

**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

**Proof of Evidence**

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

## Contents

|     |                                           |    |
|-----|-------------------------------------------|----|
| 1.0 | PERSONAL DETAILS                          | 3  |
| 2.0 | OUTLINE CASE FOR THE APPELLANT            | 4  |
| 3.0 | SITE LOCATION                             | 7  |
| 4.0 | RELEVANT PLANNING AND ENFORCEMENT HISTORY | 7  |
| 5.0 | CASE FOR THE APPELLANT                    | 8  |
|     | • The Engineering Operation               | 10 |
|     | • Main Issue i)                           | 11 |
|     | • The Use of the Land                     | 15 |
|     | • Main Issue ii)                          | 15 |
|     | • Main Issue iii)                         | 19 |
| 6.0 | THIRD PARTY COMMENTS                      | 24 |
| 7.0 | SUMMARY                                   | 29 |

## **1 Personal Details**

- 1.1 My name is Graham Beck. I hold a BA (Hons) degree in Town and Country Planning from the University of Newcastle upon Tyne together with a Dip TP from the Royal Town Planning Institute of which I was a Member for 41 years and Committee member before retiring from the Institute. I continue to uphold the professional values of the RTPI and I remain in practice.
- 1.2 I have worked in Local Government for seven different Local Planning Authorities including County Councils, a New Town Authority, and Urban and Rural District Councils. I completed my local government career as Director of Planning and Development at Southampton City Council. For the last 26 years I have worked in private practice as a Consultant supporting Central and Local Government, as well as working for many private clients and blue chip companies to include residential, commercial and industrial developments.
- 1.3 I was appointed by CCW Services some three years ago on various matters during which time I have visited the site several times for meetings and walked the site on many occasions, five of which were with officers of Eastleigh Borough Council.

## **2 Outline of the Case for the Appellant**

2.1 This Appeal is made on behalf of Mr. Maurice Doe ('the Appellant') pursuant to section 195 of the Town and Country Planning Act 1990 ('the 1990 Act') against the refusal of Eastleigh Brough Council to grant a certificate of Lawful Existing Use or development ('LDC') at Broadway Farm, Broad Oak, Botley SO30 2EU ('the Site'). The application was refused by the Council's Head of Legal Services on the 29<sup>th</sup> August 2023 for the following reasons: <sup>1</sup>

1. 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 24<sup>th</sup> April 2023 being the date of this application.
2. 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.

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<sup>1</sup> CD – B1 – Refusal certificate dated 29<sup>th</sup> August 2023

- 2.2 In accordance with section 191 of the 1990 Act, it is my opinion that the application demonstrates that on the balance of probability a) the engineering operation as described in the application was undertaken more than 4 years ago in that it was completed in 2006 (thus also more than 10 years ago) and b) that the parking apron has been used continuously for the parking of motorised vehicles, including heavy haulage vehicles and trailers, for more than 10 years.
- 2.3 The evidence supporting the application includes eleven affidavits<sup>2</sup> prepared by people who have known the site for longer than ten years together with photographs<sup>3</sup>, public advertisement Notices<sup>4</sup>, Operator's Licences<sup>5</sup> and plans<sup>6</sup> and a letter from G&M Technical Services<sup>7</sup>.
- 2.4 The Council has taken the view that the subsequent laying of tarmac on top of the grasscrete constitutes new engineering works for which planning permission is required; but this does not negate the fact the grasscrete was laid more than 10 years ago and remains in situ today, a fact which the Council appears to accept<sup>8</sup>. It seems that the Council's refusal in this regard is based upon those works constituting a new chapter in the planning history of the Site.

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<sup>2</sup> CD – A5, A15 to A22, F25 to F28 inclusive

<sup>3</sup> CD – F2 – F18, F25a to F25 inclusive

<sup>4</sup> CD – A14 to A15

<sup>5</sup> CD – A12, 12a, A23 to A28, inclusive

<sup>6</sup> CD – A3, Location plan and Block plan of the site + CD – A4, Parking Apron plan, and location of the boreholes

<sup>7</sup> CD – A6

<sup>8</sup> CD – C8 - Section 1, page 1, 17<sup>th</sup> August 2023

With regard to the use of the land for the continuous parking of vehicles and trailers, the Council relies upon the legislation, government guidance and case law to justify its decision<sup>9</sup>.

2.5 The Government's Practice Guidance Notes state<sup>10</sup>, "*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.*" (our emphasis)

2.6 It is my opinion that the application is robust insofar as the substantial engineering operation clearly took place in 2006 of which there is no ambiguity. In 2019 the repair to the parking apron was carried out in order to improve the surface whilst throughout the period 2006-2023, the land had been used consistently in support of the B8 Use Class. The evidence, based primarily on eleven sworn statutory declarations from persons who have a detailed daily knowledge of the activities on the site for the 10-year period April 2013 to April 2023, stating that the appeal site has been used continuously for the parking of vehicles and trailers, is substantial and meets the legal test.

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<sup>9</sup> CD – F29 - Paragraph 4.1 Council's Statement of Case

<sup>10</sup> Guidance for Lawful development Certificates, Paragraph 006 Ref:17c-006-20140306

### **3 Site Location**

- 3.1 The Site Location and description of the site is agreed within the Statement of Common Ground (SoCG)<sup>11</sup>

### **4 Relevant Planning and Enforcement History**

- 4.1 The Council has provided two tables at Section 3 of their Statement of Case identifying the main Planning History and Enforcement History which is factual and not disputed.<sup>12</sup> These are contained within the agreed SoCG<sup>13</sup>.
- 4.2 On page 6 of the Council's case, reference is made to just one outstanding enforcement case Ref: ENF/2023/169 dated the 17<sup>th</sup> April 2023 with all previous enforcement matters closed. The only matter being investigated, as far as I am aware, is the hardstanding, the subject of the current LDC appeal.
- 4.3 Prior to the above investigation three planning applications had been submitted (references F/21/91859, F/22/93195 and F/22/94108), the first two applications being withdrawn with the third refused.
- 4.4 The first application (reference F/21/91859) was withdrawn for technical reasons and shortly thereafter a further application was submitted (reference F/22/9315) in an attempt to overcome the technical issues raised in the first

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<sup>11</sup> Statement of Common Ground – Section 2

<sup>12</sup> CD – F29 – Council's Statement of Case

<sup>13</sup> Statement of Common Ground – Section 3

application. This was also withdrawn when it became clear that the Council remained concerned about certain aspects of the application.

4.5 A third application (reference F/22/94108) was submitted following further consideration of the Council's concerns but eventually was refused. An appeal was lodged but, in view of the progress of the LDC, the appeal was withdrawn in consultation with the Council.

4.6 During discussions with the Appellant whilst preparing the third application I became aware that the parking area, the subject of this appeal, had been used prior to 2006 for the parking of haulage lorries and trailers. Up until this point I was unaware that a substantial engineering operation had taken place in 2006 to lay the grasscrete.

## **5 Case for the Appellant**

5.1 The Appellant's application for a Lawful Development Certificate [LDC] was made pursuant to section 191 of the 1990 Act on 25<sup>th</sup> April 2023. A copy of that application<sup>14</sup> and the documentation accompanying it<sup>15</sup> are included in the Core Documents. The application was made pursuant to section 191 because it related to both an existing use and existing operations carried out in relation to the Site.

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<sup>14</sup> CD – A1

<sup>15</sup> CD – A2

- 5.2 The application was refused by the Council's Head of Legal Services on the 29<sup>th</sup> August 2023<sup>16</sup>. It is agreed with the Council that the decision was made in accordance with the "*TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191*", though the document refers to section 192.
- 5.3 The reasons for refusal are set out above. For the avoidance of any doubt, the First Schedule described the 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. The Second Schedule set out the Site address as referenced above.
- 5.4 The Court has held that the Appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted (see F. W. Gabbitas v SSE and Newham LBC [1985] J.P.L. 630). Indeed, if the Council has no evidence of its own, or from others, to contradict or otherwise make the Appellant's version of events less than probable, provided the Appellant's evidence alone is sufficiently precise and unambiguous it should be accepted. This is further supported in the Government's Guidance Notes<sup>17</sup>.
- 5.5 The Appellant continues to rely upon the planning statement<sup>18</sup> and documentation submitted in respect of the application save for any amendments or additions herein.

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<sup>16</sup> CD – B1 and B2 – Refusal certificate and letter both dated 29<sup>th</sup> August 2023

<sup>17</sup> "*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.*" (our emphasis)

<sup>18</sup> CD -A2, F1, F1a

- 5.6 The evidence provides for exhibits to include eleven affidavits<sup>19</sup> from individuals who have known the site for more than 10 years. Several of those are providing oral evidence at the inquiry.
- 5.7 There are two elements associated with the appeal, firstly the engineering operation and secondly the use of the land. In order to address each element, namely the Engineering Operation and the Use of the Land, the agreed main issues are considered under each subheading.

### **The Engineering Operation**

- 5.8 The LDC application is based upon an engineering operation comprising the digging out of several tonnes of soil to a depth of circa 50cm across the site<sup>20</sup>, the laying of a Terram membrane, covering it with a type one crushed concrete before laying the cellular reinforced concrete grasscrete on top.<sup>21</sup> This amounted to a substantial engineering operation undertaken in 2006.<sup>22</sup>

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<sup>19</sup> CD – A5, A16 to A21, F25 (to include F25 a,b,c), F26 to F28

<sup>20</sup> CD – A2 and A4

<sup>21</sup> CD – A5 – paragraph 7

<sup>22</sup> CD – A5 – paragraph 5

**Main Issue i)**

5.9 The first main issue in this case turns on “*whether the appellant has proved on the balance of probability that the operational development comprising the laying of sub-base hard core (type one crushed concrete) with concrete cellular ‘grasscrete’ was substantially completed on or before 25 April 2019.*” In order to satisfy the legal test, the onus of proof rests with the Appellant to demonstrate the engineering operation was undertaken more than four years before the date of the application.

5.10 The basis for refusing a lawful development certificate in respect of the operational development appears to be that in the Council’s view, the subsequent laying of the tarmac constituted a new engineering operation requiring planning permission, and a new chapter in the planning history of the site. The refusal Notice states; “*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.*” The fact remains that in 2006 a substantial engineering operation took place, 13 years before the 25<sup>th</sup> April 2019. In terms of issue i) I consider the Appellant has demonstrated the engineering operation took place in 2006. Whether or not the laying of the tarmac repair laid in 2020 amounts to a radical change is considered below.

- 5.11 It is clear from the statutory declaration evidence of Tony Heathfield, a Director of G&M Technical Services, that in 2006 the earth was excavated, a layer of Terram membrane was laid to provide ground support and to act as a weed suppressant<sup>23</sup>. Hardcore (type one crushed concrete) was then placed upon the membrane on top of which was laid cellular grass reinforced concrete paving to provide parking spaces for the storage of motorised vehicles to include haulage vehicles and trailers operation based at the Broadway Farm site for CCW Services Ltd.
- 5.12 Maurice Doe, Louisa Doe, Gavin Boxall and Jon Moore, all recall that the engineering works were undertaken in 2006, some 17 years ago<sup>24</sup>.
- 5.13 The four bore holes excavated in February 2023 (illustrated on drawing 21003-1011-DF<sup>25</sup>) clearly show the depth of hardcore, including the Terram membrane with what appears to me to be the grasscrete concrete beneath the tarmac; those same bore holes remain open for the Inspector's perusal and examination.
- 5.14 The Council's solicitor prepared a memo dated 17<sup>th</sup> August 2023 (Appendix 34 paragraph 2) in which there is an acceptance that "*there may be evidence that the concrete 'grasscrete' was installed in 2006*" based upon the evidence submitted in the application. More helpfully at paragraph 4.7 of the Council's Statement it states that "*The LPA accepts that it does not have contrary*

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<sup>23</sup> CD – A5 paragraphs 5 to 7.

<sup>24</sup> CD - F1 and F2

<sup>25</sup> CD – A4

*evidence to dispute the laying of grasscrete in 2006 but, on this point the LPA's opinion is that the evidence is not unambiguous."*

5.15 The Council continue at paragraph 4.8<sup>26</sup> suggesting there is a material difference between grasscrete and tarmacadam saying the boreholes are of limited assistance because they are restricted to the appeal site which is tarmacked. The appeal is confined to the appeal site and there is no reason to construct boreholes outside and beyond the site. It is helpful to note the Council does acknowledge the Terram membrane beneath the works. It is my understanding that when the tarmacadam was laid on top of the grasscrete, as part of the preparations, a machine was used to remove the grass and topsoil and in so doing, incidental damage was caused to some of the grasscrete blocks. Having said that, the vast majority of the grasscrete remains in situ as explained by Tony Heathfield in his proof of evidence at paragraph 3.4<sup>27</sup>. I have seen the Council's photographs taken on the 22<sup>nd</sup> January 2024<sup>28</sup> and I do not consider they add any further information to the original photographs<sup>29</sup>.

5.16 The Council's Planning Officer has already pointed out that<sup>30</sup>, *"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*

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<sup>26</sup> CD – F29 - Council's Statement of Case

<sup>27</sup> Tony Heathfield Proof of Evidence

<sup>28</sup> CD – H1 to H4

<sup>29</sup> CD – A7 to A11

<sup>30</sup> CD – E1 - Planning Officers Report

*enforcement action can be taken as four years have elapsed.” This would be section 171B of the 1990 Act which was amended by section 4 of the Planning and Compensation Act 1991 to insert section 171B.*

5.17 The Officer’s report continues (page 2), “*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**.*” (our emphasis).

5.18 With regard to issue i) I conclude on the basis of the evidence that the engineering operation was completed in 2006, 13 years before the 25<sup>th</sup> April 2019 which satisfies the test, on the balance of probability.

5.19 The Council consider they are unable to grant a Certificate of lawfulness because the subsequent laying of the tarmacadam constituted a new engineering works which have commenced a new chapter in the planning history of the site. Main matter iii) is considered below.

## The Use of the Land

### Main Issue ii)

- 5.20 The evidence supporting the use of the parking apron indicates that the land has been used for the parking and storage of lorries and trailers since before 2006, some 7 years prior to the 25<sup>th</sup> April 2013, the key 10 year period for the use being the 25<sup>th</sup> April 2013 to the 24<sup>th</sup> April 2023.
- 5.21 The second main issue for the appeal is *“whether the appellant has proved on the balance of probability that the use of the property changed to use for the parking of motorised vehicles to include heavy vehicles and trailers on or before 25 April 2013 and the use then continued without significant interruption for 10 years after the date of the change.”*
- 5.22 The refusal notice states, *“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.”*
- 5.23 The onus of proof rests with the Appellant and, on the evidence submitted, I believe that a Certificate should be granted. Once again, the legal test is that the evidence should be satisfied on the balance of probability.

5.24 In support of this part of the appeal there are eleven statutory declarations<sup>31</sup>, seven of whom will be giving oral evidence at the inquiry, that mention the use of the parking apron since before the 23<sup>rd</sup> April 2013, the ten-year period;

- Tony Heathfield's proof<sup>32</sup> explains the reasons why in 2006 he was instructed by Maurice Doe to undertake the engineering works to provide a parking area for heavy vehicles and trailers;
- Maurice Doe states in his proof of evidence<sup>33</sup> that since before 2006, the land identified on the location plan was used for the parking of lorries and trailers; this is over 17 years ago since the land has been used for the parking of lorries and trailers.
- Louisa Doe recalls in her proof<sup>34</sup> that up to 40 trailers were parked on the said land in 2006. At paragraph 3.15, it is explained that for the 10 year period from 2013 to 2023 the land has been used continuously for the parking of lorries and trailers.
- Gary Jewell, a driver, says in his proof<sup>35</sup> that between 2012-2018 he was parking lorries and trailers on the land. Since 2018 Gary has been supervising the parking of trailers and lorries on the parking apron<sup>36</sup>. He also states that he believes the land has been used continuously for the

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<sup>31</sup> CD – A5, A16 to A21, F25, F26 to F28

<sup>32</sup> Tony Heathfield Proof – Paragraphs 2.1 and 2.2

<sup>33</sup> Maurice Doe proof of evidence – paragraph 4.1

<sup>34</sup> Louisa Does proof of evidence – paragraph 3.14 and 5.2

<sup>35</sup> Gary Jewell Proof – Paragraph 2.4

<sup>36</sup> Ibid – Paragraph 1.6

parking of lorries and trailers since at least 2012<sup>37</sup>. He also makes the point that for the majority of the time, the parking has been undertaken in the evenings when the lorries and trailers are parked up off the road when the collections and deliveries are completed.

- Other people, such as Jamie Hawkshead,<sup>38</sup> have come forward in support of the appeal who all have a detailed knowledge of the use of the land and without exception, they have experienced the parking of vehicles and trailers on the site for at least the ten-year period, some before 2006.
- Photographic material has been provided illustrating the land used for parking, incidentally, not shown on any of the Google Earth Pro photographs<sup>39</sup>.

5.25 Under the heading ‘material change of use’, the Council’s case at paragraph 4.16 states that the Appellant’s *“evidence that has been submitted is not sufficiently precise or unambiguous as to when the material change of use took place,”* The Council seems to accept that the substantial engineering operation took place in 2006. This was clearly undertaken for a reason, to make it easier and more commodious to park lorries and trailers on the apron. Several statutory declarations, without any doubt, explain the difficulties of driving heavy vehicles off the land in wet conditions during inclement weather prior to 2006. Based on the evidence provided, it seems obvious that the land must have been

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<sup>37</sup> Ibid – Paragraph 2.6

<sup>38</sup> Jamie Hawkhead Proof -

<sup>39</sup> CD - F6 to F18, F25a to 25c

used for the parking of vehicles and trailers even before 2006 and most definitely since the 25<sup>th</sup> April 2013. There is no ambiguity and it is very clear from the evidence that the land has been used for parking since at least 2006.

5.26 It follows therefore that a material change in the lawful use of the appeal site took place by CCW Services before at least 2006 with a parking and storage use. The parking activity then, and today, has been in support of the B8 Use Class. 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”*.

5.27 The Council concedes there is evidence showing some use of the land by vehicles (tyre tracks around 2014) together with some storage but speculates that there should be more wear and tear on the land<sup>40</sup>. The reliance on such speculation and observations without any evidence is inappropriate and unreliable.

5.28 The weight of the evidence provided by the Appellant would seem to satisfy the test ‘on the balance of probability’ but neither the Council, nor any third parties, have provided any sufficient evidence to the contrary.

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<sup>40</sup> CD – F29 – paragraph 4.17 of Statement of Case

**Main Issue iii)**

- 5.29 This leads on to the main issue iii) as to “*whether or not the subsequent building operation by the laying of the Tarmacadam constitutes new engineering works which have commenced a new chapter in the planning history for the application site.*”
- 5.30 Turning to the tarmacadam layer, the evidence suggests that given the wear and tear on the grasscrete from the previous 14 years (2006-2020) the decision was made to repair the grasscrete with a tarmac top resulting in vehicles leaving the site with cleaner wheels and to avoid spreading mud onto the ‘yard’ and subsequently onto the public highway.
- 5.31 In the proof of evidence prepared by Maurice Doe<sup>41</sup>, the reasons for laying the grasscrete in 2006 are explained where he makes it clear that during inclement weather, tractors were used to pull heavy trailers out of the field for which reason he decided to install the grasscrete to improve the efficiency of the business. His evidence continues<sup>42</sup> where he explains that during the Covid pandemic, he was requested by the NHS to use part of the parking apron to accommodate NHS vehicles, namely ambulances and first response vehicles; this was in addition to the apron being used for the haulage vehicles and trailers. Based on Mr Doe’s proof of evidence, it became evident in 2018/19

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<sup>41</sup> Maurice Doe proof – paragraph 1.4 and 5.2

<sup>42</sup> Ibid – paragraph 7.1

that repairs to the grasscrete were considered but not implemented until 2020 coinciding with the Covid pandemic. I understand Mr Doe allowed the NHS to use the apron without any remuneration due the national emergency.

5.32 The proof produced by Tony Heathfield<sup>43</sup>, Director of G&M Technical Services who personally undertook the engineering works in 2006, describes in detail the more precise nature of the engineering works which took 6-8 men, about three weeks to complete. He states at paragraph 3.1 of his proof that “*I suggested topping the grasscrete with Tarmacadam which would form a much-improved robust surface to carry the heavy weight of the vehicles and trailers.*” He continues at paragraph 3.3 saying, “*In my professional opinion, whilst the function of the grasscrete and the Tarmacadam surfaces was very much the same, the Tarmac solution would provide a cleaner, more supportive, longer lasting surface for parked vehicles and trailers.*”

5.33 There was no requirement in 2020 to undertake any further ‘substantial engineering’ works to lay the tarmac top because the same substantial base constructed in 2006 remained in situ. The four boreholes dug in February 2023 within the parking apron provide the evidence, clearly demonstrating the substantial engineering works undertaken in 2006.

5.34 A tarmac top cannot be laid directly on top of a grass base. In order to prepare the ground properly, exactly the same preparations would need to be made as were undertaken in 2006. The full ‘substantial’ engineering operations would

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<sup>43</sup> Tony Heathfield Proof of evidence

still require a 40-50cm removal of all earthworks to be excavated followed by the installation of tonnes of hardcore beneath which a Terram membrane should be placed to provide ground support and to act as a weed suppressant. The final surface material, grasscrete or tarmac would then be placed on the top. In other words, the substantial engineering operation was undertaken in 2006 to include the Terram membrane, the hardcore and grasscrete which remains to this day and has never been removed.

5.35 As the Council's planning Officer has correctly pointed out, the engineering operations were "*substantially completed*" in 2006. No such 'Substantial' engineering works were required in 2020 to accommodate the tarmac repairs.

5.36 In the alternative, even if it is concluded that the tarmac top constitutes more than a lawful repair to that which already existed on site and is not permissible, a lawful development certificate should be issued in respect of the 'grasscrete' itself. It is clear that from 2006 to 2020 the original 'grasscrete' existed on Site for some 14 years and no enforcement action could have been taken in respect of it. The evidence set out above illustrates that it still remains now, under the tarmac layer<sup>44</sup>. Were the Council to consider enforcement action, any enforcement notice which required not only the removal of the tarmac but also the 'grasscrete' would plainly be excessive within the meaning of section 174 f) of the 1990 Act. In such a context, it might also be considered not to be expedient to enforce against the tarmac layer.

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<sup>44</sup> Tony Heathfield's proof of evidence paragraph 3.4

5.37 To the extent that the Council suggests that a new planning chapter has commenced by virtue of the laying of tarmac, such that the Appellant can no longer rely upon the 14 years within which the ‘grasscrete’ hardstanding has subsisted, that is not accepted. The concept of a ‘new chapter’ in the planning history of a site is judge-made. In *Jennings v Secretary of State for the Environment* [1982] 1 QB 541 Lord Denning MR was clear that a new chapter commences “*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 on as a fresh start altogether in the character of the site*”. The laying of tarmac to repair the grasscrete is plainly far from such a ‘radical change’. The appeal site has been used continuously since before 2006 to support the B8 warehousing use to park vehicles and trailers.

5.38 The Council’s Case at paragraph 4.10<sup>45</sup> suggests there was a fundamental change in the character and appearance of the Upper Field (I assume this refers to the appeal site) by a) the provision of a new access, b) a sub-division of the eastern field with boundary features erected and planted. It is these factors that lead the Council to conclude the change was so radical that it can be looked at as a fresh start altogether in the character of what was a verdant open undivided field.

5.39 The access into the apron located to the north, was moved after the new warehouse was constructed in 2019/20 because it made the logistics of

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<sup>45</sup> CD – F29

parking, loading and unloading of the trailers much more efficient in relation to the warehousing. It was an internal access relocated from the previous 'central position' adjoining the new warehouse; the main gate to the south continues to exist.

- 5.40 The eastern field has not been subdivided because there has always been and there remains a through route across the field from north to south. Some additional landscaping was introduced between 2016 and 2019 (for which planning permission was not required) and in 2020/21 some bunding was created to the south of the apron to improve security and screening.
- 5.41 The facts of the case are that since before 2006, the appeal site had been used for the parking and storage of motorised vehicles and trailers. Grasscrete was laid in 2006, 14 years before the tarmac repairs were undertaken. The use and character of the land has remained constant with the same parking and storage activity. The laying of the tarmac was not so radical as to warrant a "*fresh start altogether*" as per the Jennings case as to restart the clock.
- 5.42 There is no contrary evidence provided by the Council or any third parties which contradicts or otherwise makes the Appellant's version of events less than probable, the Appellant's evidence being sufficiently precise and unambiguous such that it should be accepted. I do not accept that there has been so radical a change to the use of the land that a new chapter in the planning history has commenced.

## **6 Third Party comments**

- 6.1 The planning officer's report<sup>46</sup> summarises on page 2 what seems three neighbour comments.
- 6.2 The resident at Springtime Cottage (located on the south side of Broad Oak, southwest of the application site) suggests there is no evidence of grasscrete from the historical photographs (Google Earth Pro is referred) but the point has been made already that the photographic evidence from Google Earth Pro is unreliable especially when the evidence provided by the Appellant clearly illustrates that the grasscrete was laid down in 2006.
- 6.3 Arising from the Appellant's own inquiries of Google Earth Pro, during the 10 years in question (April 2013 – April 2023) there are seven aerial photographs available of which the August 2016<sup>47</sup> and April 2015<sup>48</sup> photographs clearly show the tyre tracks on the land. In all seven photographs the green grass has grown through the grasscrete for which reason the colour of the ground is green, as to be expected.<sup>49</sup>
- 6.4 The photographic material provided by Google Earth Pro is not relied on to support the application for the LDC because it is inconclusive with photographs

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<sup>46</sup> CD- C7

<sup>47</sup> CD – F4

<sup>48</sup> CD – F3

<sup>49</sup> CD – D4 to D10

only taken in daylight when, nearly always, the lorries are on the road. Those witnesses giving oral evidence for the Appellant at the Inquiry will explain their own experience of how, when and why vehicles are operated and parked on the apron.

- 6.5 The further observations from Springtime Cottage state there is no evidence of regular continued use for the storage of vehicles; but the evidence provided by the affidavits from eleven different people who all worked on the land continuously throughout the 10-year period, including drivers of the haulage vehicles, suggests otherwise. No contrary evidence is provided by the objector.
- 6.6 The second set of observations makes no reference to the use of the land but the third commentary (top of page 3 of the Officer's report<sup>50</sup>) states that between 2000 and 2018 the use of the area was minimal and sporadic and the site was vacant for the majority of the time.
- 6.7 In response, the period of time under consideration is the 10 years between April 2013 and April 2023. During that time, the evidence contained in the affidavits, and witness proofs for the Appellant, indicates the land was used continuously for parking lorries and trailers, to include storage on the trailers. It has been explained in the originally submitted Planning Statement<sup>51</sup> accompanying the application how the lorries were on the road most of the day with some overseas for a week at a time. It has also been explained how the

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<sup>50</sup> CD -C7

<sup>51</sup> CD – A2, paragraphs 4.18 and 4.19

numbers of trailers parked was up to 40 in number, some of which belonged to customers from other companies. Core documents F6 to F18 illustrate photographs taken in 2016 and 2017 when clearly trailers were evident on the apron, none of which appear on Google Earth Pro.

6.8 Given the overwhelming evidence provided within the application compared with the absence of evidence to the contrary, bearing in mind that the legal test to be applied to the grant of a Lawful Certificate is ‘on the balance of probability’, it is considered that the Council’s decision must be incorrect.

6.9 The proof of evidence made by Gavin Boxall<sup>52</sup> once again refers to lorries and trailers being parked on the grass land prior to 2006. To make way for the engineering operation in 2006 Gavin recalls he and Jon Moore removing the trailers and vehicles off the grass to enable the contractor access to undertake the engineering operation. Gavin describes how the parking apron has been used since 2006 for the parking of vehicles and trailers. He also mentions the fluctuating numbers of trips because sometimes lorries would be travelling in Europe for a week before returning to CCW Services at Broadway Farm. Andrew Stacey, a Director of County Crest Pallets who has run a business off the Broadway site since 2000, also recalls lending forklift trucks and heavy-duty chains to pull vehicles from the apron during wet weather.<sup>53</sup>

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<sup>52</sup> Gavin Boxall proof

<sup>53</sup> Andrew Stacey Proof – paragraph 3.3

- 6.10 The evidence provided by the various exhibits showing the haulage licences, the dates and the public advertisements also gives testimony to the fluctuations as the business changed over the years. The point has been well made in the LDC application that Eastleigh Borough Council were notified and consulted on each application for a Haulage Licence but no objections or observations were ever received.
- 6.11 Louisa Doe<sup>54</sup> has explained the reasons why the numbers of trailers and lorries fluctuates, depending on orders as well as the application of the Operator's Licence and what that means for parking numbers and frequency on the apron.
- 6.12 Jon Moore has worked for the company for over 30 years and his evidence<sup>55</sup> confirms that since 2006 he has regularly parked 40-foot trailers and vehicles on the grasscrete area<sup>56</sup>. He goes on to describe and explain some of the business reasons for laying the grasscrete and the movement of lorries and trailers on and off the parking apron maintaining the land has been used for parking continuously since before 2006.
- 6.13 Mike Walker, a fully qualified Class 1 HGV Driver including a Class 1 ADR Licence holder, who has driven all across Europe for CCW Services, states<sup>57</sup> that when he is on site he is regularly asked to park vehicles on the apron and has done for the last 11 years. He also makes the point (at paragraph 9) that due to the relatively small amount of space around the buildings to park trailers

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<sup>54</sup> Proof of Louisa Doe – Section 3

<sup>55</sup> Proof of Jon Moore

<sup>56</sup> Ibid paragraph 3.2

<sup>57</sup> Mike Walker – Proof paragraph 3.1

and lorries, to include articulated lorries, the apron land has been used constantly.

6.14 In the light of all the evidence provide by the Appellant to support the application for the LDC, it is disappointing that the Council considers 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*”. There is no contrary evidence provided by the Council or any third parties which contradicts or otherwise makes the Appellant’s version of events less than probable, the Appellant’s evidence being sufficiently precise and unambiguous such that it should be accepted.

6.15 The Council considers that a new planning chapter commenced when the tarmacadam was used to repair the parking apron citing fundamental changes but the parking apron did not change its use. As part of the development of the site when the new warehouse building was erected in late 2019 to early 2020, the yard was improved as part of the scheme. The landscaped area to include new hedging to the east of the yard and west of the apron was undertaken between August 2016 and September 2019 (see aerial photographs CD-D6 and D7) but to rationalise the area and improve efficiencies, the northerly internal access to the apron was created because it proved more convenient to use than the southerly access, which still exists today. The apron, having been laid with grasscrete in 2006, could not be described as a verdant open field.

## **7 Summary**

7.1 Eastleigh Borough Council has refused an application for a Certificate of Lawful Existing Use or Development for two reasons namely, that the Council is not satisfied that the use described is lawful due to insufficient evidence being provided and that the Council considers that the subsequent building operation of the laying of the Tarmacadam constitutes new engineering works which have commenced a new chapter.

7.2 It has been agreed that there are three key issues in this case namely;

i. whether the appellant has proved on the balance of probability that the operational development comprising the laying of sub-base hard core (type one crushed concrete) with concrete cellular ‘grasscrete’ was substantially completed on or before 25 April 2019;

ii. whether the appellant has proved on the balance of probability that the use of the property changed to use for the parking of motorised vehicles to include heavy vehicles and trailers on or before 25 April 2013 and the use then continued without significant interruption for 10 years after the date of the change; and

iii. whether or not the subsequent building operation comprising of the laying of the tarmacadam constitutes new engineering works which have commenced a new chapter in the planning history for the appeal site.

- 7.3 Regarding matter i) there is a good deal of evidence provided that the substantial engineering works were undertaken and fully completed in 2006 some 13 years before the 25<sup>th</sup> April 2019. The Appellant recalls instructing the work. The Contractor clearly remembers undertaking the work and several other people with a close association with the land recall evidence of how, why and when the engineering works were undertaken in 2006.
- 7.4 On matter ii) there is evidence provided that before the 25<sup>th</sup> April 2013 there was a change of use to use the apron for parking of motorised vehicles to include heavy haulage vehicles and storage. Prior to 2006, during inclement weather it is recorded that heavy duty chains were borrowed from a neighbouring business to pull stranded vehicles from the grass apron because they were stuck. The engineering works in 2006 were undertaken to create a more solid base to improve the efficiency of the business and to make it easier for vehicles to move across the land.
- 7.5 A change in use of the land occurred in or around 2006 since when there has been no intensification of use amounting to a further material change of use. The Use of the land has been used for B8 storage with the parking apron being used to support that use throughout.
- 7.6 Throughout the ten-year period from April 2013 to April 2023 the parking and storage apron has been used continuously. The Appellant considered that the grasscrete laid in 2006 was in need of repair due to the heavy usage of the site

for which reason repairs were undertaken in 2020 shortly after the new warehouse had been built and the yard re-laid in order to clean the site.

- 7.7 There is evidence provided by HGV drivers, other staff and people working on the site throughout the ten year period who testify they have witnessed regular continuous use of the parking and storage apron.
- 7.8 Eleven detailed Statutory Declarations have been prepared and submitted in support of the application. All the affidavits are prepared by people who have first-hand knowledge of exactly how the land has been used for at least the last 10 years. Those who have direct knowledge of the engineering operation include an extremely plausible reason for recalling the substantial engineering operations that took place in 2006, including the Director of the Contracting Company who personally undertook the works as well as Maurice Doe who commissioned and paid for the works.
- 7.9 Other evidence to include the Haulage Licences and the corresponding newspaper advertisements corroborate the statutory declarations providing a timeline of how business practices evolved over the ten-year period.
- 7.10 The third and last matter iii) concerns the question about whether the subsequent building operation of laying the tarmac constitutes a new engineering operation which has commenced a new chapter in the planning history for the appeal site.

- 7.11 The Council has cited the case of Jennings suggesting that the laying of the tarmacadam in 2020 represented a new chapter in the planning history but in the Broadway Farm case, the land was used for exactly the same purpose for the parking of vehicles and trailers, since before 2006.
- 7.12 The Appellant has explained that the formation of the tarmac over the top of the grasscrete was a repair certainly not requiring a further ‘substantial’ engineering operation. The Terram membrane, the crushed hardcore and the grasscrete concrete blocks have always remained in situ and continue to this day.
- 7.13 The assertion is made that there was “*a change so radical*” that this amounted to “*a fresh start altogether*” but this statement does not recognise the continued use of the land for the parking of heavy vehicles and trailers since before 2006 or indeed the substantial engineering works that took place in that year.
- 7.14 No contrary evidence is provided by the Council or any third parties to reasonably justify the conclusion that the LDC should be refused on the basis that the application is supported by insufficient evidence and that the tarmac repair amounts to an engineering operation which commences a new chapter.
- 7.15 In the light of all the evidence provided to support the application, it is considered that the legal test has been satisfied that on the ‘balance of probability’; the substantial engineering operation was undertaken in 2006 as described in the First Schedule and the said land has been used for at least the

last 10 years for the parking of motorised vehicles to include heavy goods haulage vehicles and trailers.

7.16 The Inspector is respectfully requested to allow the appeal.

GB February 2024