

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)**

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

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

at

Broadway Farm,  
Broad Oak,  
Botley  
SO30 2EU

LPA Reference: LDC/23/95111  
Appeal Ref: **APP/W1715/X/23/3331326**

**COMMENTS ON EASTLEIGH BOROUGH COUNCIL'S STATEMENT OF CASE**

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

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## **1 Introduction**

- 1.1 This document has been produced to provide comment on a) the Council's statement of case and b) comments from interested parties; though it is noted, having checked the Council's website, that there appear to have been no comments submitted by interested parties, the date for which has expired. The absence of any comment on any specific issue raised by either the Council or interested parties should not be taken to constitute agreement.
- 1.2 There appears to be no dispute between the parties regarding the location, site description and history of the site. The substance of the application is common ground as is the reason for the refusal of the Lawful Development Certificate.
- 1.3 The focus of the dispute is the rationale for the decision to refuse the application, it being the Appellant's position that the relevant legal test has been satisfied.

## 2 Comments on the Council's Case

2.1 The Council's Case is based upon two factors, that:

- a) there is *"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"* and
- b) 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."*

2.2 It is noted at paragraph 3.8 of the Council's case that there has been an administrative error and, given it is agreed there has been no prejudice, the proposed amendment to refer to "section 191" is agreed.

2.3 Paragraph 4.3 and the reference to *Thurrock* is noted; however, the Council has not acknowledged that it is not necessary for there to have been no break at all in the use in order for it to be deemed sufficiently continuous (see paragraph 28 of the Judgment). It is noted that during the period in 2006 to 2023 the Council did not consider it expedient to take any enforcement action in respect of the Grasscrete that was laid at the appeal site. The key point borne from *Thurrock* is whether or not the Council could've taken enforcement action at any point during the relevant 10-year period in respect of the use of the land. The Appellant's position is that plainly they could have chosen to.

### **Operational development**

- 2.4 The Council accepts that it has no contrary evidence that the grasscrete was laid in 2006 but suggests that the evidence is not unambiguous. The Appellant has now submitted eleven Statutory Declarations from persons long associated with the appeal site and, to varying degrees, can recall how and when the Grasscrete was installed, how the land was used for the parking of vehicles and trailers and the reasons for the repair, to include the tarmac surface. It was clearly laid in 2006.
- 2.5 The Council suggests, at paragraphs 4.9 to 4.11, that the laying of the tarmac constituted new engineering works commencing a new planning chapter; that the tarmacadam surface was part and parcel of an intensified use of the 'Upper Field' (which we presume means the appeal site); and that in previous years the use was de minimis or alternatively an informal sporadic use which did not trigger a change of use. Though such paragraphs refer to the engineering works, they also include comments as to the nature of the use.
- 2.6 The laying of tarmacadam has already been explained as a result of wear and tear on the Grasscrete from its use in the period 2006-2019 (paragraph 4.17, SoC). The Grasscrete was laid for the specific purpose of assisting in the use of the appeal site for the parking of motorised vehicles to include heavy vehicles and trailers, a use that continued throughout. The tarmacadam repair did not fundamentally change the character and appearance of the appeal site. The land continued to be used for the same purpose of parking vehicles to include heavy haulage lorries and trailers.

- 2.7 It is unclear to which years the Council refers when it references '*in previous years*', and to the extent that any of those form part of the relevant period. Further, it is unclear if they really mean that there was no change of use at all in this period or if they mean that there was no material change; particularly as it seems that on their own case they accept that there was at least some use of the appeal site for the parking of motorised vehicles to include heavy vehicles and trailers.
- 2.8 Though the Council states that the tarmacadam surface was part and parcel of an intensified use of the appeal site for the same purpose (the parking of motorised vehicles to include heavy vehicles and trailers) which did constitute a material change of use, it is assumed that they are not in fact running an intensification of use argument i.e. that there has been a material change in use where an existing use has become intensified. For that to be the case, the use of the appeal site for the parking of motorised vehicles to include heavy vehicles and trailers would first have to be established in order for there to then be an intensification in that use, and the Council's position appears to be that the alleged previous de minimis or sporadic use did not trigger even a change in use let alone any material change.
- 2.9 It is assumed that the Council's case is that it is only after the installation of the tarmacadam surface that there was a material change of use on site for the parking of motorised vehicles to include heavy vehicles and trailers though it is not clear exactly on what basis that is suggested other than the engineering works which are not of themselves a 'use'. There can of course have been

sufficient use of the appeal site to materially change its use irrespective of the laying of tarmacadam, which is the Appellant's position.

2.10 For the avoidance of any doubt, the Appellant's case is that there has been a material change of use of the appeal site for the parking of motorised vehicles to include heavy vehicles and trailers which has endured for more than 10 years as set out in the Statement of Case, its Addendum and the accompanying evidence. That use was not de minimis or an informal sporadic use during the relevant period. Though there have been more vehicles/trailers on site at different times within that period, there has not been an intensification in use triggering a further material change in use such that it could be suggested that the change is not now immune from enforcement action.

2.11 Paragraphs 4.10 and 4.11 of the Council's Statement of Case are noted. To be clear, it is denied that the laying of tarmacadam constituted a new chapter in the planning history of the appeal site.

2.12 Jennings Motors Ltd v Secretary of State for the Environment [1982] QB 541 was considered in the context of a new single storey building erected on site. The Court held (paragraph D-E, page 551) that a " *new chapter in the planning history*" may take place when there is "*a radical change in the nature of the buildings on the site or the uses to which they are put—so radical that it can be looked upon as a fresh start altogether in the character of the site*".

2.13 To support their theory that this is so, the Council, at paragraph 4.10 of their Statement of Case, refers to an alleged radical change "*in the character of what*

*was a verdant open undivided field*". However, this ignores that on the Appellant's case there had been use of the appeal site for the parking of motorised vehicles to include heavy vehicles and trailers, with the installation of Grasscrete to assist in this, from 2006 – 2019 before the tarmacadam was laid. The change of laying the tarmacadam cannot rationally be suggested to be so radical that it can be looked upon as a "*fresh start altogether*" in the Court's words in *Jennings* such as to re-start the clock.

- 2.14 At paragraph 4.12 the Council refers to the Appellant's reference to the GDPO, Schedule 2, Part 7, Class J suggesting its reference is unclear. On behalf of the Appellant, this reference to the GDPO is simply suggesting that though it is accepted that the conditions in Class J are not currently met, as we consider the parking apron to be within the curtilage of industrial and warehouse premises, it would be possible for a hard surface such as that present on site to be located where it currently is were such conditions to be complied with such that the presence of hardstanding in and of itself should not be considered a radical change.

### **Material Change of use**

- 2.15 Regarding paragraphs 4.18 to 4.19 of the Council's Statement of Case and alleged intensification, the Appellant repeats that already set out above.
- 2.16 To the extent that the Council is intending to run an intensification argument that there has been a material change in use as a result of intensification of a use, not that (as the Appellant thinks is intended) there was no material change

in the lawful use of the site until there were more vehicles/trailers parked/stored on the appeal site than initially, the Appellant states the following:

i) It is clear that the appeal site has been used for the parking of motorised vehicles to include heavy vehicles and trailers for in excess of 10 years; certainly from at least the installation of Grasscrete in 2006.

ii) That was plainly a material change in the lawful use of the appeal site prior to the commencement of that use.

iii) Irrespective of whether or not there may have been changes in the number of vehicles engaged in the use of the appeal site for the parking of motorised vehicles to include heavy vehicles and trailers within the relevant period, such use would have been within the same use class for the entirety of the relevant period.

iv) Section 55(2) of the Town and Country Planning Act 1990 is clear that one of the operations or uses of land that shall not be taken for the purposes of the Act to involve the development of the land is *“(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class”*.

v) Though there may in some circumstances be a material change in use where an existing use has intensified per Brooks and Burton Ltd v Secretary of State for the Environment [1977] 1 W.L.R. 1294, the Encyclopaedia of Planning Law and Practice suggests (paragraph P55.53) that there has been no decision where intensification alone has been held to amount to a material change of use.

vi) Hertfordshire CC v Secretary of State for Communities and Local Government [2012] EWHC 277 (Admin), upheld [2012] EWCA Civ 1473, sets out when a material change of use by intensification can be judged to have taken place.

vii) The Appellant's position is that no such material change has occurred beyond the material change that occurred around 2006.

### **List of documents**

2.17 It should be noted that under reference App/06, the last three photographs dated 14<sup>th</sup> April 2021 are not of the appeal site.

GB December 2023