUD:	CLEUD
Determination Date:	1 August 2023
Existing Use:	The application form states an existing use and existing building works. A building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete' as illustrated on Plans 1 and 2 attached, together with the parking of motorised vehicles to include heavy vehicles and trailers in accordance with an Operators Licence dated 28 th June 2010 and subsequent renewals which remains ongoing and evidenced in affidavits.
When was the use or activity begun, or the building works substantially completed?	01.04.2006
Planning History	Z/17963/000/00 – Erection of chalet bungalow. Refuse – 11/11/1977. Z/17963/00A/00 – Erection of detached bungalow and integral garage. Permit – 23/03/1978. Z/17963/001/00 – Broadway Farm – Use of rear yard for pallet repair and storage with retention of relocated portable office and shed. Refuse – 25/07/1997. Allowed on Appeal – 30/09/1998. F/07/61818 – Broadway Farm - Single storey side extension with attached garage. Refuse – 30/01/2008. F/21/91859 – Broadway Farm - Construction of a warehouse for storage and distribution (Class B8) with ancillary works including parking area, together with retention of tarmac hardstanding for open vehicle storage. Withdrawn by Applicant – 06/01/2022. F/22/93195 – Broadway Farm - Construction of a Warehouse for storage and distribution (Class B8) together with a parking apron for first response vehicles and ancillary works. Withdrawn by Applicant – 28/07/2022. F/22/94108 – Broadway Farm - Proposed construction of a Warehouse for storage and distribution (Class B8) together with a relocation of existing parking apron for first response vehicles and ancillary works. Refuse – 01/02/2023. Further applications identified within the blue outline (land within the applicant's ownership) which may be useful to you: Q/05/53189 – Broadway Farm – Enquiry: Conversion of integral garage to habitable room. A Planning Application Is Not Required – 03/02/2005. F/07/59932 – Broadway Farm - Construction of detached double garage, annexe with first floor accommodation. Refuse – 04/07/2007. F/08/64049 – Broadway Farm - Single storey side extension to be used as annexe and detached double garage. Permit – 19/12/2008. LDC/17/80680 – Broadway Farm - Lawful Development Certificate for proposed construction of a new material handling/storage building (Use Class B8). CLOPUD Certificate Issued – 14/02/2018. F/17/81201 – Broadway Farm - Retention of 2No. product handling/storage buildings and alterations and extensions to existing pallet storage building in association with the continued use of the site for storage and distribution (Use Class B8). Permit – 13/03/2019.
Planning Opinion:	The site is not located within a Conservation Area, the site is not listed and there are no Article 4 Directions on the land. Within the local plan the area is designated as Countryside and Settlement Gap. This lawful development application relates to the use of the land (outlined in red) that the engineering operations took place more than 4 years ago (completed in 2006) and the parking apron has been used continuously for

	the parking of vehicles for more than 10 years. Evidence has been submitted in the form of affidavits, photographic information from trial holes dug, operator's licence information and public notices. 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. 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. In addition, if Legal are satisfied that the use for the parking of vehicles has been in continuous use for a period exceeding 10 years according to the evidence provided then this would be immune from enforcement action under the time limitations of the Planning and Compensation Act 1991, Section 171B which states: (3) 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. I've attached a current aerial image of the site which does clearly show the concreted area and the parked vehicles, and I believe the Enforcement Team could provide historic aerial images which may be helpful for comparison. Planning enforcement have also had cases on this site in the past and could provide you with more information.
Case Law	
Comments	
Neighbours	Nick Roe – Springtime Cottage, Broad Oak, Botley SEE PDF CONSULTATION RESPONSE (summary below) - Refers to Google Earth Pro images and previous planning applications to conclude: a. No evidence of grasscrete from the historical photos b. No evidence of regular continued use of the area for the storage of vehicles c. Test cut holes do not show grasscrete d. Contradicting statements (an earlier planning application states that the area was for the sole use of NHS vehicles whereas this application says it is for the use of heavy vehicles) e. Planning application F/22/94108 proposed to remove the area of tarmac as it contravenes environmental regulations being too close to the adjacent SINC woodland without a buffer of 20m. f. The area of tarmac was installed in late 2020, so less than 4 years ago. Even if it is accepted that the grasscrete was already there, the tarmac is a significant change to the character of the area. Scott Meeks These works were investigated by John Saunders EBC Ref: 00154293 (June/July 2020) and were described as temporary due to COVID-19 delays and a further follow up required, unsure of the outcome.

	Alistair Rhodes SEE CONSULTATION RESPONSE (summary below) - Cannot comment on the building operation aspect of the application other than to refer to Google Earth images of the site. - Between 2000 and 2018 use of the area was minimal and sporadic (the main use was the storage of stacks of pallets and occasional overflow parking). The site was vacant the majority of the time. - Witnessed tarmac tankers and other surfacing vehicles entering the site in 2020. - No regular parking or vehicle storage on the site until 2020.
Botley Parish Council	LDC/23/95111 - Certificate of Lawfulness - Broadway Farm, Broad Oak, Botley Lawful Development Certificate for an existing use or operation: 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 in accordance with an Operator's Licence Objection on the following grounds: We have reviewed previous applications submitted from the same site at several times since 2017. The committee would like it noted that we realise previous applications are not in relation to the area that is currently being considered, however members feel there is sufficient evidence contained within these previous applications to propose the 'grasscrete' has not been in place for several years as suggested. In previous applications, detailed reports along with various photographs of the site, suggest there is no evidence of any 'grasscrete' having been laid in the area in question. In the 2017 application F/17/81201 (which relates to a different area on site), a ground investigation report draws reference to various bore holes having been dug and there is a full report identifying the types of soil in the area. In the current application, whilst a site map compiled by Boyle & Summers has been provided suggesting bore holes have been dug, the corresponding pictures of these bore holes could have been taken at any location around the site or otherwise. There is no evidence to place these holes into the context of the site. Referring to the previous application F/17/81201, a detailed report was submitted giving the findings of the different depth measurements and findings, yet this is missing from the current request for a certificate of lawfulness. Perhaps the full report showing the bore holes in context to the site and full findings of these bore holes, depth measurements, soil analysis and their supposed previous findings could be shared? In the absence of detailed findings, committee members do not accept that existing 'grasscrete' was installed and therefore decline to accept this is a true reflection of what has happened on the site during the past four/ten years.
Cllr Kyrle	No comment
Cllr Kinloch	No comment
Elections	N/A
Environmental Health	No records relating to the deposit of hardcore on site. Records show a

	historic FOI request, a dog barking complaint, and a number of consultations from planning.
Council Tax	N/A
Enforcement	ENF/2023/169 Received 17/04/23 Officer: John Saunders Site review of potential breach of planning permissions (Hours of operation, buildings & hardstanding) Current investigation ENF/2022/14 Received 10/01/22 Officer: John Saunders Unauthorised change of use of field from agricultural to storage following withdrawal of F/21/91859 Closed: 16/06/22 Reason: As requested a retrospective planning application has been submitted under reference F/22/93195. ENF/2021/58 Received 05/02/21 Officer: John Saunders Unauthorised change of use of field from agricultural to storage. Closed: 10/11/21 Reason: As requested a retrospective application has been received under reference F/21/91859 to retain the unauthorised development. ENF/2020/224 Received 17/06/20 Officer: John Saunders Alleged unauthorised barn Closed: 16/07/20 Reason: The land owner is constructing a permitted storage building on site, however this has been delayed due to the outbreak of covid-19. The new outbuilding is temporary and will be removed once the new structure is completed. As this sits adjacent to the new development and will be removed once complete we will not be taking any further enforcement action. A follow up inspection will be completed to check that the temporary outbuilding has been removed. E/17/16597 Received 25/02/17 Officer: Phil Wiseman Unauthorised barn extension (concealed) Closed: 26/11/18 Reason: The issue of the alterations to the barn are being dealt with under planning application F/17/81201 so no enforcement action required. F/17/81201 - Planning permission granted on 13 March 2019. E/15/15782 Received 28/04/15 Officer: Phil Wiseman Unauthorised advertisement in a residential area Closed: 04/05/15 Reason: The unauthorised advertisement has been removed from site as requested.

	E/15/15747 Received 21/03/15 Officer: Phil Wiseman Unauthorised change of use - car park on countryside land Closed: 30/03/15 Reason: The land where cars are parked has been used for such activity for a number of years and is immune from any enforcement action.	
Supporting Evidence		
Chronology of Evidence	Document	Date
	Location Plan and Block Plan (CCW-BSL-ZZ-XX-DR-A-1010-DF) – Exhibit 1	N/A
	Existing Location and Block Plan – Sample Locations (CCW-BSL-ZZ-XX-DR-A-1011-DF) – Exhibits 2 and 6	N/A
	Exhibit 3 – blank	N/A
	Tony Heathfield (director of G&M Technical Services) statutory declaration – Exhibit 4	Confirms engineering works in 2006 of laying Terram membrane and a covering of type one crushed concrete before laying a cellular reinforced concrete grasscrete. Witnessed vehicles/trailers parked on the land since 2006 on visits to the site
	Letter from G&M (dated 28 th February 2023) confirming 4 trial holes were dug to analyse the ground make up – Exhibit 5	24 th February 2023
	Sample Location Plan - Exhibit 6 –	N/A
	Trial Hole 1 showing Tarmacadam with rubble beneath – Exhibit 7	N/A
	Trial Hole 2 evidencing the layers below the Tarmacadam to a depth of 35cm and the grasscrete concrete layer immediately beneath the Tarmacadam with the sub-base below, down to the Terram membrane at the bottom – Exhibit 8	N/A
	Trial Hole 2 to a depth of 40cm – Exhibit 9	
	Trial Hole 4 to a depth of 30cm with compacted material down to the Terram membrane with the concrete grasscrete towards the surface – Exhibit 10	
	Trial Hole 3 evidences the same ground make up – Exhibit 11	
	Operators Licence for Maurice Doe (2005) – Exhibit 12A	Licence for Mr Doe of Broadway Farm March 2005
	Operators Licence for CCW Services Ltd (2010) – Exhibit 12	Licence for CCW of Broadway Farm June 2010
	Public Notice for CCW Services applying for a licence to use Broadway Farm as an operating centre for 6 goods vehicles and 2 trailers (dated	November 2009

	2009) – Exhibit 13	
	Public Notice for CCW Services applying to change an existing licence – Exhibit 14	June 2016 September 2018 May and September 2019 February 2020
	Statutory Declaration of Maurice Doe (Director of CCW) – confirming that both fields identified on Exhibits 1 and 2 were used for parking of lorries and trailers well before 2000. The areas identified were laid with cellular grass reinforced concrete in 2006. The land illustrated on Plan 1 has been used for the parking of vehicles and trailers since before 2006, and is used by the NHS since 2019 – Exhibit 15	Land used for parking of vehicles and trailers since before 2000 Grasscrete installed in 2006
	Statutory Declaration of Louisa Doe (Company Secretary and Chief Executive of CCW) – in 2006 recalls the land identified in Exhibit 1 being laid with cellular grass reinforced concrete to provide parking spaces for haulage vehicles and trailers. Up to 40 trailers were parked on the land in 2006. There has been continuous parking of vehicles and trailers on the site since 2006. In 2020, the grasscrete area was capped with Tarmacadam to stop grass and soil being transferred onto access roads – Exhibit 16	Grasscrete installed in 2006 Up to 40 trailers parked on the site in 2006 Tarmacadam installed in 2020
	Statutory Declaration of Gary Jewell (worked for CCW for 15 years) – between 2012 and 2018 he parked lorries and trailers on the land identified in Exhibits 1 and 2. Recalls up to 40 trailers parked on the grasscrete land. Grasscrete was repaired by laying tarmac on top in 2020. The land has been used continuously for the parking of vehicles and trailers (predominantly at night) since at least 2012 – Exhibit 17	Use of the land for the parking of vehicles and trailers since 2012
	Statutory Declaration of Gavin Boxall (worked for CCW for 19 years) – Gavin would drive vehicles onto the grass area identified in Exhibits 1 and 2 19 years ago. In 2006, Jon and Gavin moved all the trailers and vehicles off the grassed area to prepare the ground for the concrete grasscrete. The land has been used for the parking of vehicles and trailers since 2006 – Exhibit 18	Use of the land for the parking of vehicles and trailers since 2006 Grasscrete installation in 2006
	Statutory Declaration of Jon Moore (worked for CCW since 1992) – recalls that since 2006 he regularly parked 40 foot trailers and vehicles on the grasscrete area when it was grass. Recalls grasscrete being installed in 2006. Throughout employment at CCW, he has driven vehicles with and without	Use of the land for parking of heavy vehicles and trailers since 2006 Grasscrete installation in 2006 Tarmac installation in 2020

	trailers onto the grasscrete land. In 2020 the grasscrete area was topped with tarmac – Exhibit 19	
	Exhibit 20 - blank	
	Exhibit 21 – blank	
	Statutory Declaration of Mike Walker (worked at CCW since 2012) states he has been parking and shunting lorries and trailers on the grasscrete area since he started with CCW in 2012. Advises that the majority of vehicles are out on the road during the day and are temporarily parked on the grasscrete area at night. The grasscrete was repaired with a layer of tarmac in 2020. The grasscrete area has been used constantly over his time at CCW – Exhibit 22	Use of the land to park vehicles and trailers since 2012 Tarmac installation in 2020
	Operators Licences from 2010-2020 – Exhibits 23-28	No indication as to where the vehicles were parked/stored – Broadway Farm is a large site
Evidence		
Supporting		Against
Existing use – Parking of motorised vehicles to include heavy vehicles and trailers from 2006 (10 years +)		
SD – Maurice Doe		Consultation response of Alistair Rhodes (Mallow Cottage)
SD – Louisa Doe		Google Earth Pro images don't evidence continued use of the site
SD – Gary Jewell		
SD – Gavin Boxall		
SD – Jon Moore		
SD – Mike Walker		
Existing building works (development) – Building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete' in 2006 (4 years +)		
SD – Anthony Heathfield		Google Earth Pro (consultation responses from Alistair Rhodes and Nicholas Roe)
SD – Gavin Boxall		
SD – Jon Moore		
SD – Mike Walker		
SD – Maurice Doe		
SD – Louisa Doe		

From: [Dinnage, Claire](#)
To: [Moorhouse, Nicki](#); [Parker, Nicholas](#)
Cc: [Osmond, Gary](#); [Saunders, John](#)
Subject: LDC/23/95111 - Broadway Farm
Date: 17 August 2023 15:00:06

Hi all,

Further to our meeting to discuss the CLEUD for Broadway Farm, I have reviewed the application in its entirety and set out below my recommendation for each aspect of the application. To recap, the application is for a 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.

1. Building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete'

It is alleged that the engineering operation, consisting of the excavation of the land and placing of a layer of Terram membrane topped by 40-50cm of hardcore and concrete 'grasscrete' was undertaken in 2006. We determined that, although there may be evidence that the concrete 'grasscrete' was installed in 2006 (statutory declarations from various people, photographs of trial holes evidencing the Terram membrane etc.), the subsequent laying of tarmac on top of the 'grasscrete' constitutes new engineering works which require planning permission. Therefore, I recommend that this aspect of the application is refused.

2. Parking of motorised vehicles to include heavy vehicles and trailers

It is stated that the application site has been used continuously for the parking of motorised vehicles, including heavy haulage vehicles and trailers, for more than 10 years (since before 2006). In support of this, the applicant has provided a number of statutory declarations from the owners and employees of the business. There are neighbour consultation responses which refute the use, stating that between 2000 and 2018 the use of the area was minimal and sporadic (as opposed to continuous), and that the site was vacant for the majority of time.

We concluded 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. While the evidence available does show some use of the land by vehicles (tire tracks from around 2014) and some storage (containers in 2016), we would expect to see more 'wear and tear' on the land if it was being used continuously for the parking of vehicles and trailers. It is accepted that the site is currently being used for the storage of vehicles and trailers, and that this use has intensified over a number of years, but it has not been demonstrated that the land has been used **continuously** in this manner for a period in excess of 10 years.

If you are all happy with the above, I will draft a refusal notice and accompanying letter advising as to the reasons why we are refusing the application. Please feel free to comment/make changes on the above.

Thank you,

Claire

Claire Dinnage

Solicitor and Deputy Data Protection Officer

Governance and Support - Legal Services

Ext.: 8498

APP/04 – AERIAL PHOTOGRAPHS OF THE SITE

Google Earth Pro - Timeline for Broadway Farm (LDC/23/95111)

Application for:

- (a) Use of the land for storage of heavy vehicles and trailers from 2006 (10+ years)
- (b) Building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete' in 2006 (4+ years)

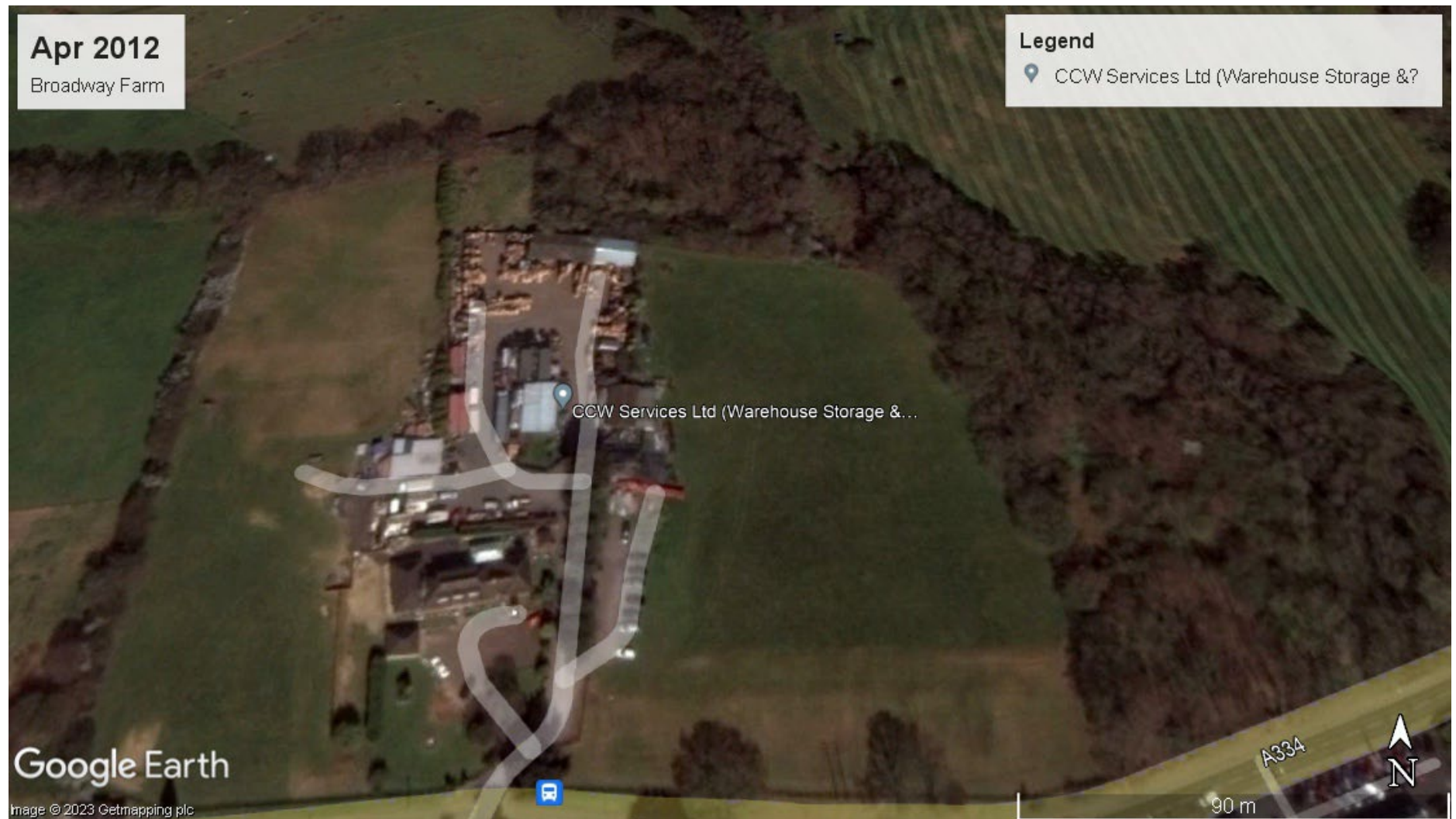
December 2005 (pre-installation of the sub-base hardcore and use of the land commencing)



April 2007 (post-installation and 1 year of alleged use)



April 2012



September 2014



April 2015



August 2016



September 2019



May 2020



December 2020



March 2022



PLANNING APPLICATION REPORT

DESCRIPTION/ ADDRESS	- Single storey side extension with attached garage Broadway Farm Broad Oak Botley Southampton SO30 2EU
-------------------------	--

SITE VISIT DATE: 17 th December 2007
ARE PLANS ACCURATE? Yes
HAVE ALL NECESSARY NEIGHBOURS BEEN CONSULTED? Yes

THE SITE AND ITS SURROUNDINGS

DESCRIPTION OF APPLICATION	The proposal is for a pitched roofed side extension with a front garage
SITE AREA	3.15 hectares
RESIDENTIAL DEVELOPMENT DENSITY (NET)	N/A
TOPOGRAPHY	Slopes upwards from south to north
TREES	Row of deciduous boundary trees to west elevation of the existing dwelling
BOUNDARY TREATMENT	Boundary fence
SITE CHARACTERISTICS	Broadway Farm is an agricultural holding which lies within the Hedge End/Botley Strategic Gap defined in the development plan. The farm was used for strawberry cultivation, including a 'pick your own' operation, which has ceased due to infestation and the land is now laid to grass surrounded by trees and hedges. The existing bungalow is subject to an agricultural occupancy condition. The land to the north, east and west of the site is open pasture divided by hedges and trees with some arable fields while there is established ribbon development between the settlements immediately to the south on the other side of the main road.
CHARACTER OF LOCALITY	Countryside

RELEVANT PLANNING HISTORY

REFERENCE	DESCRIPTION	DECISION
17963/A F/07/59932	Erection of detached bungalow and integral garage Construction of detached double garage, annexe with first floor accommodation	Permitted March 1978 subject to agricultural occupancy condition Refused 4/7/07

REPRESENTATIONS RECEIVED

SOURCE	SUMMARY OF CONTENT
No third party letters of objection received	

REPRESENTATIONS RECEIVED

SOURCE	SUMMARY OF CONTENT

CONSULTATION RESPONSES

CONSULTEE	SUMMARY OF RESPONSE
Botley Parish Council Environmental Health	No objections No objections subject to conditions

POLICY CONTEXT

DESIGNATION APPLICABLE TO SITE
Within Countryside/Local Gap

DEVELOPMENT PLAN POLICIES

Eastleigh Borough Local Plan Review (2001-2011): 9.CO, 59.BE, 3.CO Supplementary Planning Guidance : Residential Amenity in the Borough of Eastleigh

PLANNING POLICY GUIDANCE / STATEMENT

PPS 1 - Promotes good quality design -

POLICY COMMENTARY

The above policies combine to form the criteria against which this application will be assessed with particular regard to: • The character and appearance of the area • Residential amenities

COMMENT ON CONSULTATION RESPONSES

Comments noted

COMMENT ON REPRESENTATIONS RECEIVED

No objections

PLANNING OBLIGATION/CONSIDERATIONS

No contributions required

ASSESSMENT OF PROPOSAL

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:- <i>"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."</i> The proposal is considered to conflict with relevant Development Plan policies in that:

ASSESSMENT OF PROPOSAL

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

The proposed side extension by reason of poor design, is not considered to be a sympathetic addition to the existing hipped roofed and designed bungalow as it would be pitched and stepped forward from the front building line. The projection of the pitched roof extension from the front building line would introduce an incongruous pitched roof feature into a simplistic but attractively designed and symmetrical hipped roofed bungalow which is situated in a very visible and prominent position from Broad Oak Road.

In addition, the proposal is considered to be contrary to Policy 9.CO of the Local Plan in that:

The development would be likely to facilitate the subdivision of the property into more than one dwelling, particularly given the recent refusal for an annexe to the existing building. The proposed extension would certainly be large enough to sub-divide into a separate dwelling despite it being attached to the existing dwelling and so is contrary to policy.

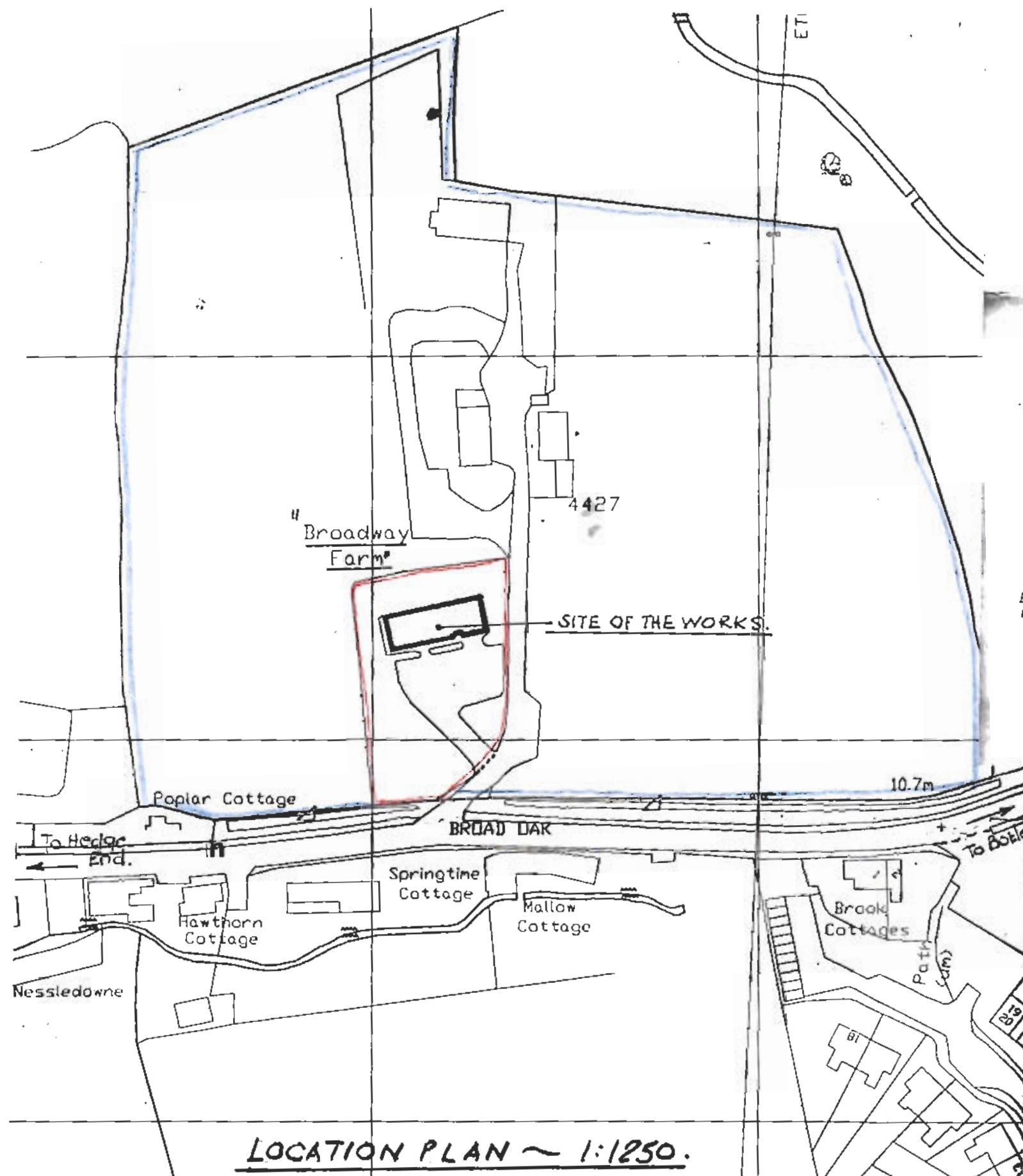
The proposed design of the extension would materially worsen the impact of the dwelling on its immediate surroundings and the countryside in general. Furthermore, the dwelling is subject to an agricultural occupancy condition.

OTHER MATERIAL CONSIDERATIONS

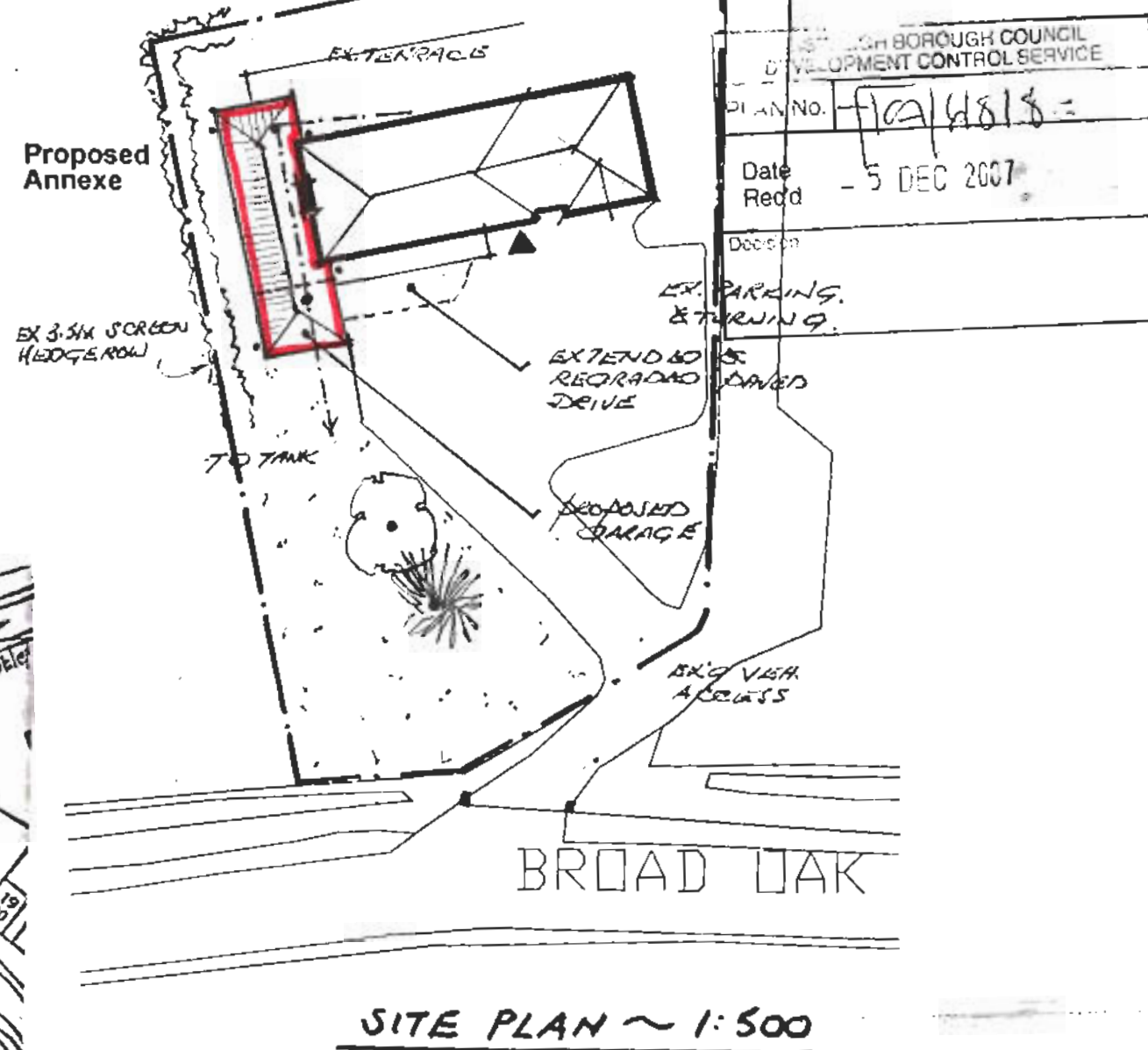
It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

It is considered that the proposed development would be out of character with the area and contrary to Policy 9.CO of the Local Plan.



Broadway Farm



SOUTH BOROUGH COUNCIL DEVELOPMENT CONTROL SERVICE	
PLAN NO.	F102/4818
Date Recd	5 DEC 2007
Decision	

**APP/06 – PLANNING ENFORCEMENT SITE VISIT PHOTOGRAPHS (EN/15/15747 &
ENF/2021/58)**

EN/15/15747 – SITE VISIT PHOTOS FROM PLANNING ENFORCEMENT



ENF/2021/58 – SITE VISIT PHOTOGRAPHS FROM PLANNING ENFORCEMENT









APP/07 – LEGAL MEMORANDUM

General Info	
Planning Ref:	LDC/23/95111
Address:	Broadway Farm, Broad Oak, Botley, Hampshire SO30 2EU
CLEUD/CLPUD:	CLEUD
Determination Date:	1 August 2023
Existing Use:	The application form states an existing use and existing building works. A building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete' as illustrated on Plans 1 and 2 attached, together with the parking of motorised vehicles to include heavy vehicles and trailers in accordance with an Operators Licence dated 28 th June 2010 and subsequent renewals which remains ongoing and evidenced in affidavits.
When was the use or activity begun, or the building works substantially completed?	01.04.2006
Planning History	Z/17963/000/00 – Erection of chalet bungalow. Refuse – 11/11/1977. Z/17963/00A/00 – Erection of detached bungalow and integral garage. Permit – 23/03/1978. Z/17963/001/00 – Broadway Farm – Use of rear yard for pallet repair and storage with retention of relocated portable office and shed. Refuse – 25/07/1997. Allowed on Appeal – 30/09/1998. F/07/61818 – Broadway Farm - Single storey side extension with attached garage. Refuse – 30/01/2008. F/21/91859 – Broadway Farm - Construction of a warehouse for storage and distribution (Class B8) with ancillary works including parking area, together with retention of tarmac hardstanding for open vehicle storage. Withdrawn by Applicant – 06/01/2022. F/22/93195 – Broadway Farm - Construction of a Warehouse for storage and distribution (Class B8) together with a parking apron for first response vehicles and ancillary works. Withdrawn by Applicant – 28/07/2022. F/22/94108 – Broadway Farm - Proposed construction of a Warehouse for storage and distribution (Class B8) together with a relocation of existing parking apron for first response vehicles and ancillary works. Refuse – 01/02/2023. Further applications identified within the blue outline (land within the applicant's ownership) which may be useful to you: Q/05/53189 – Broadway Farm – Enquiry: Conversion of integral garage to habitable room. A Planning Application Is Not Required – 03/02/2005. F/07/59932 – Broadway Farm - Construction of detached double garage, annexe with first floor accommodation. Refuse – 04/07/2007. F/08/64049 – Broadway Farm - Single storey side extension to be used as annexe and detached double garage. Permit – 19/12/2008. LDC/17/80680 – Broadway Farm - Lawful Development Certificate for proposed construction of a new material handling/storage building (Use Class B8). CLOPUD Certificate Issued – 14/02/2018. F/17/81201 – Broadway Farm - Retention of 2No. product handling/storage buildings and alterations and extensions to existing pallet storage building in association with the continued use of the site for storage and distribution (Use Class B8). Permit – 13/03/2019.
Planning Opinion:	The site is not located within a Conservation Area, the site is not listed and there are no Article 4 Directions on the land. Within the local plan the area is designated as Countryside and Settlement Gap. This lawful development application relates to the use of the land (outlined in red) that the engineering operations took place more than 4 years ago (completed in 2006) and the parking apron has been used continuously for

	the parking of vehicles for more than 10 years. Evidence has been submitted in the form of affidavits, photographic information from trial holes dug, operator's licence information and public notices. 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. 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. In addition, if Legal are satisfied that the use for the parking of vehicles has been in continuous use for a period exceeding 10 years according to the evidence provided then this would be immune from enforcement action under the time limitations of the Planning and Compensation Act 1991, Section 171B which states: (3) 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. I've attached a current aerial image of the site which does clearly show the concreted area and the parked vehicles, and I believe the Enforcement Team could provide historic aerial images which may be helpful for comparison. Planning enforcement have also had cases on this site in the past and could provide you with more information.
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Neighbours	Nick Roe – Springtime Cottage, Broad Oak, Botley SEE PDF CONSULTATION RESPONSE (summary below) - Refers to Google Earth Pro images and previous planning applications to conclude: a. No evidence of grasscrete from the historical photos b. No evidence of regular continued use of the area for the storage of vehicles c. Test cut holes do not show grasscrete d. Contradicting statements (an earlier planning application states that the area was for the sole use of NHS vehicles whereas this application says it is for the use of heavy vehicles) e. Planning application F/22/94108 proposed to remove the area of tarmac as it contravenes environmental regulations being too close to the adjacent SINC woodland without a buffer of 20m. f. The area of tarmac was installed in late 2020, so less than 4 years ago. Even if it is accepted that the grasscrete was already there, the tarmac is a significant change to the character of the area. Scott Meeks These works were investigated by John Saunders EBC Ref: 00154293 (June/July 2020) and were described as temporary due to COVID-19 delays and a further follow up required, unsure of the outcome.

	Alistair Rhodes SEE CONSULTATION RESPONSE (summary below) - Cannot comment on the building operation aspect of the application other than to refer to Google Earth images of the site. - Between 2000 and 2018 use of the area was minimal and sporadic (the main use was the storage of stacks of pallets and occasional overflow parking). The site was vacant the majority of the time. - Witnessed tarmac tankers and other surfacing vehicles entering the site in 2020. - No regular parking or vehicle storage on the site until 2020.
Botley Parish Council	LDC/23/95111 - Certificate of Lawfulness - Broadway Farm, Broad Oak, Botley Lawful Development Certificate for an existing use or operation: 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 in accordance with an Operator's Licence Objection on the following grounds: We have reviewed previous applications submitted from the same site at several times since 2017. The committee would like it noted that we realise previous applications are not in relation to the area that is currently being considered, however members feel there is sufficient evidence contained within these previous applications to propose the 'grasscrete' has not been in place for several years as suggested. In previous applications, detailed reports along with various photographs of the site, suggest there is no evidence of any 'grasscrete' having been laid in the area in question. In the 2017 application F/17/81201 (which relates to a different area on site), a ground investigation report draws reference to various bore holes having been dug and there is a full report identifying the types of soil in the area. In the current application, whilst a site map compiled by Boyle & Summers has been provided suggesting bore holes have been dug, the corresponding pictures of these bore holes could have been taken at any location around the site or otherwise. There is no evidence to place these holes into the context of the site. Referring to the previous application F/17/81201, a detailed report was submitted giving the findings of the different depth measurements and findings, yet this is missing from the current request for a certificate of lawfulness. Perhaps the full report showing the bore holes in context to the site and full findings of these bore holes, depth measurements, soil analysis and their supposed previous findings could be shared? In the absence of detailed findings, committee members do not accept that existing 'grasscrete' was installed and therefore decline to accept this is a true reflection of what has happened on the site during the past four/ten years.
Cllr Kyrle	No comment
Cllr Kinloch	No comment
Elections	N/A
Environmental Health	No records relating to the deposit of hardcore on site. Records show a

	historic FOI request, a dog barking complaint, and a number of consultations from planning.
Council Tax	N/A
Enforcement	ENF/2023/169 Received 17/04/23 Officer: John Saunders Site review of potential breach of planning permissions (Hours of operation, buildings & hardstanding) Current investigation ENF/2022/14 Received 10/01/22 Officer: John Saunders Unauthorised change of use of field from agricultural to storage following withdrawal of F/21/91859 Closed: 16/06/22 Reason: As requested a retrospective planning application has been submitted under reference F/22/93195. ENF/2021/58 Received 05/02/21 Officer: John Saunders Unauthorised change of use of field from agricultural to storage. Closed: 10/11/21 Reason: As requested a retrospective application has been received under reference F/21/91859 to retain the unauthorised development. ENF/2020/224 Received 17/06/20 Officer: John Saunders Alleged unauthorised barn Closed: 16/07/20 Reason: The land owner is constructing a permitted storage building on site, however this has been delayed due to the outbreak of covid-19. The new outbuilding is temporary and will be removed once the new structure is completed. As this sits adjacent to the new development and will be removed once complete we will not be taking any further enforcement action. A follow up inspection will be completed to check that the temporary outbuilding has been removed. E/17/16597 Received 25/02/17 Officer: Phil Wiseman Unauthorised barn extension (concealed) Closed: 26/11/18 Reason: The issue of the alterations to the barn are being dealt with under planning application F/17/81201 so no enforcement action required. F/17/81201 - Planning permission granted on 13 March 2019. E/15/15782 Received 28/04/15 Officer: Phil Wiseman Unauthorised advertisement in a residential area Closed: 04/05/15 Reason: The unauthorised advertisement has been removed from site as requested.

	E/15/15747 Received 21/03/15 Officer: Phil Wiseman Unauthorised change of use - car park on countryside land Closed: 30/03/15 Reason: The land where cars are parked has been used for such activity for a number of years and is immune from any enforcement action.	
Supporting Evidence		
Chronology of Evidence	Document	Date
	Location Plan and Block Plan (CCW-BSL-ZZ-XX-DR-A-1010-DF) – Exhibit 1	N/A
	Existing Location and Block Plan – Sample Locations (CCW-BSL-ZZ-XX-DR-A-1011-DF) – Exhibits 2 and 6	N/A
	Exhibit 3 – blank	N/A
	Tony Heathfield (director of G&M Technical Services) statutory declaration – Exhibit 4	Confirms engineering works in 2006 of laying Terram membrane and a covering of type one crushed concrete before laying a cellular reinforced concrete grasscrete. Witnessed vehicles/trailers parked on the land since 2006 on visits to the site
	Letter from G&M (dated 28 th February 2023) confirming 4 trial holes were dug to analyse the ground make up – Exhibit 5	24 th February 2023
	Sample Location Plan - Exhibit 6 –	N/A
	Trial Hole 1 showing Tarmacadam with rubble beneath – Exhibit 7	N/A
	Trial Hole 2 evidencing the layers below the Tarmacadam to a depth of 35cm and the grasscrete concrete layer immediately beneath the Tarmacadam with the sub-base below, down to the Terram membrane at the bottom – Exhibit 8	N/A
	Trial Hole 2 to a depth of 40cm – Exhibit 9	
	Trial Hole 4 to a depth of 30cm with compacted material down to the Terram membrane with the concrete grasscrete towards the surface – Exhibit 10	
	Trial Hole 3 evidences the same ground make up – Exhibit 11	
	Operators Licence for Maurice Doe (2005) – Exhibit 12A	Licence for Mr Doe of Broadway Farm March 2005
	Operators Licence for CCW Services Ltd (2010) – Exhibit 12	Licence for CCW of Broadway Farm June 2010
	Public Notice for CCW Services applying for a licence to use Broadway Farm as an operating centre for 6 goods vehicles and 2 trailers (dated	November 2009

	2009) – Exhibit 13	
	Public Notice for CCW Services applying to change an existing licence – Exhibit 14	June 2016 September 2018 May and September 2019 February 2020
	Statutory Declaration of Maurice Doe (Director of CCW) – confirming that both fields identified on Exhibits 1 and 2 were used for parking of lorries and trailers well before 2000. The areas identified were laid with cellular grass reinforced concrete in 2006. The land illustrated on Plan 1 has been used for the parking of vehicles and trailers since before 2006, and is used by the NHS since 2019 – Exhibit 15	Land used for parking of vehicles and trailers since before 2000 Grasscrete installed in 2006
	Statutory Declaration of Louisa Doe (Company Secretary and Chief Executive of CCW) – in 2006 recalls the land identified in Exhibit 1 being laid with cellular grass reinforced concrete to provide parking spaces for haulage vehicles and trailers. Up to 40 trailers were parked on the land in 2006. There has been continuous parking of vehicles and trailers on the site since 2006. In 2020, the grasscrete area was capped with Tarmacadam to stop grass and soil being transferred onto access roads – Exhibit 16	Grasscrete installed in 2006 Up to 40 trailers parked on the site in 2006 Tarmacadam installed in 2020
	Statutory Declaration of Gary Jewell (worked for CCW for 15 years) – between 2012 and 2018 he parked lorries and trailers on the land identified in Exhibits 1 and 2. Recalls up to 40 trailers parked on the grasscrete land. Grasscrete was repaired by laying tarmac on top in 2020. The land has been used continuously for the parking of vehicles and trailers (predominantly at night) since at least 2012 – Exhibit 17	Use of the land for the parking of vehicles and trailers since 2012
	Statutory Declaration of Gavin Boxall (worked for CCW for 19 years) – Gavin would drive vehicles onto the grass area identified in Exhibits 1 and 2 19 years ago. In 2006, Jon and Gavin moved all the trailers and vehicles off the grassed area to prepare the ground for the concrete grasscrete. The land has been used for the parking of vehicles and trailers since 2006 – Exhibit 18	Use of the land for the parking of vehicles and trailers since 2006 Grasscrete installation in 2006
	Statutory Declaration of Jon Moore (worked for CCW since 1992) – recalls that since 2006 he regularly parked 40 foot trailers and vehicles on the grasscrete area when it was grass. Recalls grasscrete being installed in 2006. Throughout employment at CCW, he has driven vehicles with and without	Use of the land for parking of heavy vehicles and trailers since 2006 Grasscrete installation in 2006 Tarmac installation in 2020

	trailers onto the grasscrete land. In 2020 the grasscrete area was topped with tarmac – Exhibit 19	
	Exhibit 20 - blank	
	Exhibit 21 – blank	
	Statutory Declaration of Mike Walker (worked at CCW since 2012) states he has been parking and shunting lorries and trailers on the grasscrete area since he started with CCW in 2012. Advises that the majority of vehicles are out on the road during the day and are temporarily parked on the grasscrete area at night. The grasscrete was repaired with a layer of tarmac in 2020. The grasscrete area has been used constantly over his time at CCW – Exhibit 22	Use of the land to park vehicles and trailers since 2012 Tarmac installation in 2020
	Operators Licences from 2010-2020 – Exhibits 23-28	No indication as to where the vehicles were parked/stored – Broadway Farm is a large site
Evidence		
Supporting		Against
Existing use – Parking of motorised vehicles to include heavy vehicles and trailers from 2006 (10 years +)		
SD – Maurice Doe		Consultation response of Alistair Rhodes (Mallow Cottage)
SD – Louisa Doe		Google Earth Pro images don't evidence continued use of the site
SD – Gary Jewell		
SD – Gavin Boxall		
SD – Jon Moore		
SD – Mike Walker		
Existing building works (development) – Building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete' in 2006 (4 years +)		
SD – Anthony Heathfield		Google Earth Pro (consultation responses from Alistair Rhodes and Nicholas Roe)
SD – Gavin Boxall		
SD – Jon Moore		
SD – Mike Walker		
SD – Maurice Doe		
SD – Louisa Doe		