

TOWN AND COUNTRY PLANNING ACT 1990 – S174 APPEAL

PLANNING APPEAL SUBMITTED IN RESPECT OF THE DECISION OF THE EASTLEIGH BOROUGH COUNCIL TO SERVE AN ENFORCEMENT NOTICE WITHOUT PLANNING PERMISSION THE ALLEDGED MATERIAL CHANGE OF USE OF THE LAND FOR THE STORAGE OF VEHICLES, PLANT MACHINERY AND EQUIPMENT, MATERIALS AND SCAFFOLDING AND ANCILLARY OFFICE(S), FENCING AND HARDSURFING AT LAND AT 2 BRIDGE COTTAGES, SHAMBLEHURST LAND NORTH, HEDGE END, SO32 2BY.

INTRODUCTION

This appeal submission sets out the grounds of appeal on behalf of B. Harris Surfacing (the Appellants) against the decision of the Eastleigh Brough Council (the LPA) to serve an Enforcement Notice regarding the alleged material change of use of land for the storage of vehicles, plant machinery and equipment, materials and scaffolding and ancillary offices and fencing and hardsurfacing at 2 Bridge Cottages, Shamblehurst Lane, Hedge End.

The Appellants run a successful tarmac business and at any one time have a minimum of eight employees. They all live locally and in addition the business makes a contribution to the local economy through the employment of sub-contractors.

An Enforcement Notice in respect of the above was served on the Appellant's on the 9th June 2026.

The alleged breach of control is that without planning permission material change of use of land for the storage of vehicles, plant machinery and equipment, materials and scaffolding and ancillary offices and fencing and hardsurfacing at 2 Bridge Cottages, Shamblehurst Lane, Hedge End.

The effective date of the Enforcement Notice is the 10th July 2026.

The current appeal is submitted in order to argue that the use of the hardsurfaced area is acceptable and that the use of the land should continue. The various grounds of appeal are as follows:

Ground (a) – *that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.*

Ground (b) – *that those matters have not occurred*

Ground (c) – *that those matters (if they occurred) do not constitute a breach of planning control.*

Ground (d) – *that, at the date when the notice was issued, no enforcement action could be taken in respect any breach of planning control which may be constituted by those matters.*

Ground (e) – *copies of the Enforcement Notice were not served as required by section 172 of the TCPA 1990*

Ground (f) – *that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach*

The following Statement of Case will expand on these grounds of appeal to include setting out the case for the development, within the context of the National Planning Policy Framework and the Eastleigh Borough Local Plan (2016-2036). It will also directly address the stated concerns of the LPA in respect of a drainage strategy.

Part of the identified site, as per red line of the enforcement notice, includes an area of land that has an authorised use for storage purposes – as defined by consent no. LDC/18/83362 (namely a lawful development certificate). The LPA cannot take enforcement action in respect of the use of this land and to uphold the notice would therefore prejudice the ongoing use of this land for its authorised purpose.

This area of land, i.e. that is subject to the Lawful Development Certificate is located in the eastern portion of the site and immediately adjacent to the highway. There are no local rights of way and therefore the only view of the site will be from Shamblehurst Lane. Furthermore, the extent of the public view from the highway is very limited. It will be argued that in respect of the ground (a) appeal that this is the starting point for analysis of the wider site is the relative impact compared to this authorised use.

The EN also refers to damage to trees. However, there are no trees located in the area defined by the red line of the EN. There are three oak trees located within third party land to the north of the site which have been damaged by third party actions. Any damage to these trees, and a potential remedy, is therefore beyond the control of the appellants. In addition, the owners of the land upon which these trees are located have not been served an EN in respect of the alleged breach.

The following statement will address the balance between policy S5, which seeks to support the expansion of rural businesses in the countryside with that of policy S6 which seeks protect the strategic gap. It will therefore be argued that there is no demonstrable harm to the character of the countryside as a result of the presence of the hardsurfaced area nor associated activity. Evidence in support of this will include the following:

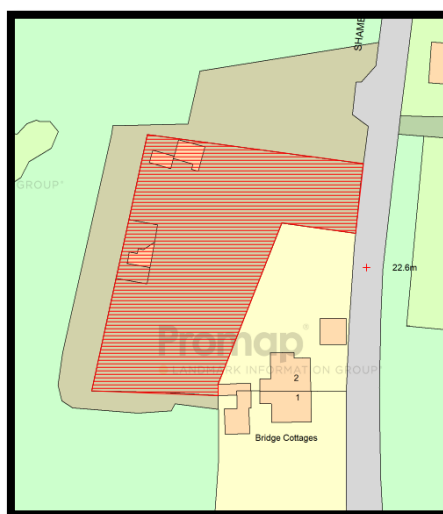
- A Landscape Visual Impact Assessment that will clearly demonstrate that the site is visually well contained and set well away from the public domain – to follow;
- A Drainage Strategy setting out how the hardsurfaced area can address issues – to follow;
- A Noise Impact Assessment setting out the impact of the alleged use on the wider area – attached;
- An ecological impact assessment setting out the ecological implications of the site – to follow;
- A tree survey confirming that there are no trees on site. Any adjacent trees that are adjacent to land that is subject to the LDC consent - attached.

Reference will also be drawn to a relatively recent, and local, appeal decision that deals with similar issues (PINS reference: 3361911).

It will therefore be argued that the proposed development does not undermine the function of the Strategic Gap and not harm the character of the area.

THE SITE AND SURROUNDING AREA

The appeal site refers to an area of land of some 0.21 hectares located to the west of Shamblehurst Lane, Hedge End as set out in the following extract:



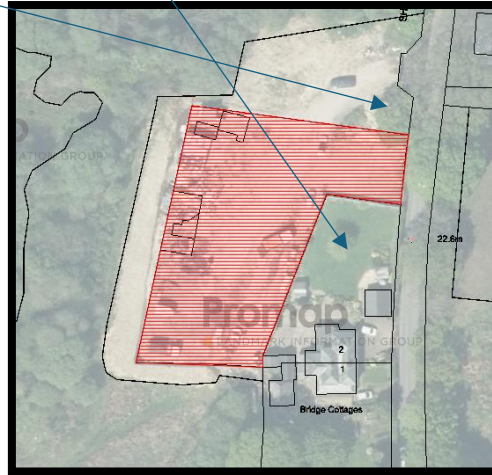
The red hatched line comprises the extent of the red line as defined in the Enforcement Notice.

The site context here is one where no. 2 Bridge Cottages is in the ownership of the appellants. No 1 Bridge Cottages is in third party ownership. The darker coloured land to the north, east and south is also in third party ownership and has been largely cleared of trees and vegetation (presumably by the third-party landowner). The site (as defined by the red hatched area) does not contain any trees. With regard to adjacent land there are three oak trees to the north of the access and one willow tree in the rear garden of no. 2 Bridge Cottages.

The land to the north of the site has its own separate entrance and between the two entrances there are the three oak trees that have had earth piled around their trunks. These three oak trees are in third party ownership and the earthworks have been carried out by third parties. The third-party gate and trees are as per the following photograph (courtesy of Instant Streetview):



The following image comprises an aerial photograph of the site and clearly confirms the absence of trees on-site. However, off-site trees comprise the willow tree (planted by the appellant in 2014) within the rear garden of no 2 Bridge Cottages and the three off-site oak trees to the immediate north of the site.



The following images (courtesy of Google Earth), dated August 2023, comprise a bird's eye view of the site and which clearly shows the absence of on-site trees. The purple line shows the approximate rear boundary of the land covered by the lawful development certificate (i.e. the authorised part of the site).



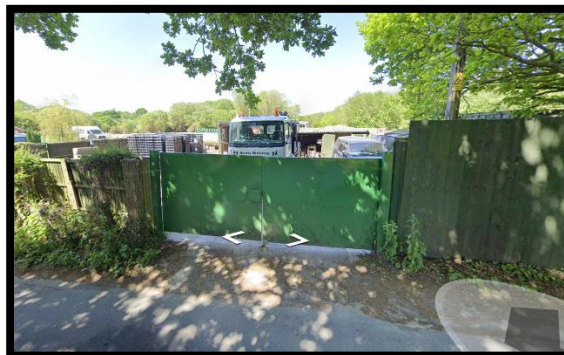


The images also clearly show cleared land around the majority of the periphery of the site.

The following images (courtesy of Instant Streetview) show the view of the site from Shamblehurst Lane (which comprises the only public viewpoint of the site) in both 2026 and 2018.

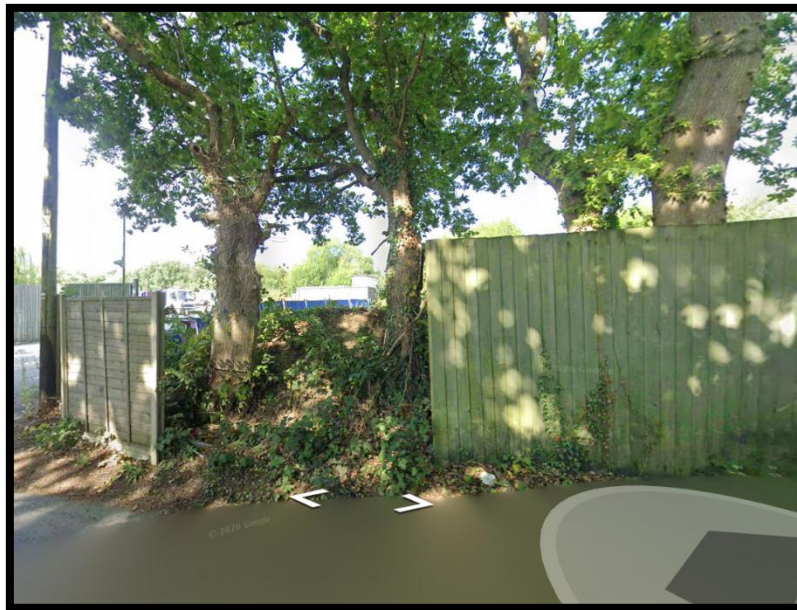


2025



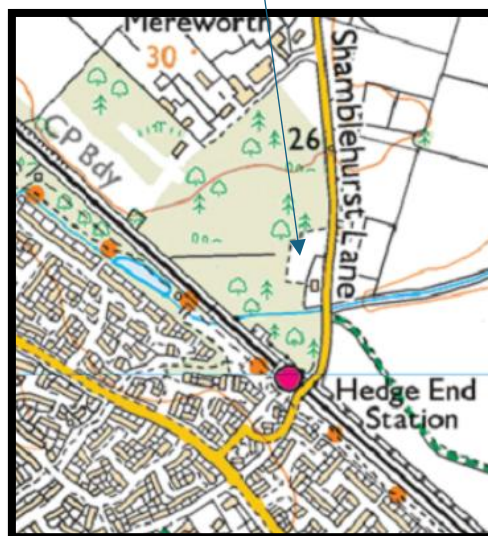
2018

The following image (courtesy of Instant Streetview) shows the presence of the off-site trees to the north of the site entrance. It is clear that someone (presumably the third-party owners) has placed earth around the trunks of those trees.



To confirm, these trees are not in the ownership of the appellants (or anyone that has been served an enforcement notice) and are outside of the red line that defines the Enforcement Notice. Any works that have been carried out to these trees has not been done so by the Appellents.

The following extract (courtesy of the Ordnance Survey) confirms that there are no local rights of way in the vicinity of the site;

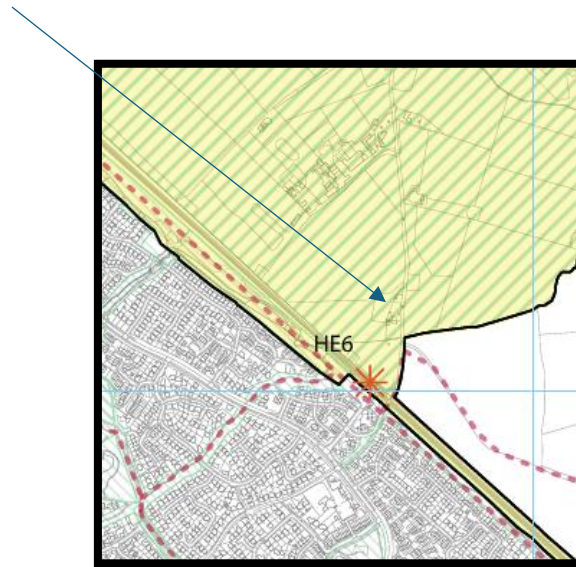


PLANNING POLICY CONTEXT

Local Planning Policy

The adopted Local Plan (LP) is the Eastleigh Borough Local Plan 2016-2036.

The appeal site is identified as being located in the countryside and the Settlement Gap;



Policy S1 looks to deliver sustainable development;

Strategic policy S1, Delivering sustainable development

1. *To be sustainable, new development in the Borough should:*

c. maintain and help to grow a high-performing local economy that benefits the Borough, south Hampshire and the wider economy, without adverse impact on south Hampshire's city, town and other centres, the quality of the local environment or local transport networks;...

Policy S5 refers to new development in the countryside;

Strategic policy S5, New development in the countryside

1. *Planning permission will be granted for new development in the countryside provided it is related to:*

a. the provision of employment through agricultural development (policy DM17), the extension and replacement of existing employment uses (policy DM18) and the re-use of existing buildings (policy DM19);...

2. In permitting new development in the countryside the Borough Council will seek to:

a. avoid adverse impacts on the rural, woodland, riparian or coastal character, the intrinsic character of the landscape including the avoidance of adverse landscape impacts on areas adjoining national parks and their settings, the significance of heritage assets and on the biodiversity of the area;

b. secure long-term beneficial management practices that will enhance the landscape and biodiversity of the countryside and coast;

c. avoid sterilisation of mineral resources, in accordance with the Hampshire Minerals and Waste Plan;

d. safeguard the best and most versatile agricultural land unless the benefit of the development clearly outweighs the loss; and

e. protect soils during construction wherever possible in line with the 'Defra code of practice for the sustainable use of soils on construction sites'.

Policy S6 refers to settlement gaps

Strategic policy S6, Protection of settlement gaps

1. Development within a Settlement Gap as set out in the policies map will be permitted provided that:

a. it would not undermine the physical extent and/or visual separation of settlements; and

b. it would not have an urbanising effect detrimental to:

i. The character of the countryside;

ii. or the separate identity of the adjoining settlements

Policy DM1 seeks to set out general criteria for new development;

Policy DM1, General criteria for new development

1. *All new development should (as relevant):*

a. not have an unacceptable impact on, and where possible should enhance:

i. residential amenities of both new and existing residents; the character and appearance of urban areas, the countryside and the coast;

ii. biodiversity (avoiding significant adverse impacts); and

iii. the significance of heritage assets;

b. make efficient use of the site, maximise opportunities to increase density and have regard to potential development opportunities on adjoining land;

c. take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbourhood, and be compatible with adjoining uses and be well integrated with these in terms of mass, scale, materials, layout, density, design and siting, both in itself and in relation to adjoining buildings, spaces and views. Where adjoining development is poor in urban design terms, new development should contribute to improving the character of the area;

d. not involve the loss of or damage to trees, woodlands, hedgerows, ponds, priority habitats or other landscape features of value to the character of the area, for appearance or biodiversity unless they can be replaced with features of equivalent or enhanced value, (recognising that some species and habitats may be irreplaceable);

e. include a landscape scheme covering the design and layout of external space;...

g. provide satisfactory management arrangements for all landscape, green infrastructure and biodiversity enhancement;

Policy DM18 refers to non-residential buildings in the countryside;

Policy DM18, Extension and replacement of non-residential buildings in the countryside

1. *The extension or replacement of non-residential buildings in the countryside will be permitted, subject to the general development criteria and transport policies of this Local Plan and provided that:*

- a. the existing building is in lawful use and is not subject to a temporary permission;*
- b. the extension or replacement building is for a non-residential use;*
- c. the extension or replacement building would not have an urbanising effect on the countryside in terms of its density, scale, massing, layout and height;*
- d. access, car parking, landscaping and services can be provided without having a detrimental impact on the character of the countryside;*
- e. so far as possible the property is sustainably located in terms of accessibility by means of transport other than the private car;*
- f. the extended building or its replacement would be located within the existing curtilage unless its relocation or extension would contribute to improving the character and quality of the local area;*
- g. in the case of a replacement building, the proposal also includes the demolition of the building to be replaced; and*
- h. the development would not by itself or cumulatively with other recently permitted schemes undermine the Council's strategy for the development of employment-related floorspace (see strategic policy S4).*

The LPA is currently embarking on a review of its local plan. In doing so it is looking to meet its long terms housing obligations. Between December 2024 and January 2025 the LPA undertook a consultation exercise (Issues and Options Consultation Document – December 2024).

NATIONAL PLANNING POLICY

The National Planning Policy Framework (NPPF), published in December, sets out the Government's national planning policies and how they should be applied.

Paragraph 2 of the NPPF states the following:

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions.

Paragraphs 7 and 8 refer to the requirement to achieve sustainable development:

7. The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development and supporting infrastructure in a sustainable manner. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
- b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*
- c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and*

pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

Paragraph 48 reinforces the requirement to determine planning applications in accordance with the development plan unless material considerations indicate otherwise:

48. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

Paragraph 56 refers to the use of planning conditions to make an otherwise unacceptable scheme acceptable:

56. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

Paragraph 60 specifically refers to enforcement, stating that it should be proportionate to the breach:

60. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

Section 6 of the NPPF refers to building a strong, competitive economy.

85. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation, and in

areas with high levels of productivity, which should be able to capitalise on their performance and potential.

87. Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for:

b) storage and distribution operations at a variety of scales and in suitably accessible locations that allow for the efficient and reliable handling of goods, especially where this is needed to support the supply chain, transport innovation and decarbonisation; and

c) the expansion or modernisation of other industries of local, regional or national importance to support economic growth and resilience.

Para 88 seeks to supporting a prosperous rural economy

88. Planning policies and decisions should enable:

a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, new buildings;

b) the development and diversification of agricultural and other land-based rural businesses;

Para 89 seeks to support businesses in rural areas;

Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

Para 198, referring to the impact of pollution states the following:

198. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;*
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason;*

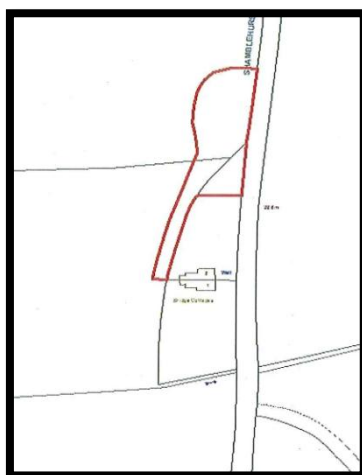
BACKGROUND/PLANNING HISTORY

There have been two relevant planning applications on-site, as follows:

1. LDC/18/83362 – Lawful Development Certificate for *the use of land for the storage of vehicles, plant and machinery (use Class B8) on land at 2 Bridge Cottages, Shamblehurst Lane North, Botley, SO32 2BY. Dated 30th July 2018.*

Note 2 of the LDC states that it certifies that *the use specified in the First Schedule taking place on the land described in the second schedule was lawful on the specified date and therefore was not liable to enforcement action under section 172 of the 1990 Act on that date.*

The red line plan extract from the planning consent is as follows:



It is therefore clear that the use of the land edged red is immune from enforcement action for use for B8 storage and distribution purposes.

There is no officer report on-line that sets out the extent of activity carried out at that time. However, to assist on this point the following image of the site, courtesy of Google Earth is dated August 2016.

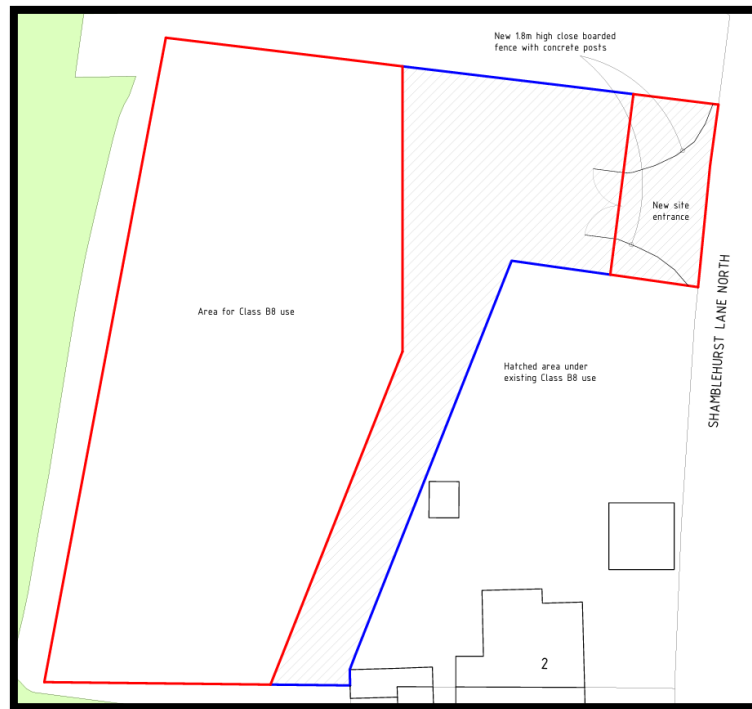


It is also noted that the area of activity in 2016 also clearly includes the office located in the southern portion of the site:



2. F/24/96940 – *Retrospective: Change of use of land from field/woodland to storage area of vehicles and plant (Use Class B8) with new enlarged entrance to highway and gates and fencing.* Refused 28th January 2025

The following plan comprises the application site:



The plan clearly includes the area covered by the LDC consent (i.e. application no. LDC/18/83362) as hatched in blue.

The officer report makes the following comments:

- Tree officer – there are a group of trees between the two sets of gates that have had earth placed around their trunks presumably as a result of the creation of the gates and access.
- Environmental Health – the site is in close proximity to dwellings and the proposed development has the potential to create nuisance by reason of noise, dust and nuisance.
- Ecology – an ecological impact assessment is required in order to establish the value of the site

THE ENFORCEMENT NOTICE

The LPA issued an EN in respect of the site on the 9th June. The red line defining the extent of the EN is as follows;



The EN identifies the following (summarised) reasons for serving the EN:

- The change of use of the land and associated works has taken place within the last ten years
- The change of use of the land and associated works is located in the countryside and will have a harmful and urbanising impact on the area.
- The change of use and associated works are contrary to relevant policy.
- The use harms local residential amenities by reason of noise, dust and nuisance
- The lack of on-site drainage will result in harm to the local ecology

The EN requires the following:

- Cease the use of the land for the storage of vehicles, plant machinery and equipment, materials and scaffolding
- Cease the use of the office associated with the use
- Remove ancillary fencing and gates
- Remove storage containers and scaffolding storage racks
- Remove the sub-base, hardcore and any other materials
- Reinstate the grassed surface

The period for compliance with the EN is six months.

The effective date for EN is the 10th July.

THE BREACHES OF PLANNING CONTROL

The breach of planning control comprises the material change of use of the land for the storage of vehicles, plant machinery and equipment, materials and scaffolding with ancillary office(s), fencing and hardstanding.

THE APPELLANT'S CASE

Ground (a) Appeal: *that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.*

The ground (a) appeal argues that consent should be granted for the development as built.

Whilst it is acknowledged that the site is located in the countryside and settlement gap the context here is that part of the site has an authorised use for B8 storage purposes. This area is located in the eastern portion of the site, i.e. immediately adjacent to the highway and that there are no local public rights of way in the vicinity of the site. The only public viewpoint of the site is from Shamblehurst Lane North.

It is argued that the public view of the site will not change as a result of proposed development by reason of the consented scheme. This contention will be supported by the submission of a Landscape Visual Impact Assessment.

Furthermore, the specific concerns with regard to drainage can be addressed. This will be in the form of a Drainage Strategy, the technical details of which will be submitted in due course. This will ensure that the surface will be regraded to ensure that run-off from the site can be collected and filtered prior to discharge in the local stream. This will provide an effective solution to this particular issue and ensure that no harm will be created in terms of pollution and impact on local ecology.

Visual impact

The Appellants have commissioned a Landscape Visual Impact Assessment in order to assess the impact of the proposed development on the wider area.

Due to the limited timescales, it has not been possible to submit the LVIA at the present time. This report will follow as soon as possible so as to demonstrate actual impact in this regard.

Part of the site has an authorised use for B8 storage purposes. This is by virtue of the Lawful Development Certificate granted in 2018, which specifically refers to the eastern portion of the site. There are no conditions that restrict the extent of storage within this area.

The LVIA will acknowledge this consent and seek to place the overall impact of the proposed development within this context. It will be noted that there are very few public rights of way within the vicinity of the site and any adverse visual effects of the proposed development from publicly accessible locations will be restricted to a short section of Shamblehurst Lane.

Furthermore, by reason of the relatively level local topography and due to the presence of intervening vegetation there are very limited views of the site from Shamblehurst Lane, thereby minimising the perceived effects on the character and appearance of the wider area.

Drainage

The Appellants have instructed consultants to prepare a drainage strategy in order to demonstrate that the run-off as a result of the use of the hardsurfaced area will not harm the integrity of the adjacent woodland.

This will involve the effective filtration of any pollutants, in compliance with current policy requirements.

Due to limited consultant availability and the time constraints imposed on the Appellants in respect of the submission of the Enforcement Notice Appeal it has not been possible to submit the drainage strategy at the present time. However, this report will follow as soon as possible so as to demonstrate actual impact in this regard.

The proposed drainage design will be developed in accordance with Eastleigh Borough Council's Local Plan 2016–2036, specifically Policy DM6, which promotes sustainable drainage principles and requires surface water management systems to replicate natural drainage processes wherever practicable. The strategy will incorporate a treatment train, ensuring appropriate water quality treatment prior to discharge. The design will also be prepared with due regard to the principles and guidance contained within CIRIA SuDS Manual, adopting best practice for sustainable drainage design.

The drainage proposals will seek to:

- Replicate greenfield runoff rates for surface water discharge.
- Follow and mirror natural hydrological pathways as closely as practicable.
- Incorporate an appropriate SuDS treatment train and provide evidence to demonstrate that adequate treatment of surface water runoff has been achieved.
- Demonstrate a coherent and integrated drainage network that manages runoff safely and effectively.

The submitted information will demonstrate that the proposed development can be drained sustainably, in accordance with the requirements of Eastleigh Borough Council's planning policies and recognised industry best practice guidance.

Trees

There are no trees on-site, i.e. within the red line plan as set out the Enforcement Notice.

The submission is supported by a tree survey which confirms that there are no trees on-site. However, it identifies three off-site oak trees that have had earth placed around the trunks and suggesting remedial works. These trees are not within the ownership of the appellants and any works to these trees have been carried out by third parties.

It is noted though that the works required in order to comply with the EN do not include the removal of earthworks around these trees.

Noise

There have been no known complaints from local residents or anyone else in respect of noise.

A Noise Impact Assessment accompanies this submission and includes a baseline noise survey to establish the background noise levels with regards to the neighbouring residential property.

The NIA notes that there is a range of impacts depending on the time of day and the activity.

However, within the context of the existing LDC consent, the additional harm created by the proposed development will be *small and be unlikely to materially affect neighbours when compared with the existing permitted use.*

Ecology

LPA concerns are that the lack of effective drainage on-site will result in impact on the local ecology. The drainage strategy will clearly demonstrate that its implementation will be effective and that there will be no pollution to immediate area and thus will have no impact on the local ecology. However, an ecological assessment will be provided in the near future in order to understand the context in this regard.

Ground (b) Appeal: *that those matters have not occurred*

The EN specifically alleges that harm has been undertaken to trees.

However, there are no trees on-site, i.e. within the red line plan as set out the Enforcement Notice. As such, the matters alleged have not occurred within the red line area defined by the EN.

This is clearly evident from arial photographs of the site and the tree survey confirms this point. However, there are three off-site trees oak trees that have had earth placed around the trunks. These trees are not within the ownership of the appellents and any works to these trees have been carried out by third parties.

The officer report and consultee responses with regard to application no. F/24/96940 identify specific concerns with regard to impact on trees, to include the following points:

- *There is a group of trees between the two sets of gates. Enforcement photographs (dated 2023) show significant volumes of soil stored in the root protection areas, which appears to have been as a result of the installation of the large gates/access. This soil could have a significant impact on the health of the trees and may, ultimately, result in tree failure, with and damage being the legal responsibility of the tree owner.*

Thus, it is clear by reason of the officer report that the trees in question are to the north and outside of the ownership of the appellents (and outside of the EN red line).

The officer report does not state the trees in question are subject to a Tree Preservation Order. It also notes that the damage to the trees *appears* to be as a result of recent activity of the appellant. This is not the case and any activity in respect of the placing of soil close to these trees has been undertaken by third parties.

Furthermore, the report makes it clear that any damage would be the legal responsibility of the landowner. The appellant is not the landowner and the trees do not seem to be protected. Not least due to the fact the alleged damage to the trees has

not been undertaken by the appellant it is argued that the matters alleged in EN have not occurred.

Ground (c) – *those matters (if they have occurred) do not constitute a breach of planning control*

Part of the appeal site has been subject to a Lawful Development Certificate for B8 storage use. Despite this fact the LPA has chosen to include this area within the red line of the EN. No enforcement action can be taken in respect of the site covered by the Lawful Development Certificate.

Consent no LDC/18/83362 confirms that LPA agree that the lawful use of part of the site is for B8 purposes and that no

Note 2 of the certificate confirms that enforcement action cannot be undertaken with regard to the use for this purpose as per the following:

- *the use specified in the First Schedule taking place on the land described in the second schedule was lawful on the specified date and therefore was not liable to enforcement action under section 172 of the 1990 Act on that date.*

Despite this fact the LPA has clearly included land subject to the LDC as part of the red line of the Enforcement Notice. The following plan, submitted with the recent refusal clearly identifies the area subject to the LDC as hatched in blue:



The officer report re application no. F/24/96940 recognises that the certificate has been granted and that associated lawful activities have taken place on site.

The land that has been identified in the LDC includes an office in the southern portion of the site. The EN identifies that this use should cease – it is clear that this use is in fact lawful.

Ground (d) - *that, at the date when the notice was issued, no enforcement action could be taken in respect any breach of planning control which may be constituted by those matters.*

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Note 2 of the certificate confirms that enforcement action cannot be undertaken with regard to the use for this purpose as per the following:

- *the use specified in the First Schedule taking place on the land described in the second schedule was lawful on the specified date and therefore was not liable to enforcement action under section 172 of the 1990 Act on that date.*

Despite this fact the LPA has clearly included land subject to the LDC as part of the red line of the Enforcement Notice. The following plan, submitted with the recent refusal clearly identifies the area subject to the LDC as hatched in blue:



The officer report re application no. F/24/96940 recognises that the certificate has been granted and that associated lawful activities have taken place on site.

The land that has been identified in the LDC includes an office in the southern portion of the site. The EN identifies that this use should cease – it is clear that this use is in fact lawful.

Ground (e) – *copies of the Enforcement Notice were not served as required by section 172 of the TCPA 1990*

One of the reasons for serving the EN is due to concerns with regard to the piling earth around tree trunks that are in fact off-site. These, alleged works have not been undertaken by the appellant but by a third party. The LPA issued accompanying information with respect to the EN setting out who it was served on. This list clearly does not include the owners of the land in question.

Ground (f) – *that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach*

The EN is seeking to restrict/remove a lawful activity a, namely the eastern portion of the site that has an authorised use for (B8) Storage and Distribution purposes.

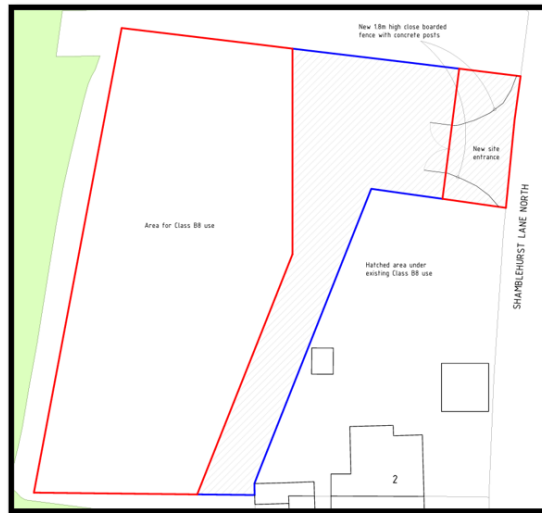
Part of the appeal site has been subject to a Lawful Development Certificate for B8 storage use. Despite this fact the LPA has chosen to include this area within the red line of the EN. No enforcement action can be taken in respect of the site covered by the Lawful Development Certificate.

Consent no LDC/18/83362 confirms that LPA agree that the lawful use of part of the site is for B8 purposes.

Note 2 of the certificate confirms that enforcement action cannot be undertaken with regard to the use for this purpose as per the following:

- *the use specified in the First Schedule taking place on the land described in the second schedule was lawful on the specified date and therefore was not liable to enforcement action under section 172 of the 1990 Act on that date.*

Despite this fact the LPA has clearly included land subject to the LDC as part of the red line of the Enforcement Notice. The following plan, submitted with the recent refusal clearly identifies the area subject to the LDC as hatched in blue:



The officer report re application no. F/24/96940 recognises that the certificate has been granted and that associated lawful activities have taken place on site.

The land that has been identified in the LDC includes an office in the southern portion of the site. The EN identifies that this use should cease – it is clear that this use is in fact lawful.

Planning balance

Evidence will be provided confirming that the proposed development will not harm the Settlement Gap, or create visual harm, or other harm, to the wider area.

Policy DM1 of the Local Plan sets out criteria for new development. It specifically refers to concerns over the potential harm to local residential amenities and harm to woodland and priority habitats but also making efficient use of land.

There have been no known complaints in respect of any aspect of the operation of the site - to include that of noise nuisance or dust. Evidence has been provided in terms potential impact to residential amenities in terms of noise. It has demonstrated that there is no additional harm in respect of noise nuisance as a result of the use of the land (in addition to that covered by the LDC). In addition, a drainage strategy will be submitted clearly demonstrating that there will no harm to the wider area from potential pollution.

Policy S5 will permit new development in the countryside for the extension of employment uses (subject to policy DM18) where it avoids adverse impact on the local and woodland character. Policy DM18 (d) specifically refers to ensuring that there is no detrimental impact on the character of the countryside.

Policy S6 seeks to protect settlement gaps, ensuring that new development does not undermine the physical or visual separation of settlements or character of the countryside.

In addressing both policies S5 and S6 it is clear that the isolated and well-screened nature of the site mean that there is very little impact on the wider area. As such they are policy compliant.

Overall, the proposed development creates no harm and is therefore compliant with Policies S5 and S6 of the Local Plan.

The NPPF puts great weight on the benefits that businesses provide to the local economy and as particularly set out in Section 6, to include the following:

- The need to support economic growth taking into account local business needs (paragraph 85);
- Decisions should recognise specific locational requirements to include the expansion of industries of local, regional or national importance (87);
- Recognition should be given to the need to provide for rural businesses outside established settlement boundaries (89); and
- In such circumstances it will be necessary to ensure that impact is sensitive to its surroundings (89).

There are economic benefits as a result of the proposed development are clear and weigh in its favour. The proposed development provides much needed employment for local residents.

The proposals are compliant with both national and local policy and consistent with S38(6) of the Planning and Compensation Act 2004