

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 Reference: APP/W1715/X/23/3331326

STATEMENT OF COMMON GROUND

FEBRUARY 2024

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1.0 INTRODUCTION

- 1.1 This Statement of Common Ground has been prepared by Luken Beck on behalf of Mr. Maurice Doe [CCW Services Ltd] in respect of an appeal brought pursuant to section 195 of the Town and Country Planning Act 1990 ('the 1990 Act') against the refusal of Eastleigh Brough Council ('the Council') to grant a certificate of Lawful Existing Use or development ('LDC') at Broadway Farm, Broad Oak, Botley SO30 2EU ('the Site').

2.0 DESCRIPTION OF SITE

- 2.1 The land, the subject of this appeal, is within the land ownership of the Appellant who owns all the blue land identified in Figure 2 below known as Broadway Farm, Broad Oak, Botley, Hampshire.
- 2.2 The A334 Broad Oak Road is located immediately to the south of the site providing access to the site.
- 2.3 The site slopes upwards to the north from the A334 towards a crest in the middle of the site where the land falls away to the south.
- 2.4 The southern site frontage is set back from the road by a large chalet bungalow to the western side with fencing and landscaping along the road frontage. The wider site is characterised by two outer parcels of open grassed paddock land bound by hedgerows and trees on their outer edges.

The central parcel consists of three storage warehouses of varying sizes positioned east to west with further warehousing to the north. There is a tarmacadamed car parking area located south of the warehousing with other spaces used for vehicular manoeuvring commonly referred to as 'the yard'.

- 2.5 The appeal site is situated in the northwest corner of the site as illustrated by the red oval shape in Figure 1.



Figure 1 – Broadway Farm, Broad Oak, Botley, Hampshire (courtesy of Google Maps)

3.0 PLANNING HISTORY

3.1 The Two Tables of relevant Planning and Enforcement History set out in the Council's Statement of Case are agreed as follows;

Table 1 – Relevant Planning History

Application no/date	Description	Decision /date
Z/17963/000/00 Refused – 11/11/1977	Erection of chalet bungalow	Refused – 11/11/1977
Z/17963/00A/00	Erection of detached bungalow and integral garage	Permit – 23/03/1978
Z/17963/001/00	Broadway Farm – Use of rear yard for pallet repair and storage with retention of relocated portable office and shed	Refuse – 25/07/1997 Allowed on appeal – 30/09/1998
F/07/61818/	Broadway Farm – Single storey side extension with attached garage	Refuse – 30/01/2008
F/17/81201	Broadway Farm – Retention of 2 no. product handling/storage buildings and alterations and extensions to existing pallet storage building in association with the continued use of the site for storage and distribution (Use Class B8)	Permit – 13/03/2019
F/21/91859	Broadway Farm – Construction of a	Withdrawn by Applicant – 06/01/2022

	warehouse for storage and distribution (Class B8) with ancillary works including parking area, together with retention of tarmac hardstanding for open vehicle storage.	
F/22/93195	Broadway Farm – Construction of a Warehouse for storage and distribution (Class B8) together with parking apron for first response vehicles and ancillary works.	Withdrawn by Applicant – 28/07/2022
F/22/94108	Broadway Farm – Proposed construction of a Warehouse for storage and distribution (Class B8) together with a relocation of existing parking apron for first response vehicles and ancillary works	Refuse – 01/02/23

Table 2 – Relevant Enforcement History

REF	Description	Date
E/15/15747	Unauthorised change of use - car park on countryside land Closed: 30/03/15 Reason: The land where cars are parked has been used for such activity for a number of years and is immune from any enforcement action.	21/03/15

E/17/16597	Unauthorised barn extension (concealed) Closed: 26/11/18 Reason: The issue of the alterations to the barn are being dealt with under planning application F/17/81201 so no enforcement action required.	25/02/17
ENF/2020/22	Alleged unauthorised barn Closed: 16/07/20 Reason: The landowner is constructing a permitted storage building on site, however this has been delayed due to the outbreak of covid-19. The new outbuilding is temporary and will be removed once the new structure is completed. As this sits adjacent to the new development and will be removed once complete, we will not be taking any further enforcement action. A follow up inspection will be completed to check that the temporary outbuilding has been removed.	17/06/20
ENF/2021/58	Unauthorised change of use of field from agricultural to storage. Closed: 10/11/21	05/02/21

	Reason: As requested, a retrospective application has been received under reference F/21/91859 to retain the unauthorised development.	
ENF/2022/14	Unauthorised change of use of field from agricultural to storage following withdrawal of F/21/91859 Closed: 16/06/22 Reason: As requested, a retrospective planning application has been submitted under reference F/22/93195.	10/01/22
ENF/2023/169	Site review of potential breach of planning permissions (Hours of operation, buildings & hardstanding) Current investigation	17/04/23

4.0 THE APPLICATION AT APPEAL

4.1 This appeal concerns an application for a Certificate of Lawfulness for an Existing Use or Development under section 191 of the Town and Country Planning Act 1990 (“The Act”) made on or about 25th April 2023, was received by Eastleigh Borough Council (“The LPA”) from Luken Beck (“the Agent”), on behalf of Maurice Doe, CCW Services L.td (“the Appellant”).

4.2 The application was in respect of the following:

“Building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular ‘grasscrete’ as illustrated on Plans 1 and 2 attached, together with the parking of motorised vehicles to include heavy vehicles and trailers in accordance with an Operator’s Licence dated 28th June 2010, and subsequent renewals which remains ongoing and evidenced in Affidavits.

4.3 The application was refused by the Council’s Head of Legal Services on the 29th August 2023 for the following reasons:

- i) 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.
- ii) 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.

5.0 THE MAIN ISSUES

5.1 The main issues for the Inspector's consideration in this appeal as agreed to be as follows:

- 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 by the laying of the Tarmacadam constitutes new engineering works which have commenced a new chapter in the planning history for the application site.

6.0 AGREED MATTERS

6.1 At the CMC it was agreed that the LDC refusal notice should be amended to refer to section 191.

- 6.2 The burden of proof rests on the Appellant on the balance of probabilities.
- 6.3 In respect of both operational development and use of the site insofar relevant to the LDC, the Appellant's evidence does not need to be corroborated by "independent" evidence in order to be accepted. 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. See *F. W. Gabbittas v SSE and Newham LBC* [1985] and the PPG.
- 6.4 In respect of the use, the proper approach is to compare the present years with the previous use and assess whether there has been any material change of use per *Thurrock Borough Council v SSETR* [2002] EWCA Civ 226.
- 6.5 The refusal notice does not refer to the sub-base hardcore (type one crushed concrete) with concrete cellular 'grasscrete' but focuses on the subsequent laying of tarmacadam. At the time of the decision, the Council accepts that it did not have contrary evidence to dispute the laying of grasscrete in 2006 and considered the Appellant's evidence to be ambiguous.

- 6.6 The Council's Officer's report acknowledges that "*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.*"
- 6.7 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*". It is agreed that an intensification is capable of being a material change of use.
- 6.8 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*".

7.0 MATTERS OF DISAGREEMENT

7.1 The main issues set out above comprise the key matters of disagreement between the parties, save for those elements agreed above:

- 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 by the laying of the Tarmacadam constitutes new engineering works which have commenced a new chapter in the planning history for the application site.

Signed on behalf of the Appellant

Signed on behalf of Eastleigh B.C.

J C Beck

H Deneer

Position: Planning Consultant for
CCW Services

Position: Head of Legal Services

Date: 9th February 2024

Date: 12th February 2024