



Certificate of Lawful Development Statement
Beech Ridge, Land opposite Tamella, The Bridleway, Brook Lane, Botley, Hampshire

20 February 2024

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1 INTRODUCTION

INTRODUCTION

- 1.1 This Certificate of Lawful Development application statement has been prepared by Wessex Planning Ltd on behalf of Mr Sam Skinner in support of a planning application for the existing use of the land opposite Tamella, (known as Beech Ridge) as a yard for the storage of building materials and associated vehicle parking.
- 1.2 This application follows the refusal of a previous Certificate of Lawfulness application. That application has been analysed and considered carefully to understand why the application was rejected on the previous occasions and what the shortcomings in the evidence for the use were said to be.
- 1.3 From this analysis the issue seems to be that historic Google Earth photographs showed a thick tree canopy over the site until the larger trees were recently removed and therefore the LPA could not be confident that building material storage and associated vehicle parking took place beneath the canopy.
- 1.4 Secondly there was said to be a lack of evidence of the historic vehicular access to the site from its western boundary, prior to the formation of the current frontage access.
- 1.5 Therefore, the witnesses have been asked to make more detailed statements of their use of the site and their knowledge of the use of the site. The witnesses have been made aware of the importance of being clear about who they are, how they used the site, how often they used the site, what vehicles they used, how they accessed the site and what they saw on the site whilst using it. These statements have, in the main, been provided as sworn statutory declarations. .
- 1.6 It is important to note that the contradictory evidence from neighbours received to the previous application is refuted by the applicant. As with all Certificates of Lawfulness applications, there may be objectors who, for whatever reason, want such an application to fail.

- 1.7 In addition to this supporting statement, the submission includes the following statutory declarations/witness statements:

Applicant

- Mr Sam Skinner – Applicant

9 x Users of the site:

- Andrew Doswell – Doswell Projects and landowner adjacent site
- Christopher Southcott – Southcott Homes
- Nick Clay - Burton Roofing Merchants
- Ian Goodenough – Elliotts
- Rob Wickens – Wickborne Homes
- Conrad Collins - Lockhams Recycling
- Martin Rodgers – MWR Groundworks
- Mike Gould - Firgrove Holdings
- Joe Dorrington - Imperial Homes

8 x Neighbours to the Site

- Jo and Garth Skinner – Springfield, Marls Road, Botley
- Russell Vaughan – Lynwood, Marls Road, Botley
- Ross Sayers – West View, The Bridleway, Marls Road, Botley
- Jamie Beirn – Springfield, Marls Road, Botley
- Chris and Nina Roy – Wildgrounds, Brook Lane, Botley
- Damon Rafi – Robinsgate, Marls Road, Botley
- Hollie Parnell – 14 Waters Edge, Hedge End
- Ian Stacey – Avalon, Marls Road, Botley

- 1.8 The HM Land Registry documents are also included to confirm the transfer of the land from father to son in 2007, and then into joint ownership in 2015.
- 1.9 Finally, a sample of client receipts are included from 2011-2024.
- 1.10 This application is also supported by a legal opinion from planning Counsel (Philippa Jackson at 39 Essex Chambers).

2 SITE CONTEXT AND HISTORY

SITE CONTEXT AND HISTORY

- 2.1 The site is located along The Bridleway off Brook Lane. The site lies on the northern side of The Bridleway and is situated opposite the dwelling known as 'Tamella'.
- 2.2 The site measures approximately 0.18ha in size.
- 2.3 The site is bounded by trees to the north, east and west. Beyond the trees to the north lie open fields, with further trees to the east. To the west of the site is a small yard under separate ownership which is also used for storage purposes.
- 2.4 The site is accessed via The Bridleway to the south side of the site which is also bound by trees on either side providing screening to the materials storage areas and associated parking.
- 2.5 Historically the site was accessed by vehicles from its western side by way of a 'sleeper' bridge over the ditch along this boundary. There remains evidence of this old access on site.
- 2.6 The site has been used for the storage of building materials and associated vehicles for over 10 years. Before 2007, it was used for agricultural (strawberry growing) storage.
- 2.7 There are no trees, subject to protection, on this site.
- 2.8 There is no planning history for this site other than the previously refused application for a Certificate of Lawfulness.

3 PROPOSAL

- 3.1 This application for a Certificate of Lawful Use seeks to establish, in law, the use of the land opposite Tamella, for the storage of building materials and associated vehicle parking.
- 3.2 The land has been continuously used for these purposes since 2007, when the applicant, Sam Skinner, took over the site from his father, Garth Skinner, who had been using this land continuously for agricultural storage since 1984.
- 3.3 Evidence of the continuous use of this site for building materials and associated vehicle parking is confirmed in the evidence section below.

4 PLANNING LAW AND PRACTICE

The Town and Country Planning Act 1990

- 4.1 Section 191 of The Town and Country Planning Act 1990 ('the Act') allows for an individual to submit an application for a Certificate of Lawfulness. The Act states that the operations are lawful at any time if:
- a) No enforcement action may then 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
- 4.2 The Act goes on to state, that, if on an application made under Section 191, the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use, they shall issue a certificate. Thereafter, the lawfulness of the use shall be conclusively presumed.
- 4.3 The time for enforcement action is clarified in Section 171B of the Act which 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."

Planning Practice Guidance

- 4.4 Planning Practice Guidance, at paragraph 003, states:
- "Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required"*

- 4.5 Paragraph 006 goes on to state that, whilst the applicant is responsible for providing sufficient information to support an application, an LPA always needs to co-operate with an applicant who is seeking information that the LPA may hold about the planning status of the land. Furthermore, it states:

"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"

- 4.6 In terms of assessing an application for a lawful development certificate, the PPG is clear that there is no statutory requirement to consult third parties. Any views that are received from third parties on the planning merits of the case are also to be disregarded.

High Court Judgements and Standard of Proof

- 4.7 ***F W Gabbitts v SSE (1985)*** remains the judgement that Courts rely on in terms of considering evidence for and against a Certificate of Lawfulness application, especially where unhappy neighbours seek to frustrate the Certificate of Lawfulness process.
- 4.8 In this case, the High Court held that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. There is no need, for example, for utility bills to be produced in order to confirm occupation of a dwelling, although such evidence may be helpful if the applicant chooses to produce it. But, if the LPA has no evidence of its own, or 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 is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'.

- 4.9 This reflects the ministerial advice that was formerly contained in Annex 8 to Circular 10/97, at paragraph 8.15, and so remains longstanding advice.
- 4.10 Applying the *Gabbitas* judgement, it is clear that mere doubt, disbelief or scepticism cast upon the applicant's evidence does not make the applicant's evidence less than probable.
- 4.11 It is not unusual for a full award of costs to be granted against an LPA on appeal under section 195 where an LDC is refused in ignorance or defiance of the principles in *Gabbitas*.
- 4.12 The evidence of objecting neighbours has been addressed with the evidence accompanying this application.
- 4.13 It is important for the LPA to bear in mind that a decision to grant or refuse a Certificate of Lawfulness is not a matter of discretion but should be based only on the factual evidence provided.
- 4.14 Certificates of Lawfulness are not required to be determined on the basis of a use having been evidenced to have taken place over the prescribed period 'beyond reasonable doubt'. The burden of proof to be used is the lesser, civil requirement - 'on the balance of probabilities' or whether something is more likely than not (*Thrasyvoulou v SSE 1984*).
- 4.15 Finally, there is no material change of use through intensification alone. The Courts have made clear that in order for intensification to give rise to a material change of use there must be a fundamental change to the character of the use. It is the character of the use rather than the character of the site which must be considered. This is relevant on this site where the scale of the use has not altered within the prescribed period even though the appearance of the site has changed to a degree with the removal of trees.

5 EVIDENCE

- 5.1 This application for a lawful use certificate is supported by several detailed statutory declarations/witness statements from both the applicants, commercial users of the site and neighbours that live along Brook Lane. The statutory declarations/witness statements are tabulated below.
- 5.2 Submitted is the following:
- 1 x Statutory Declaration from Applicant
 - 9 x Statutory Declarations/Witness Statements from commercial users
 - 8 x Statutory Declarations/Witness Statements from neighbours
- 5.3 In addition, samples of receipts for materials deliveries are include from 2011 to 2024.

APPLICANT		Statutory Declaration	Signed Witness Statement
Sam Skinner (applicant)	Took over from father in 2007, formally registering SDS Roofing Services in 2015, although business existed prior to formal registration. In 2010, 2 loads of aggregate delivered to formalise existing pedestrian access over the ditch from west. In late 2011, this was made into a vehicular access. Previously, building materials moved from onto site from by hand. Deliveries of about 15-20 a month have remained at same level since 2011/2012. Some smaller trees removed in late 2011 to ease vehicular access around the site. Larger trees remained. Uses a flat-bed truck, transit vans and 1 battery fork lift truck. Never more than 6 vehicles parked on site. Have never collected or delivered commercial waste. In Dec 2019, created new front vehicular access. Felled larger trees late 2019/early 2020. Sample of receipts between 2011 and 2024 provided.	✓	
USERS (9)			
Ian Goodenough (Elliotts)	Delivered building materials onto site approximately once a week since, at least, 2013, using both historical and current access. Palletised materials. Batten stacks between 1m and 3m high. Vehicles used only use in connection with building materials business .	✓	
Nick Clay (Burton Roofing and SIG Roofing)	From around 2012 to 2018, deliveries made under previous employer - SIG. Then when transferred employment to Burton Roofing, deliveries from 2018 to current.		✓
Mr Andy Doswell – (Doswell Projects)	From at least 2009 to present day, once or twice a month, has collected tiles form the site using both existing and historic access points as shown on plan. Used a 7.5 tonne man drop truck. Aware of associated vehicle parking during this time. Stacks of materials varied in placement but whole site definitely used. No increase or decrease in usage over this time period. Removal of trees has made manoeuvring around site easier.		✓
Christopher Southcott (Southcott Homes)	For over 10 years, 2 or 3 times a month, have collected building materials that have either been stacked or mounded all over the site, beneath the trees. Between 1 and 4 parked vans/trucks too. Have used both historical vehicular access and new vehicular access.	✓	
Rob Wickens (Wickborne Homes)	Delivered building materials to site since at least 2013, once a fortnight using historical and new vehicular accesses. Truck reversed onto site and materials manually lifted off to parts of whole site, wherever there was room amongst other building materials. Many tonnes delivered. Stacks have varied in height but some up to 4m in height at times. Number of deliveries and amounts of materials delivered has not changed since 2013.	✓	
Conrad Collins (Lockhams Recycling)	In 2010, delivered two tonnes of crushed concrete using the side access and was aware that the whole site was being used as a builders yard for many years. Receipt included. This is the concrete which was used to create the bridge access in 2011, as explained by Sam Skinner in his statement (see above).		✓
Martin Rodgers – (MWR Groundworks)	Delivered building materials to the site since 2007 using accesses shown on site plan several times a month. Materials lifted off truck using a forklift and stored on whole site. Removal of trees has made manoeuvring easier.		✓
Mike Gould (Firgrove Holdings)	Operates a project management company. Been delivering and collecting building materials from the site for 10-12 years using small drop-side trucks to 7.5 tonne vehicles. Original side access was suitable but frontage access also adequate for requirements.	✓	

EVIDENCE

Joe Dorrington (Imperial Homes)	His employees have been collecting building materials around 6 times a year, for the past 10 years, using a transit tipper truck. Both the historical and the new frontage access have been used in this time. No increase or decrease in use or materials stored in this time.		✓
NEIGHBOURS (8)			
Garth Skinner (applicant's father)	Lived at Springfield for 35 years. Agricultural storage before 2007 (beneath canopies of trees). Building materials storage since 2007. Between approx. 1-4 vehicles parked on site in association with the buildings storage use. Historical vehicular access to west used prior to frontage vehicular access.	✓	
Ross Sayers (West View, The Bridleway, Marls Road, Botley)	Walked dogs for the last 12 years 3 times a week past this site. Confirms the site has always been used for the storage of building materials in that time, beneath the tree canopies. Confirms delivery vehicles accessing the site many times each week, using both the historical access and the current access. Confirms Removal of trees has made manoeuvring easier.	✓	
Jamie Beirne (Springfield, Marls Road, Botley)	Lived at Springfield for 34 years. Uses The Bridleway every day including walking children to and from school in term times. Confirms use of site for the storage of building materials for at least 10 years, beneath the trees on site. Confirms delivery and pick-up of materials many times each week, using both historical access and current access point. Removal of trees has made manoeuvring easier.	✓	
Christopher and Nina Roy (Wildgrounds, Brook Lane, Botley)	Lived in vicinity for 40 years, and resident at 'Wildgrounds' for the last 7 years. Use lane regularly, almost daily. Confirm that in the last 7 years the site has been used for the storage of building materials, using both the historical and current vehicular access, but also aware that the site was used as such before they lived at Wildgrounds.	✓	
Damon Rafi (Robinsgate, Marls Road, Botley)	Resident for 6 years – regularly walks dog and runs 3 x a week. Confirms use of land for the storage of building materials beneath the tree canopies. Confirm that delivery and pick up vehicles have used historical access and current access. Tree removal has made manoeuvring easier. Certain that level of use stayed the same in that time.	✓	
Hollie Parnell (14, Waters Edge, Hedge End)	Operates a livery and keeps horses in the fields immediately to the north, north-west and south of the site. Tends horses daily and has done for 14 years. Drives past the site 2/3 times a day. Confirms the use of the site for the storage of building materials in that time. Witnessed delivery and pick up vehicles accessing site, many times each week using both historical and current vehicular access. Removal of trees has made manoeuvring easier.	✓	
Ian Stacey (Avalon, Marls Road, Botley)	Resident for 6 years. Passes the site at least 5 times a week. Confirms use of land for storage of building materials and associated vehicles beneath the tree canopies. Regularly witnessed the use of the historical access to the side of the site as well as the current frontage access ('up to 5 times in as many days'). Removal of trees have made manoeuvring on site easier.	✓	

6 ASSESSMENT

- 6.1 The previous application failed on the basis of neighbours 'doubting' or 'disbelieving' the evidence provided, and the tree officer confirming the tree cover on site until 2019 from aerial and street view photographs. However, additional evidence has now been provided which confirms that the site was originally accessed from the west with the materials being stacked up or mounded beneath the tree canopies.
- 6.2 Whilst there was, historically, more tree cover on the site, this was never a barrier to its use for the storage of building materials and parking of associated vehicles in the same manner as at the current time and since 2011. The stacking and mounding of materials took place beneath the tree canopies and is therefore hidden in historic aerial views.
- 6.3 Whilst the removal of the trees makes it easier to see the use of the site from Google Earth imagery, the fact that the use can now be 'seen', as opposed to the use not being visible beneath the former tree canopies, is not in itself evidence of its intensification.
- 6.4 As the accompanying evidence for this application confirms, the site was used to store and stack materials against the trees and beneath their canopies since at least 2011, with associated vehicles parked on site. The majority of the statements confirm the use of the site for the requisite ten-year period i.e. since January 2014. Where witnesses are unable to testify to this period of use because they only moved to the area more recently, these statements are also of evidential value because they corroborate the evidence of long-term residents but also because they confirm that the site was used in the same manner for storage of building materials prior to removal of the trees (and so answer the Council's concerns in this regard).
- 6.5 The removal of the trees has simply made it easier to move building materials on the site. Furthermore a historic bridge access (to the west of the site) was used for vehicles to deliver materials onto this site until the formation of the current frontage access in December 2019.
- 6.6 This evidence demonstrates, unequivocally, that this yard has been used for the storage of building materials and associated parking for at least the last 10 years. This evidence is, in the main, in the form of Statutory Declarations, to which significant weight should be attached.
- 6.7 Whilst the removal of the trees has changed the appearance of the site, the statutory declarations demonstrate that the character, scale or intensity of the use has not changed over time.
- 6.8 This second submission now includes a more detailed statutory declaration from the applicant, 9 x statutory declarations and 8 x witness statements from neighbours or commercial users of the site, and a large sample of client receipts between the years of 2011 and 2024.
- 6.9 This weight of evidence is significant and demonstrates the usage of the site for the storage of building materials and associated parking continuously, and at the same intensity, for at least the last 10 years, tree cover or no tree cover.

7 CONCLUSION

CONCLUSION

- 7.1 Section 171B of the Act is clear that where a change of use of land has taken place, no enforcement action can be taken after the end of the period of 10 years. Section 191 of the Act expands on this, stating that an individual may make an application for a Certificate of Lawfulness for an existing use if no enforcement action can be taken in respect of the use (because the time for enforcement action has expired) and they do not contravene any enforcement notices in force at the time).
- 7.2 The use of the land opposite Tamella complies with both Sections 171B and 191 of the Act. This is clear within the evidence presented with this application including statutory declarations signed in the presence of a solicitor, witness statements, a sample of delivery receipts between 2011 and 2024, and the HM Land Registry documents confirming ownership.
- 7.3 As Gabbitas instructs, 'evidence' from neighbours, or others objecting to the application, consisting of no more than **doubt, disbelief or scepticism** regarding the evidence adduced by the applicant does not amount to evidence contradicting or otherwise making the applicant's evidence less than probable.
- 7.4 The legal opinion accompanying the application confirms the above.
- 7.5 As such it is respectfully requested that the LPA approve this application for a Certificate of Lawfulness to allow the applicant to continue the use of the site, as he has done for at least 10 years.