

Planning statement to support a Certificate of Lawfulness for Breach of condition 10 of planning application F/10/67282 and condition 10 of planning application F/10/66422 at Land opposite MOT centre, Seddul Bahr, Arlington Lane, SO30 3HP

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KM Planning

On behalf of JR Properties LTD

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1.0 Introduction:

1.1 This planning statement supports a Section 191 application for a Certificate of Lawfulness for the use of the Land opposite MOT centre, Seddul Bahr in breach of conditions 10 of planning applications F/10/67272 and F/10/66422.

1.2 The condition attached to both consents reads as follows:

(10) Within two months of the date of this permission the gravel parking area, fencing and all other structures shall be removed from the area hatched green on the plans hereby approved (area currently used for parking and two compounds). Within this same time frame details for the reinstatement of this area to its former undeveloped state shall be submitted to, and approved in writing, by the local planning authority. The approved details shall be implemented within 6 months of the date of this permission. Reason: To protect the character and appearance of this countryside location.



Extract from site location plan for applications F/10/67272 and F/10/66422

2.0 **Planning case:**

2.1 Applications for Lawful Development Certificates (LDC's) made under Section 191 of the Town and Country Planning Act 1990 (as amended) (the Act) are different from normal planning applications in that they enable anyone to apply to the Local Planning Authority (LPA) for a decision as to whether a specified existing use, operation, building or failure to comply with a planning condition or limitation, which has already been carried out on the land, is lawful for planning purposes.

2.2 Section 191(1) of the Act states that:

“If any person wishes to ascertain whether;

(a) any existing use of buildings or other land is lawful:

(b) any operations which have been carried out in, on, over or under land are lawful;
or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful.

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.” (emphasis added).

2.3 Section 191(3) of the Act states that:

“For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if –

(a) the time for taking enforcement action in respect of the failure has then expired;
and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.”

2.4 Section 171B(3) states:

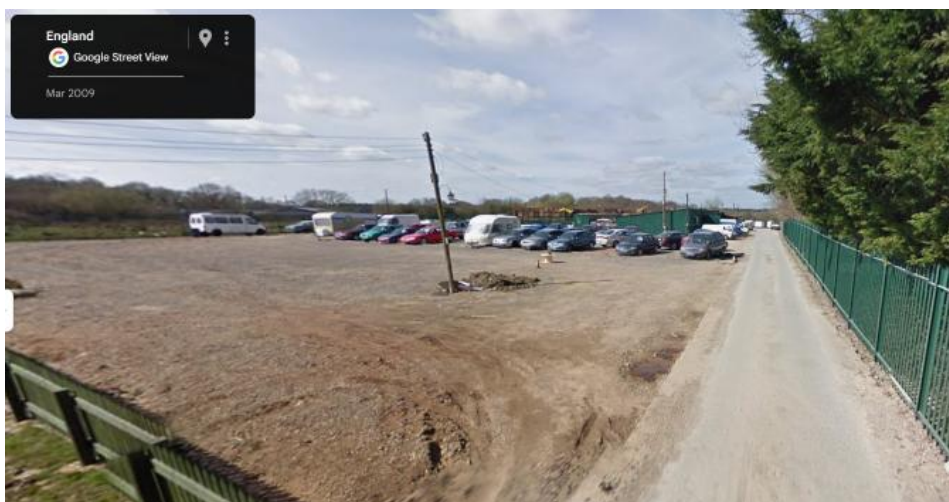
“In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.”

2.5 Therefore under the Section 191 of the 1990 Act, if the applicant can demonstrate that there has been no compliance with conditions 10 of applications F/10/67282 and F/10/66422 in that the gravel parking areas, fencing and other structures were not removed, no details were submitted to the Authority and the land was not reinstated to its former undeveloped state, and that this non compliance with the conditions has continued for a period in excess of 10 years prior to the submission of the application without interruption, the LPA is obliged to issue a certificate confirming that the breach is lawful.

2.6 It is understood that the onus of proof in an LDC application is on the applicant. The relevant test of the evidence is the 'balance of probability'. The applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. As the issue of a certificate depends entirely on factual evidence about the planning history and planning status of a building or land in question and the interpretation of any relevant planning law, planning merits are also not relevant in deciding an LDC application.

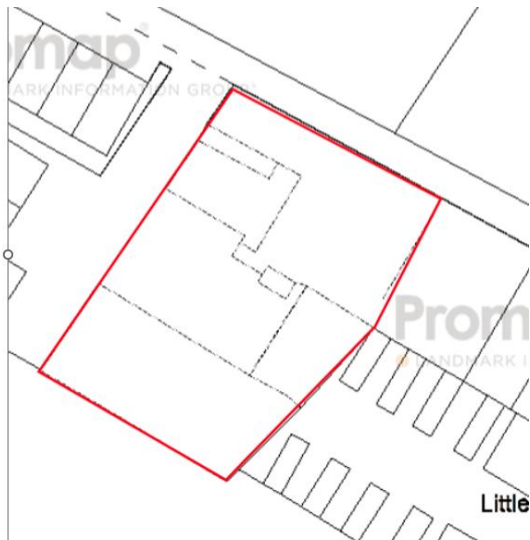
Supporting evidence:

2.7 The reason for the condition being imposed was because the land in question was cleared prior to the implementation of the permissions F/10/67282 and F/10/66422 and a gravel surface was laid. The photo below is dated from the March 2009.



(Source: Google Street View dated March 2009)

- 2.8 It should be noted that the plan referred to in the condition is not available. However, the owner of the land, who was also the applicant for the 2010 applications, was aware of the condition and the area of land referred to is shown below by the red outline:



- 2.9 In 2012 a hardstanding was laid on this area of land as per the aerial image below.



(Source: Google Earth Pro image dated April 2012)

- 2.10 Between 2012 and 2014 the hardstanding was populated with containers, structures and parked cars.



(Source: Google Earth Pro image dated April 2014)

- 2.11 Below are further aerial images dating from 2015 – September 2025 evidencing the continued use of this area in breach of conditions 10 of applications F/10/67282 and F/10/66422.



September 2015



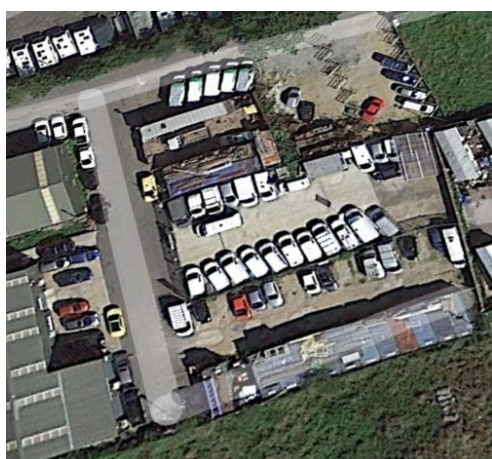
August 2016



May 2017



July 2018



September 2019



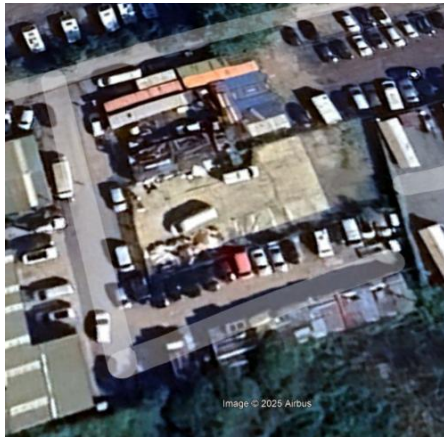
July 2020



July 2021



September 2023



September 2024



September 2025

(Source: Google Earth Pro)

- 2.12 A Statutory Declaration by Ashkin Mittal of JR Properties LTD has also been included with the submission documents corroborating the above facts.
- 2.13 Documents from the planning application file relating to application F/10/66422 dated 11th May 2012 also confirm that at that point in time condition 10 had not been complied with. This document is attached at appendix 1.

3.0 Summary:

- 3.1 In conclusion, the Statutory Declaration by Ashkin Mittal of JR Properties LTD and the series of aerial photographs clearly show that 'on the balance of probabilities', the area the subject of the condition has been used continually since at least 2012 when the slab was laid, and from 2014 when containers and vehicles were located on the site, in breach of conditions 10 of applications F/10/67282 and F/10/66422 for a period exceeding 10 years from the date of this application. The gravel parking areas, fencing and other structures were not removed, no details were submitted to the Authority, and the land was not reinstated to its former undeveloped state. The LPA are thus obliged to issue a Certificate of Lawfulness in accordance with Section 191 of the 1990 Act (as amended).